

# What are the implications of COVID-19 law and regulation for health professionals in Northern Ireland?

**Anne-Maree Farrell, Thérèse Murphy and Leah Treanor**

Health and Human Rights Unit, School of Law, Queen's University Belfast

With John Coggon (University of Bristol), Edward Dove (University of Edinburgh), Rhiannon Frowde (University of Edinburgh), John Harrington (Cardiff University), Farhang Tahzib (UK Faculty of Public Health), Erin Thomas (Cardiff University), and Bonnie Venter (University of Bristol)

## Aims of this report

This report provides health professionals with an overview of key legal and regulatory responses to COVID-19, and how they affect important areas of health and social care, in Northern Ireland. It explains the laws and other sources related to professionals' rights and duties to help guide their decision-making. The overview of legal measures aims to be of ongoing relevance, but laws may change, and this document is representative of the situation on 7th July 2020. The report also provides guidance to assist reflective practice underpinned by a human rights-based approach.

## COVID-19: The UK's legal response

In March 2020, the UK Parliament enacted the [Coronavirus Act 2020](#). This Act will be in force for up to two years; albeit that some of its provisions have not been given immediate effect—and may never take effect. The Act operates alongside existing legislation enacted for all of the UK, as well as measures that apply only to England, Northern Ireland, Scotland, and Wales, or just some of these. The legal and policy situation for health and social care is complex, with regulation and guidance coming from the UK government and the devolved administrations. Local government also has a crucial role to play, as do health professionals and their representative organisations and regulators.

Rights and duties are at the core of being a health professional. Health professionals owe general duties to the public, underwritten by law and professional ethics. It is important to take a holistic, culturally congruent stance on the provision of health and social care in light of people's needs and rights.

## The legal and regulatory context in Northern Ireland

Health is a devolved matter in Northern Ireland and it is the [Northern Ireland Executive](#) and the [Northern Ireland Assembly](#) which make law and policy in health and social care. In response to COVID-19, the Assembly consented to legal measures for managing the pandemic in Northern Ireland to be included in the Coronavirus Act, which led to the adoption of local 'lockdown' measures under [The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#), as amended. In responding to the pandemic, the [Northern Ireland Department of Health](#), the [Northern Ireland Public Health Agency](#) and [Health and Social Care \(HSC\)](#) have also had crucial roles to play. There has also been greater [North-South public health co-operation](#), as well as with the other nations of the UK.

The [Northern Ireland Executive's Approach to Decision-Making](#) sets out the principles that guide the review of lockdown measures. It operates alongside a [Coronavirus Recovery Plan](#) which sets out how such measures will be eased over time. This includes a phased return to work and education, a gradual approach to the re-opening of retail shops, and increased contact with family and friends.

The following diagram illustrates how legislative, regulatory and advisory sources interact in Northern Ireland:

**Overarching law**

**Human Rights Act 1998 and Anti-Discrimination/Equality Legislation that Applies in Northern Ireland**

Enshrining rights and outlawing discrimination in certain circumstances, these Acts remain in force during the COVID-19 pandemic. They require public bodies to respect human dignity, paying special attention to the interests and voices of people who are vulnerable, and avoiding limitations of rights that are unnecessary or disproportionate to the goal sought.

**The Coronavirus Act 2020**

This Act introduces novel powers, and amends (or provides the power to amend) existing legislation, aiming to slow the spread of the virus, reduce the resourcing and administrative burden on public bodies, and limit the impact of potential staffing shortages.

**Northern Ireland public health laws**

**Public Health (Northern Ireland) Act 1967**

The Coronavirus Act created new legal powers under this Act for protecting public health in Northern Ireland as a result of COVID-19.

**The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020**

The Regulations govern 'lockdown' measures in Northern Ireland. They are subject to review by the Executive every 21 days and have been amended as circumstances change in responding to COVID-19.

**Professional regulation and governance for public health**

**Statutory Regulators for Health Professionals**

Bodies which license and discipline health professionals, including the General Medical Council and the Nursing and Midwifery Council, have general codes of conduct and have also issued specific COVID-19 related guidance.

