

DUBLIN CIRCUIT

THE HIGH COURT

Record No:
2020 JR

ORDER 84, RULES OF THE SUPERIOR COURTS 1962

JUDICIAL REVIEW

BETWEEN:

GEMMA O'DOHERTY

AND

JOHN WATERS

Applicants

-and-

THE MINISTER FOR HEALTH

AND

IRELAND

AND

THE ATTORNEY GENERAL

Respondents

STATEMENT REQUIRED TO GROUND APPLICATION
FOR JUDICIAL REVIEW

- (a) **Applicants' name:** GEMMA O'DOHERTY and JOHN WATERS
- (b) **Applicants' address:** THE GABLES, FOXROCK, CO. DUBLIN
- (c) **Applicants' description:** INVESTIGATIVE JOURNALISTS, IRISH CITIZENS
- (d) **Reliefs sought:**

AN ORDER OF CERTIORARI declaring the enactment of the following null and void:

- (I) HEALTH (PRESERVATION AND PROTECTION AND OTHER EMERGENCY MEASURES IN THE PUBLIC INTEREST) ACT 2020
- (II) EMERGENCY MEASURES IN THE PUBLIC INTEREST (COVID-19) ACT 2020

(III) HEALTH ACT 1947 (SECTION 31A- TEMPORARY RESTRICTIONS) (COVID-19) REGULATIONS 2020

(IV) HEALTH ACT 1947 (SECTION 31A- TEMPORARY RESTRICTIONS) (COVID-19) (AMENDMENT) REGULATIONS 2020

(V) HEALTH ACT 1947 (AFFECTED AREAS) ORDER 2020

2. Further or other Order.
3. Costs of this Application.

(e) Grounds upon which such relief is sought:

Background Facts

1. On 4th January 2020, the World Health Organization (hereinafter: “WHO”), Geneva, Switzerland, reported (via social media) a cluster of pneumonia cases – with no deaths – in the Wuhan, Hubei province of The People’s Republic of China.
2. On 22nd January 2020 WHO issued a statement saying that there was evidence of human-to-human transmission in Wuhan of such pneumonia disease but more investigation was needed to understand the full extent of transmission.
3. On 23rd January 2020 The WHO Director-General convened an Emergency Committee (EC) under the International Health Regulations (IHR 2005) to assess whether the outbreak constituted a public health emergency of international concern. However, the Committee Members could not reach a consensus based on the evidence available at the time and asked to be reconvened within 10 days after receiving more information.
4. On 30th January 2020 the WHO Director-General reconvened the Emergency Committee (EC). This was earlier than the 10-day period as previously agreed and only two days after the first reports of limited human-to-human transmission were reported outside China. This time, the EC reached consensus and advised the Director-General that the outbreak constituted a Public Health Emergency of International Concern (PHEIC). The Director-General accepted the recommendation and declared the novel coronavirus outbreak (2019-nCoV) a PHEIC. This was the sixth occasion since its inception that the WHO had declared a PHEIC.
5. On 11th February 2020 the WHO Director-General advised that pursuant to agreed guidelines between WHO, the World Organisation for Animal Health and the Food and Agriculture Organization of the United Nations, advised that the coronavirus disease would be officially named COVID-19. He further advised that as of 6am Geneva time on 11th February 2020 there were 42,708 confirmed cases reported in China and 1,017 deaths, the majority of deaths occurring in Hubei province, Wuhan, China, and outside of China, 393 cases in 24 countries, and 1 death.

The WHO Director-General continued by advising the pre-emptive preventative health measures that could be adopted by the general public to prevent the spread of COVID-19:

-Clean your hands regularly, either with alcohol-based rub or soap and water.

-Keep your distance from someone who is coughing or sneezing.

-And when you cough or sneeze, cover your mouth and nose with a tissue or your elbow.

6. On 20th February 2020 outgoing Taoiseach Leo Varadkar TD tendered his resignation to President Michael D Higgins at Áras an Uachtaráin, Phoenix Park.

7. Concurrently on 20th February 2020 the Minister for Health Simon Harris TD signs the Infectious Diseases (Amendment) Regulations 2020 (S.I.53/2020) amending Regulation 8 and the Schedule to the Infectious Diseases Regulations 1981 ([S.I. No. 390 of 1981](#)) to include COVID-19 amongst the list of diseases designated as an ‘infectious disease’ for the purposes of the Health Act 1947.

