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Consultation on Public Health Bill 2024

Rural Community Network (RCN) is a regional membership-based organisation supporting rural communities across Northern Ireland. RCN works with rural communities to address issues relating to poverty, inequality, community and good relations and strives to develop the capacity and skills of groups to articulate their voice at a policy influence level.

RCN has over 200 member groups across rural Northern Ireland. Its Board is also representative of its membership base. RCN's aims are:

- to empower the voice of rural communities
- to champion excellence in rural community development practice
- to develop civic leadership in rural communities
- to actively work towards an equitable and peaceful society
- to promote the sustainable development of rural communities

RCN have taken significant time to read your Consultation Document and we also consulted with Members who work in the Community and Voluntary Sector with a health remit. Whilst we welcome a Bill to protect NI citizens in times of public health emergencies, our main concern is the terminology used throughout the Bill and consultation questionnaire is highly complex. We are concerned the public will feel unable to engage with this consultation, or to engage in a meaningful way, if they do not understand it. Our members are also concerned that you have not made attempts to simplify or explain the terminology.

It is also disappointing to note that, despite this being a health-related bill, there are no other accessible formats available and one has to seek out alternative methods proactively and independently just to engage with you. This includes, but is not limited to, an "easy read" version of the Bill. Again, this is disappointing given the levels of health-related literacy issues in the United Kingdom generally. The Patient and Client Council advise that "based on statistics in other regions of the UK, it can be seen that up to half the population [in Northern Ireland] could be expected to have limited health literacy". [i]

Our Members also cite disappointment with the lack of exposure and public consultation events which would have afforded you the opportunity to explain the complexities within this Bill.

In addition to the foregoing, we found the questions pitched within your questionnaire to be at a highly complex level for an "ordinary reasonable person" to understand. We found it equally difficult to answer your questions within your proposed framework. The framework almost forces us by its design to accept the premise of the Bill which you say is to "*protect the population against various forms of infection and contamination"* but our reading of this has led us to have human rights concerns regarding the far-reaching powers of entry, investigation, medical intervention and quarantine. Whilst we understand there are health related justifications for interfering in rights associated with public health intervention, you are required to act in a manner which is clear, proportionate and reasonable. These human rights aspects cannot be ignored as they are now laid down in caselaw. (please see below)

In addition to the Human Rights aspects, The Rural Needs Act (Northern Ireland) 2016[ii] requires you, as Duty Holder, to give due regard to rural needs. As part of this consultation, we ask you to consider the following:

Theme One: Structure and Purpose

Statement of Intent

RCN disagree with your statement of intent. It is not clear to us that your intent, and the manner in which you then propose this intent to be actioned, are compatible with the principle of proportionality as emphasised in *R (on the application of Daly) v Secretary of State of the Home Department [2001] UKHL 26*. [iii]The conclusion in this case asks that aims pursued be proportionate with the rights impacted. In creating a law that interferes with rights, we must consider more than just "Wednesbury Reasonableness". RCN urge you to consider Lord Steyn's criteria on proportionality being (a) The objective of the legislation must be sufficiently important to justify a restriction on a fundamental right; (b) measures created to meet an objective must be rationally connected to it, and (c) The means used to impair the right/freedom are no more than is necessary to accomplish the objective.

Definition of "infection and Contamination" within an "All Hazards Approach" Framework

From our discussions with members, RCN have established that this definition is too wide and leaves a broader scope for interpretation than we feel appropriate given the powers afforded to the Public Health Agency (PHA) later in the Bill. We cannot look at definitions in isolation of linked powers, especially when those definitions relate to limiting a fundamental human right eg Right to Privacy and Family Life Article 8 ECHR or Right to Liberty and Security Article 5 ECHR.

Indeed, the Courts indicated in *R (on the application of Purdy)-v- Director of Public Prosecutions [2009] UKHL 45* that "A law which confers a discretion is not in itself inconsistent..... provided the scope of the discretion and the manner of its exercise are indicated with sufficient clarity to give the individual protection against interference which is arbitrary" . Therefore, it is our contention that law should be clear and concise for all involved in upholding the rule of law and presently the scope is so large, most likely to accommodate differing scenarios, but nonetheless, still too vague. [iv]

An example of this from within the Bill, you state that the definition of "medical treatment" within this Public Health Bill is "mirroring that of the rest of the UK" but this is not our interpretation. We would ask for further clarity on this point, worded in clear, precise language for all to understand.

Theme Two Organisation Responsibilities

Scope

RCN is concerned regarding the scope of the Public Health Agency (PHA) under this draft Bill. The Document refers to PHA being "able to authorise others to undertake specified duties" But it does not explain this- who are these "others" and what are these "specified duties". How restrictive will they be and how might they impact rural communities given their more limited access to services and poor infrastructure?