**Public Health Agency & RQIA**

The Agency deals with public health matters, including disease outbreaks. The Regulatory and Quality Improvement Authority (RQIA) is responsible for the quality of health and social services in Northern Ireland.

**Advisory guidance**

**Professional Associations**

Bodies including the Academy of Medical Royal Colleges, the Royal College of Nursing, the Faculty of Public Health, and the British Medical Association are providing guidance and support to their members in responding to COVID-19.

**Advisory and Expert Ethics Bodies**

The Moral and Ethical Advisory Group, NI Human Rights Commission, and the Equality Commission of NI are addressing ethical and human rights questions raised by COVID-19. Organisations such as the Nuffield Council on Bioethics are also addressing the ethical questions raised by the pandemic.

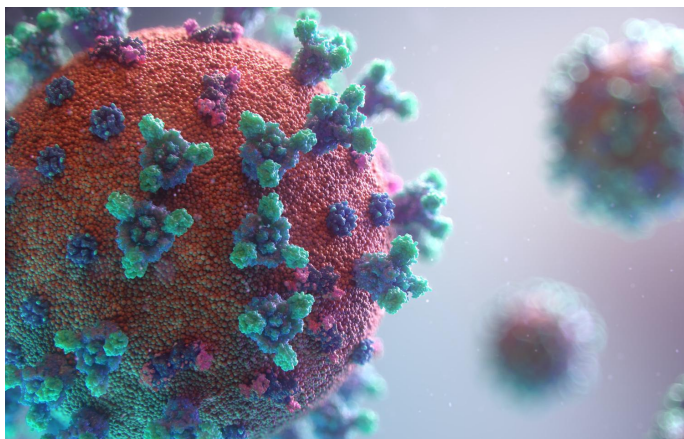


Photo by Fusion Medical Animation on Unsplash

## COVID-19 laws and regulation in key areas of health and social care

The measures adopted in response to COVID-19 make significant changes to health and social care. When exercising duties, it is important to maintain a high standard of practice and continue to respect human rights and equality obligations.

### 1. Health professionals: workforce and employment

The COVID-19 pandemic has placed an unprecedented burden on the HSC. To increase workforce capacity, the Coronavirus Act permits temporary registration or a licence to practise to fit, proper, and suitably experienced health professionals. The General Medical Council and the Nursing and Midwifery Council have introduced temporary registers for this purpose. Indemnity coverage is also provided for clinical negligence liabilities arising due to COVID-19, if not covered by existing arrangements. Personal Protective Equipment (PPE) guidance, as well as a range of other COVID-19 guidance, have been published to assist health and social care professionals in their work, and to support their health and wellbeing. Whistleblowing laws offer protection to health and social care professionals who wish to express concerns about unsafe work practices.

### 2. Resource allocation

NICE, the BMA, and the Intensive Care Society have all published guidance on resource allocation decision-making. The GMC has also updated its guidance on prioritisation of access to treatment in light of COVID-19. In Northern Ireland, guidance has been published for managing staff, as well as allocation of equipment and medicines. In the event of being overwhelmed by subsequent waves of COVID-19, spare treatment

capacity can be activated via a Nightingale Hospital facility. A Covid-19 Test, Trace, Protect, Support Strategy is in place, with COVID-19 testing now more widely available. Studies are underway examining alternative ways to treat COVID-19 in the absence of a vaccine.

### 3. Nursing and residential care homes

Over half of COVID-19 deaths in Northern Ireland have occurred in care homes. Guidance for nursing and residential care homes recommends a series of measures to keep residents and staff safe, including how best to use PPE and to monitor residents for symptoms. The guidance emphasises the importance of adhering to quality assurance requirements overseen by the Regulatory Quality and Improvement Authority (RQIA). Those managing care homes also need to ensure that appropriate protections from COVID-19 are in place for residents lacking capacity pursuant to the Deprivation of Liberty Safeguards scheme.