8. On 26th February 2020 the Irish Rugby Football Union announced following a meeting with Minister for Health Simon Harris the cancellation of a match between Ireland and Italy due to take place at the Aviva Stadium Dublin on March 7th and a report issued in the Irish national media quoting Chief Medical Officer Tony Holohan as follows: *“the rugby match would result in a number of people travelling from an affected region” and there would be a “high risk of cases being imported from Italy, where there has been an outbreak of the virus”.*

However concurrently on 26th February 2020 a report issued in the Irish national media that both Minister for Health Simon Harris and the Chief Medical Officer Tony Holohan advised that screening at airports was *“not necessary”* and Minister for Health Simon Harris in particular stating that any response of Ireland to the virus must be *“proportionate”* and adding *“we can’t ban travel”*.

Minister Harris continued: *“Let’s pretend we decided in Ireland we weren’t going to accept flights from Italy. That wouldn’t work because Italian people could be flying to France and France on to Ireland. We live in the European Union. There is free movement. That’s a proportionate and responsible thing to do.”*

On 28th February 2020 a report issued in the Irish national media that a woman en route from Italy to her home in Northern Ireland is a carrier of the virus known as COVID-19.

9. On 29th February 2020 the Health Protection Surveillance Centre confirmed the first case of COVID-19 in Ireland, a male patient in the east of the country.

10. On 1st March 2020 a report issued in the Irish national media that a secondary school in the east of the country would close for 14 days as a male student who had recently returned from Northern Italy had contracted COVID-19.

11. On 3rd March 2020 a report issued in the Irish national media that a female in the east of the country, who travelled to the Republic of Ireland from Northern Italy, was confirmed as the second case of COVID-19 in Ireland. At the briefing on this new case, Chief Medical Officer Tony Holohan said he saw no reason why, as things stood, that the St Patrick’s Day Festival should not go ahead.

12. On 4th March 2020 a report issued in the Irish national media that four more cases

of persons infected with COVID-19 had been recorded in the Republic of Ireland, but in the West of the country, and all four cases being associated with recent travel from Northern Italy.

13. On 6th March 2020 a report issued in the Irish national media that the total number of persons infected with COVID-19 was 18. The Taoiseach stated the Government will not be ordering the cancellation of any events at this stage, including St Patrick's Day events.

14. On 7th March 2020 a report issued in the Irish national media that the Chief Medical Officer Dr. Tony Holohan insisted the risk of contracting COVID-19 in Ireland remained low. No impasse or blockade on flights entering Ireland from Italy occurred at any time at the direction of the Minister or any member of Government – and has not occurred to the present date - and on the weekend of March 6th to March 8th flights carrying Italian citizens already booked to travel to the now-cancelled Ireland v Italy match resulted in the presence of thousands of Italian citizens who may or may not have been infected with COVID-19 being present in the Greater Dublin area, eleven municipalities in the Lombardy region of Northern Italy having been placed in quarantine since February 22nd.

15. On 9th March 2020 a report issued in the Irish national media that there are now 24 confirmed cases of COVID-19 in the Republic of Ireland and the Health Service Executive (HSE) is working to identify any contacts the new cases may have had to provide them with information and advice to prevent further spread of the virus.

16. On 11th March 2020 a report issued in the Irish national media that there are now 34 confirmed cases of COVID-19 in the Republic of Ireland and that a patient carrying the virus has died. The WHO also on this date characterizes COVID-19 as a pandemic. However in declaring the pandemic, the WHO Director-General stated:

“Of the 118,000 cases reported globally in 114 countries, more than 90 percent of cases are in just four countries, and two of those – China and the Republic of Korea - have significantly declining epidemics. 81 countries have not reported any cases, and 57 countries have reported 10 cases or less.”

17. On 12th March 2020 the Taoiseach announced that schools, colleges and childcare facilities would remain closed until March 29th as a consequence of COVID-19 and that indoor gatherings of more than 100 people and outdoor mass gatherings of more than 500 should be cancelled.