It goes on to say that, in other areas of the United Kingdom, local authorities are authorised to undertake health protection functions and investigations eg taking of air, water and land samples. Further to this, you add that you are still mapping current roles and responsibilities with local councils and PHA to make this process clearer and may identify protection gaps. We urge you to rural proof this clearly and with openness to your local discussions. RCN are happy to assist in this process. This process too, should be in keeping with the clarity and proportionality principles set out above.

Rural Communities often feel marginalised and require a different response to public health emergencies taking into account how same might impact them for example:

- Isolation if forced to quarantine
- Access to services to deal with an emergency;
  (a) how far will they be required to travel?
  (b) what are the safe pathways to access those services?
- lack of infrastructure to ensure safe and timely decontamination

We urge you therefore not to centralise your public health response system.

Our reason for this comment relates specifically to your Rural Proofing Exercise wherein you have indicated you believe public health emergencies impact those living rurally and those living in an urban setting equally. The Rural Policy Framework however acknowledged that COVID 19

did not impact rural communities equally and in fact commended rural communities for their flexible response during the pandemic. [v] This is an important factor when considering your scope and we note that Community and Voluntary Groups have been left out of this scoping exercise completely despite them being at the coal face during our last public health emergency.

Theme 3 Health Powers to include Monitoring and Surveillance

RCN, having considered the powers which appear to be granted under theme 3 with its membership, conclude that we have concerns over the extensive powers of enforcement and lack of clarity with definitions. As above, you are required to be clear in the remit of your policy as well as proportionate as to the need. We are not satisfied that this has been achieved given the following:

- Powers to PHA to notify schools that a pupil will not be attending
- Powers of PHA to alter notices and make continuous notices – who oversees this, can this be challenged?
- Powers to force Teachers to notify PHA if "they believe" a child has a disease. Teachers are not medically qualified to make this decision.
- Powers to PHA to require that a Head Teacher provide PHA with the names and contact details of the pupils at their school, where the PHA has served a notice on a parent of a child requiring them to keep a child away from school. We wonder if the Information Commissioner has been consulted in relation to this?
- Making it an offence if parents or teachers fail to comply, is very draconian. It is not clear who has oversight of this process, can it be challenged and will there be assistance to legally challenge in order to ensure parity of esteem.
- General Practitioner Surgeries are already struggling in Northern Ireland and this is certainly true in a rural setting. GPs are struggling to cope with demand and many GP contracts in Rural Settings are at the brink of collapse and others have already collapsed. The Department of Health admit an 11% reduction in GP practices since 2014 with the Western Trust, a significantly rural Trust, suffering the largest proportionate decrease[vi]. We are concerned about this additional pressure of reporting and surveillance on an already stretched sector. We also add that any enhancement of powers should also be compatible with Article 8 of the ECHR and proportionate (as above)
- Our members are concerned that this Bill appears to afford significant powers to force people, including children, to be vaccinated. RCN ask again for clarity on this in clear, precise language for all to understand

<u>Rural Needs Conclusion</u>

Whilst we understand the Rural Needs Act (Northern Ireland) 2016 asks you to give due regard to the needs and complexities of rural working, RCN ask you to please go beyond "due regard". 37% of the population of Northern Ireland live rurally and in areas of high deprivation, isolation and with limited access to services including health services. This consultation is focused on

times of emergency and our rural community organisations proved their worth during the COVID-19 pandemic. They know their locality and the need within it, they have the flexibility and adaptability to respond quickly and do not have layers of bureaucracy to navigate in order to affect a change in service. We ask you to consider them in your Bill.

Finally, it is very difficult in the absence of a Bill of Rights in Northern Ireland to establish clearly what rights citizens have to an adequate standard of physical and mental health. We need the building blocks within a Bill of Rights and what this might look like on a regional level in order to best proceed to consider Public Health emergency responses. It is our contention that it would be best to have a Bill of Rights in place before proceeding with this Bill in order to allow better and clearer parameters.

We thank you for allowing us the opportunity to feed into this important consultation.

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[i] pcc-scoping-paper-on-health-literacy-2021.pdf (pcc-ni.net)
[ii] Rural Needs Act (Northern Ireland) 2016 (legislation.gov.uk)
[iii] House of Lords - Regina v. Secretary of State For The Home Department, Ex Parte Daly (parliament.uk)
[iv] House of Lords - R (on the application of Purdy) (Appellant) v Director of Public Prosecutions (Respondent) (parliament.uk)
[v] ruralpolicyframeworkfornorthernirelandreportonpublicconsultation.pdf (nidirect.gov.uk)
[vi] Publication of FPS General Medical Services for Northern Ireland, Annual Statistics 2023/24 | Department of Health (health-ni.gov.uk)