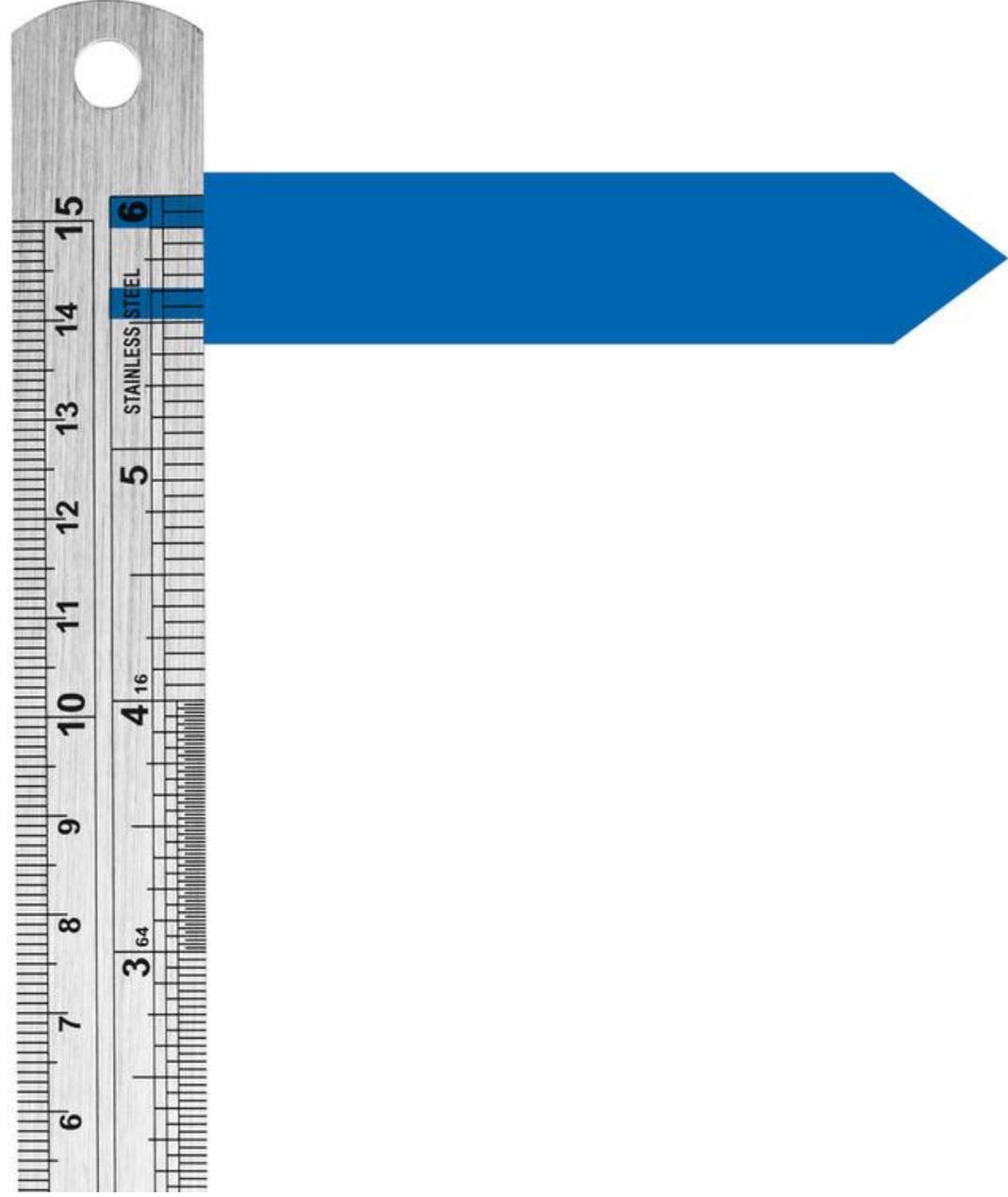


## Emergency measures

The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020

3 April 2020



## 1. Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020

### Brief

The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (the "Act") forms part of the emergency response by the Government to the increasing prevalence and spread of COVID-19.

The objective of the Act is to mitigate the effect of the spread of COVID-19. In achieving this objective it provides for amendments to the Health Act 1947 and for income supports for those whose income and employment are affected by the virus.