18. On 13th March 2020 the Department of Health confirms the total number of COVID-19 infections in Ireland is 90.

19. Concurrently on 13th March 2020 a report issues in the Irish national media that the Ceann Comhairle of the 33rd Dail Seán Ó Feargháil had written to political party leaders on the evening of Friday 13th March proposing that just 30 per cent of TDs – being 48 – should attend the sitting of the Dail on the following Thursday 19th March 2020, with attendance calculated proportionately on the basis of overall membership and that Fianna Fáil, Fine Gael and Sinn Féin limit their TDs attending to 11 each, the Green

Party to four, the regional independent group to three members, and all other parties and groups to two, and that the sitting would be for three hours, and the agenda would be restricted to emergency legislation related to and arising from COVID-19. Mr Ó Fearghaíl also asked that members not sit beside one another and adopt a novel practice known as “social distancing” and proposed that the vote for a new taoiseach – already agreed by the Dáil’s business committee for that date – should be postponed. He further specified that TDs suspend parliamentary questions until the end of March.

20. On 15th March Minister for Health Simon Harris asked all pubs, including hotel bars, to close from midnight 15th March until at least 29th March, in a bid to curb the spread of COVID-19.

21. Also on 15th March the Taoiseach (posting on the social media platform Twitter via his Twitter handle @LeoVaradkar) stated: “*No indoor mass gatherings of more than 100 people applies to pubs & clubs. Have asked NPHEAT for further expert guidance on this. May seek enforcement powers from Dail/Seanad*”.

22. On 16th March a report issues in the Irish national media that there are 268 confirmed cases of persons infected with COVID-19 in the Republic of Ireland including two deaths of persons infected with the virus.

23. Also on 16th March the draft Bill “Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020” is initiated by Minister for Health Simon Harris TD. The Preamble to the Bill is as follows:

“An Act, to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of the disease known as Covid-19, to amend the Health Act 1947 to confer a power on the Minister for Health to make regulations prohibiting or restricting the holding of certain events or access to certain premises and to provide for enforcement measures; to provide for powers for certain medical officers of health to order, in certain circumstances, the detention of persons who are suspected to be potential sources of infection with the disease known as Covid-19 and to provide for enforcement measures in that regard; and to confer on the Minister for Health the power to designate areas as areas of infection of Covid-19 and to provide for related matters; to amend and extend the Social Welfare Acts to provide for amendments in relation to entitlement to illness benefit for persons who have been diagnosed with, or are a probable source of infection with the disease known as Covid-19; and to provide for amendments in relation to jobseeker’s benefit and jobseeker’s allowance to mitigate the economic effects of the spread of the disease known as Covid-19; and to provide for related matters.”

WHEREAS an emergency has arisen of such character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to deal with the immediate, exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of the disease known as Covid-19; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or slow the risk of persons being infected with the disease known as Covid-19;

AND WHEREAS as a consequence it is necessary for the State to take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity; Be it enacted by the Oireachtas as follows:”

24. On 17th March 2020 the Taoiseach Leo Varadkar makes a televised ministerial briefing to the Irish nation of duration 11 minutes 33 seconds. No reference is made by the Taoiseach in this televised briefing of the draft Bill “Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020” or its contents or its intended moving before the Dail on Thursday 19th March 2020 as set out by Ceann Comhairle of the 33rd Dail Seán Ó Feargháil in his letter to political party leaders of Friday 13th March.

25. On 18th March 2020 the draft Bill “Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020” was presented to the Dail constituting the First Stage in the passage of a Bill through the Houses of the Oireachtas.

26. On 19th March 2020 at the opening of business, Ceann Comhairle of the 33rd Dail addressed the Dail as follows:

“I welcome you all and thank you for attending today for this important sitting. We meet this afternoon in limited numbers at a time of great crisis for our country and for the entire globe. The crisis is not to be underestimated. However much we try to tame the world we share with so much else, we are rarely true masters of our own destinies. Something as cruel and capricious as coronavirus has come from nowhere to challenge us and to challenge our human confidence.

We arrive here today to debate at social distances from each other in the Chamber of our nation’s proud Parliament, utterly shaken and taken aback by the events of the past few days and weeks. I know we all wish to commend the Taoiseach on his address on St. Patrick’s Day, a considered, thoughtful and sensible view of our current, grave predicament. As he said on Tuesday, we are at the beginning of this crisis. Considerably more sorrow and sadness have yet to visit our towns, villages, neighbourhoods and communities, but in the time ahead, we must be resilient, sensible and cautious, as I know we will be.

Common sense and factual information must triumph, not rumour and ill-judged mutterings on social media. We, parliamentarians, must lead by example. We must be to the forefront in dispensing practical, factual information to our constituents, friends and

neighbours. We much practise those safe and sensible guidelines which help to prevent the spread of this pitiless virus.

