

Irish Council for Civil Liberties (ICCL)

Submission on Health Act 1947 (Section 31A – Temporary Requirements) (Covid-19 Passenger Locator Form) Regulations 2020

29 May 2020

The Irish Council for Civil Liberties (ICCL) wishes to restate its general position with regard to all regulations introduced under the Health (Preservation and Protection of Life and Other Matters in Public Interest) Act 2020 which impact upon human rights: namely, that in all cases where the Government proposes to legislate for restrictions on rights, it must do so lawfully and with regard to constitutional rights and human rights obligations; and it must demonstrate that such measures are necessary and are proportionate to a specific legitimate aim.

In its letter of 20 May 2020 (see attached), ICCL called on the Minister for Health to consult with appropriate bodies in advance of introducing regulations relating to international travel, including the Oireachtas Special Committee on Covid (which has a specific role in relation to pre-legislative scrutiny) and the Irish Human Rights and Equality Commission (which has a statutory function in advising Government on human rights issues relating to proposed legislation). We have also consistently called on the Minister to carry out a Human Rights Impact Assessment, which would assess the impact of the temporary regulations on the rights of individuals and communities across Ireland.

We regret that none of these options have been availed of with regard to the Health Act 1947 (Section 31a – Temporary Requirements) (Covid-19 Passenger Locator Form) Regulations 2020. We call again on the Minister to carry out such consultations and reviews before there is any consideration of extending these regulations on their expiry on 18 June.

As a guiding principle, ICCL believes that public health matters should be overseen and implemented by public health bodies. In that regard, the Minister has not demonstrated why he deemed it necessary to include penal provisions in the main regulations. In our view, any decision to introduce penal provisions in public health regulations of this type should be premised on a demonstration that a public health approach is not sufficient to meet the public health aim. A public health based approach could involved the provision of information to passengers, public awareness raising campaigns, and advice to passengers on arrival into the State.

We support a separation between criminal justice and public health matters. We have called for a lifting of all public health regulations defined as penal provisions that are not demonstrably necessary and can not be defined as the most minimal interference with rights

necessary to protect public health. There may be public health scenarios where enforcement is necessary, but this need must be demonstrated.

With regard to these Passenger Form Regulations, the ICCL welcomes the fact that no legal obligations, powers of enforcement or penal provisions have been introduced with respect to the oversight or self-isolation of international travelers after they arrive in the State. ICCL also welcomes the absence in these regulations of any provisions regarding centralised quarantine (detention) of some or all international travelers. We understand proposals were made to include these matters in regulations, which we believe would have presented significant human rights concerns. We would urge the Government to continue leave such proposals off the table.

Insofar as Sections 5 and 6 of these regulations provide for penal provisions, they give rise to potential arrest and prosecution of individuals for matters relating to the completion of a Passenger Form, or the provision of information related to a Passenger Form. It is essential that any individual who is not in a position to complete such a form, or who may have a reasonable excuse for not fully completing the form – e.g. where a person is seeking international protection – are provided with the opportunity to present a reasonable excuse before any arrest or prosecution. We urge a common sense approach by ‘relevant persons’ to be taken in such circumstances.

Section 7 of the regulations introduces a number of welcome protections with regard to data protection – particularly in specifying the purpose of the regulations, identifying the HSE as data controller, and providing for the destruction of personal data after a period of time. Nevertheless, ICCL would welcome further information about how and within which offices or units data will be held by the HSE, and also what protections will be in place with regard to any data transferred to criminal justice agencies for the purposes of prosecution under the regulations.