The Act, amongst other things, amends the Health Act 1947 to allow the Minister for Health (the "Minister") to introduce regulations which can impose travel restrictions, prohibit some events (including large gatherings), and for any other measures that they may deem appropriate for the minimisation of the spread of COVID-19, and enables the detention and isolation of persons who are a potential source of COVID-19 where they do not submit to voluntary self-isolation.

The Act was signed into law (enacted) by the President on 20 March 2020 and commenced upon enactment (with measures relating to social welfare amendments deemed to have come into effect from 9 and 13 March). Changes made by the Act to the Health Act 1947 will remain in place until 9 November 2020.

### Amendments Of Health Act 1947 Section 31A

Section 10 of the Act inserts a new Section 31A into the Health Act 1947. The new Section 31A allows the Minister to make regulations for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19 (including the spread outside the State) or to deal with public health risks arising from the spread of COVID-19 (the "**Regulations**"). **As at 2 April 2020, no Regulations have been made.**

The Regulations may prohibit certain types of events in the interest of preventing, limiting minimising or slowing the spread of COVID-19. Regulations may also be made on the safeguards to be put in place by organisers of events. In addition, Regulations may provide for the safeguards to be put in place in relation to premises to prevent the risk of infection to people visiting or working there. Regulations may provide for any other measures that the Minister may deem appropriate in order to prevent, limit, minimise or slow the spread of COVID-19.

The Minister under section 31A(4) can exempt certain persons who carry out essential services from the provisions of the Regulations.

### Section 31A Subsection (6)

Provides that where a person who contravenes a penal provision of the Regulations, or obstructs a "relevant person" (defined as including a medical officer, customs officer, authorised officer, HSE appointees) carrying out their duties under the Regulations, fails to provide requested information to a relevant person, or gives false information shall be guilty of an offence.

### Section 31A Subsections (7) and (8)

Where the Gardaí suspect a person is not complying with a penal provision of the Regulations, they can give such directions to that person as they deem necessary, to ensure compliance. Failure to comply with any such direction is an arrestable offence.

### Section 31A Subsection (12)

A person who commits an offence under section 31A is liable on summary conviction to a maximum fine of €2,500 and/or six months imprisonment.

**Section 31A  
Subsection (15)(a)**

Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

**Section 31A  
Subsection (15)(b)**

Where the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

**Section 31A  
Subsection (16)**

For the purposes of section 31A, section 31B (affected areas orders) and section 38A - 'event' is defined broadly, as meaning a gathering of persons, whether the gathering is for cultural, entertainment, recreational, sporting, **commercial, work**, social, community, educational, religious or other reasons;

'event organiser', in relation to an event, is defined as meaning a person who - (a) is engaged in publicising, arranging, organising or managing the event, or (b) receives some or all of the revenue, where applicable, from the event;

'premises' is defined as including a building or any part of a building, any outdoor space surrounding or adjacent to the premises, whether or not used in conjunction with the premises, any land, premises, tent, caravan, or other temporary or moveable structure, ship or other vessel, aircraft, railway carriage or other vehicle (whether stationary or otherwise) and any storage container.

**Detention and  
isolation of persons  
in certain  
circumstances**

Section 11 of the Act inserts a new section 38A into the Health Act 1947. The intention of the new section 38A is to allow a medical officer of health to order the detention and isolation of a person where the medical officer of health reasonably believes that the person is a *potential source of infection* and where the person refuses to self-isolate. The medical officer of health must keep the person under review and a medical examination must be carried out as soon as possible but in any event no later than 14 days after detention. This reflects the incubation period and is intended to indicate an outer time period. In practical terms, the person would be medically monitored throughout any time of detention. The person detained may also ask for a review of his or her detention by another doctor.

Under section 38A(7) a person commits an offence where they prevents or attempts to prevent the detention, or the bringing to a hospital or other place, of any person who is subject to detention and isolation under the provisions of this section, or who assists in an escape or an attempted escape of any person who is subject to detention and isolation under the provisions of this section, or who obstructs or interferes with the exercise of any power conferred by section 38A.

A person who is guilty of an offence under section 38A shall be liable on summary conviction to a maximum fine of €2,500 and/or three months imprisonment.