### 4. Mental health care

Changes have been made to the Mental Health (Northern Ireland) Order 1986 and the Mental Capacity (Northern Ireland) Act 2016 (MCA 2016), including a relaxation of existing qualifications, training, and experience requirements for professionals undertaking mental capacity assessments, and the easing of time limits for assessment and involuntary detention where suitably qualified professionals are unavailable. These changes will most likely impact involuntary detention for medical treatment in hospital settings. The MCA 2016 emergency regulations have since been revoked but the power to reinstate them remains under the Coronavirus Act. It is not clear exactly how the use of these emergency provisions will be monitored but independent scrutiny will be important to ensure adequate human rights protections remain in place for those assessed as lacking capacity.

### 5. Managing death and bereavement

Death certification and registration requirements have been relaxed to ensure certification can still take place where relevant medical practitioners are unavailable, and registration can now be done remotely. Specific guidelines have been published regarding handling of the deceased to minimise transmission of COVID-19. Although visits to local cemeteries can now be made, current guidance recommends only limited funeral attendance by family and friends, with no wakes to be held. While the importance of cultural practices regarding death and burial in Northern Ireland is recognised, safety remains paramount. While the importance of cultural practices regarding death and burial in Northern Ireland is

recognised, safety remains paramount. Guidance will be kept under regular review and updated as circumstances change in responding to COVID-19.

## Reflective practice: a human rights-based approach

The law on COVID-19 is complex, controversial, and subject to change. It will not always make clear what is required, or fit easily with other types of rules and guidance operating in the workplace. But decision-makers in a clinic or hospital, in public health, or in social care still need to make informed judgements. Human rights standards, which are part of UK and international law, can help.

Human rights standards resonate with ethics, equity, and other ways of thinking with which health professionals should be familiar. They offer key prompts in the face of challenging or apparently everyday decisions. They enable health professionals to identify the fundamental values at stake, how they conflict, and the way in which such conflicts can be resolved, while never losing sight of the interests of the person receiving care.

### What are the key features of a human rights-based approach?

- **Mobilise social rights.** The right to health obliges states to combat pandemics, through disease control measures, but also preparedness planning, adequate resourcing of the health system (including public health), and removing obstacles to treatments and vaccines.
- **Adopt fair processes.** Valuable resources, like tests, ventilators, and PPE, should be allocated on the basis of public criteria, with transparent decision-making and wide participation where feasible. Accountability should be promoted by regular monitoring and review, with remedies available where standards are breached.
- **Respect civil and political rights.** The right to life and the right not to be subject to inhuman or degrading treatment must be respected. Government has a positive obligation to take appropriate steps to safeguard people's lives; this includes making regulations that require public and private facilities to adopt measures for the protection of the lives of people in their care. Liberty and privacy, the ability to sustain important relationships, and to accept or reject professional advice, are integral to ethical health care and to individual dignity. They continue to be fundamental in a time of pandemic emergency, though they may be limited.

- **Justify restrictions.** Limitations can only be imposed if they are necessary, the least restrictive means needed to protect the public's health, justified by scientific evidence, and laid down in law. Independent review after a fixed time-period is essential.

- **Embed equality and non-discrimination.** Decisions should not exacerbate existing inequalities or create new ones. Planning at all levels should take account of the needs of people from BAME communities, older people and other marginalised groups, as well as women, who are disproportionately burdened with caring responsibilities in the health and social care sector and domestically.

### Further information and resources

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For further briefings and resources on the law and regulation in all four UK nations, please see the project website: <https://bit.ly/3eaM1Sg>

### Contact the authors:

Anne-Maree Farrell: [a.farrell@gub.ac.uk](mailto:a.farrell@gub.ac.uk)

Thérèse Murphy: [t.murphy@gub.ac.uk](mailto:t.murphy@gub.ac.uk)

Leah Treanor: [ltreanor05@gub.ac.uk](mailto:ltreanor05@gub.ac.uk)