---

### Section 31A Subsection (16)

For the purposes of section 31A, section 31B (affected areas orders) and section 38A - 'event' is defined broadly, as meaning a gathering of persons, whether the gathering is for cultural, entertainment, recreational, sporting, **commercial, work**, social, community, educational, religious or other reasons;

'event organiser', in relation to an event, is defined as meaning a person who - (a) is engaged in publicising, arranging, organising or managing the event, or (b) receives some or all of the revenue, where applicable, from the event;

'premises' is defined as including a building or any part of a building, any outdoor space surrounding or adjacent to the premises, whether or not used in conjunction with the premises, any land, premises, tent, caravan, or other temporary or moveable structure, ship or other vessel, aircraft, railway carriage or other vehicle (whether stationary or otherwise) and any storage container.

### Detention and isolation of persons in certain circumstances

Section 11 of the Act inserts a new section 38A into the Health Act 1947. The intention of the new section 38A is to allow a medical officer of health to order the detention and isolation of a person where the medical officer of health reasonably believes that the person is a *potential source of infection* and where the person refuses to self-isolate. The medical officer of health must keep the person under review and a medical examination must be carried out as soon as possible but in any event no later than 14 days after detention. This reflects the incubation period and is intended to indicate an outer time period. In practical terms, the person would be medically monitored throughout any time of detention. The person detained may also ask for a review of his or her detention by another doctor.

Under section 38A(7) a person commits an offence where they prevents or attempts to prevent the detention, or the bringing to a hospital or other place, of any person who is subject to detention and isolation under the provisions of this section, or who assists in an escape or an attempted escape of any person who is subject to detention and isolation under the provisions of this section, or who obstructs or interferes with the exercise of any power conferred by section 38A.

A person who is guilty of an offence under section 38A shall be liable on summary conviction to a maximum fine of €2,500 and/or three months imprisonment.

---

## 2. Emergency Measures in the Public Interest (COVID-19) Act 2020

### Brief

The Emergency Measures in the Public Interest (COVID-19) Act 2020 (the "Emergency Measures Act") was signed into law by the President on 27 March 2020.

The Emergency Measures Act makes provision for emergency measures in order to mitigate the impact of the COVID-19 virus on the administration of crucial public service functions. The Act includes a range of measures by a number of Government Departments for the duration of the COVID-19 crisis including, inter alia, empowering the Minister for Housing, Planning and Local Government for a defined period to disregard certain time periods and deadlines provided for in planning and building legislation.

### Part 3/ Section 9: Amendment of Planning and Development Act 2000

Part 3 of the Emergency Measures Act deals with the calculation of time limits relating to planning and development. It contains a number of measures that gives the government power to disregard certain time periods during the Covid-19 crisis to avoid breaching statutory deadlines in a number of acts relating to planning and building development.

[According to materials produced by the Government,] the Minister for Housing has commenced Section 9 of the Emergency Measures Act. This section inserts a new provision (Section 251A) into the Planning and Development Act, 2000 as amended (the PDA 2000). The provision is modelled on an existing and long-established provision under Section 251 of the Act, which applies in normal circumstances every year over the Christmas period. Subsequently, and having regard to the issues set out in Section 251A(5) of the Act, the Government made an order under Section 251A(4), to the effect that the period from 29 March 2020 to the 20 April 2020, inclusive, may be disregarded when calculating any appropriate period, specified period, or other timelines in the following Acts, or provisions, or in any regulations made under those acts or provisions:

- The Planning and Development Act 2000, as amended;
- The Derelicts Sites Act, 1990;
- Part 2 of the Urban Regenerations and Housing Act, 2015 (which relates to the vacant site levy);
- Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (which relates the Strategic Housing Developments)

### List of essential service providers under new public health guidelines – 28 March 2020

The Government has decided that everybody should stay at home until 12 April 2020 except for, inter alia, to travel to and from work, or for purposes of work, only where the work is an essential health, social care or other **essential service** and cannot be done from home. The question is what constitutes an essential service where workers cannot work from home. If you carry out an activity that is necessary for the continued provision of an essential service by another organisation or you are part of an essential supply chain, you should continue to carry out that activity. To the maximum extent possible, that should be done remotely.

Employers should take the following steps:

- refer to this guidance to decide whether your organisation is providing an essential service; **it is not necessary to seek official authorisation**;
- if you are providing an essential service, you should identify those employees (including sub-contractors etc.) who are essential to the provision of that service and notify them (this can be done by category of employee or by individual; it could include all employees of the organisation);
- if you are providing an essential service, latest public health guidance should be followed at all times Employees should take the following steps;
- If your employer notifies you that you are an essential employee, or that you belong to a category of essential employees, you are permitted to travel to and from work;
- When travelling to and from work, you should at all times bring with you either a work identification or a letter from your employer indicating that you are an essential employee, as well as one other form of identification.

Non Essential Services: If you are not engaged in the provision of essential services, then you are not permitted to travel to and from work until 12 April 2020.

The Government have released a list of **essential services** and construction is described as "*Essential health and related projects relevant to the COVID-19 crisis, and supplies necessary for such projects; repair\construction of critical road and utility infrastructure; delivery of emergency services to businesses and homes on an emergency call out basis in areas such as electrical, plumbing, glazing and roofing.*".

Following the announcement, a grace period was afforded to businesses until 6pm on Monday, 30 March 2020 for those who needed to make necessary arrangements to wind down their activities in an orderly way. In exceptional circumstances, it is accepted that some extra time will be needed for a wind down of activity, or necessary for a site to continue to operate at a reduced level of activity e.g. in complex manufacturing processes or very large construction projects.

## **Analysis**

The question arises as to whether the public health measures are enforceable by An Garda Síochána, or whether we are being asked to adhere to these measures via a civic duty.

Regulations have not yet been introduced to allow for enforcement of the measures. However, government websites have indicated (read more here) that "The measures above will be reflected in the regulations to be made under the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 and will be enforced by the Garda Síochána."

It is therefore anticipated that the rules around essential services, recently updated (and the measures of adhering to government guidelines) will be linked to section 31A of the Health Act 1947 and in particular will fall within the scope of the anticipated powers of An Garda Síochána to enforce the measures.

Employers who are carrying on business should be aware that if they are regarded as a non-essential service, they could be acting in contravention of the legislation. Should an employer act in contravention of the provisions of section 31A and Regulations made thereunder, they are exposed to a possible fine and/or imprisonment.

In the same vein, those who are providing an essential service in line with the recommendations may qualify as an exempt specified classes of persons to the regulations, specified by the Minister under the new legislation.

In many cases it will be clear whether a given entity is carrying out an essential service. For others, determining an entity's activity will be more difficult to consider. The entity must look to (i) which aspects of their activity can be said to be an essential service, and (ii) which employees or classes of employees are required to attend the work site for those essential aspects. The employer should document the basis for their decision, referencing to specific Government advice that they based their decisions on, and any other advice they received.

Workers who travel to work because they are required for an essential service need a letter from their employer indicating that their work is an essential service and that they are permitted to travel to work. It is conceivable that, if travelling, they may be asked by Gardaí to produce this as evidence that they are travelling for a permitted purpose.

Employers should also be conscious to their existing duty of care to employees under common law and statutory requirements as well as their employee contracts.

The emergency powers continue in operation until 9 November 2020 on which date they will cease to have effect unless a resolution is passed by both houses of the Oireachtas to approve the continuation of the measures.

**For further information, please contact:**



**Dermot McEvoy**  
*Partner, Dispute Resolution  
& Litigation*

+353 1 6644 238  
DermotMcEvoy  
@eversheds-sutherland.ie



**Stephen Barry**  
*Partner, Dispute Resolution  
& Litigation*

+353 1 6644 284  
StephenBarry  
@eversheds-sutherland.ie



**Harry Caulfield**  
*Solicitor, Dispute Resolution  
& Litigation*

+353 1 6644 975  
HarryCaulfield  
@eversheds-sutherland.ie

**Disclaimer**

The information is for guidance purposes only and should not be regarded as a substitute for taking legal advice. Please refer to the full terms and conditions on our website.

**Data protection and privacy statement**

Your information will be held by Eversheds Sutherland. For details on how we use your personal information, please see our Data Protection and Privacy Policy.