We have before us this afternoon legislation for debate which addresses some of the key concerns people have as the coming weeks seem to open up into dark, uncharted waters. Those waters will be choppy and difficult to navigate. However tempting it is to batten down the hatches and hope things go away quickly, we must be proactive in fighting this virus and its impact on our nation's health. We must adapt quickly to those sensible rules for living set down by medical and scientific experts. We all know it will be a long slog. This is an exhausting marathon, not a sprint. This legislation is one step in that long and difficult journey but each step forward is a step closer to our final goal, namely a resolution to this dreadful crisis. We legislators are playing our part this afternoon. So too are many others. Healthcare professionals, public servants, shops, pharmacies and transporters are all continuing to work tirelessly for the common good. Neighbours are looking out for neighbours, particularly the sick and the elderly. We all have a part to play. Everyone should be involved. In my time as a public representative, I cannot recall a time when the Irish people were called upon to work together for the common good in such difficult and challenging circumstances but we are up to the challenge.

The Dáil and Seanad play their specific and significant parts in that challenging work. We can do our best and no more is expected of us than that. Of this crisis I say that this too will pass, but not before it has scarred our nation and hurt many of our people. As we begin this painful and challenging journey forward to a final resolution to the crisis, we do so with knowledge, with fortitude and with thanks to those who share the journey and share our burden. We parliamentarians must play our role in the short, medium and long term. As Ceann Comhairle, I will continue to work closely and productively with all sides of this House to ensure our contributions here in Dáil Éireann are meaningful, effective and are for the greater good.”

27. On Thursday 19th March 2020 the Bill had passed the Second, Third and Fourth Stages and proceeded to pass the Fifth Stage in the 33rd Dail but without a final vote being cast and with a reduced attendance of a maximum of 30% of the 160 members of Dail Éireann, or 48 TDs, as directed by the Ceann Comhairle in his letter of Friday 13th March. Furthermore it was then deemed to have passed the First Stage of the 25th Seanad without in actuality being passed to a sitting of such Seanad, and such 25th Seanad itself being the outgoing Seanad elected in concurrence with the election of the 32nd Dail (such Dail being dissolved by President Michael D Higgins on 14th January 2020) and not the 33rd Dail from which the Bill was transmitted on Thursday 19th March.

28. On Friday 20th March 2020 the Bill passed the Second, Third, Fourth and Fifth Stages of such outgoing 25th Seanad and was signed into law by the President Michael D Higgins also on Friday 20th March without reference to the Council of State or the Supreme Court.

29. On Tuesday 24th March 2020 the Minister for Health Simon Harris TD initiated the Bill entitled “Emergency Measures in the Public Interest (Covid-19) Bill 2020” being the First Stage of passage through the Dail.

30. On Thursday 26th March 2020 such Bill had passed the Second, Third and Fourth Stages and proceeded to pass the Fifth Stage in the 33rd Dail but without a final vote being cast. It was then deemed to have passed the First Stage of the 25th Seanad without in actuality being passed to a sitting of such Seanad, and such 25th Seanad itself being the outgoing Seanad elected in concurrence with the election of the 32nd Dail (such Dail being dissolved by President Michael D Higgins on 14th January 2020) and not the 33rd Dail from which the Bill was transmitted on Thursday 26th March.

31. On Friday 27th March 2020 the Bill passed the Second, Third, Fourth and Fifth Stages of such outgoing 25th Seanad and was signed into law by the President Michael D Higgins also on Friday 27th March without reference to the Council of State or the Supreme Court.

32. On Tuesday 7th April 2020 the Minister for Health, Simon Harris TD signed the Health Act 1947 (Section 31A-Temporary Restrictions) (Covid-19) Regulations ostensibly made pursuant to powers conferred on him by operation of Section 31A of the Health Act 1947 (inserted by Section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020) such Regulations to remain in operation until 12th April 2020.

33. On Tuesday 7th April 2020 the Minister for Health, Simon Harris TD signed the Health Act 1947 (Affected Areas) Order 2020 ostensibly pursuant to powers conferred on him by Section 31B of the Health Act 1947 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*”.

34. On Friday 10th April 2020 the Minister for Health, Simon Harris TD signed the Health Act 1947 (Section 31A-Temporary Restrictions) (Covid-19) (Amendment) Regulations ostensibly made pursuant to Sections 5 and 31A of the Health Act 1947 (inserted by Section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020) amending the period of operation of the Health Act 1947 (Section 31A-Temporary Restrictions) (Covid-19) Regulations substituting the effective period of the Regulations prescribed to cease 12th April 2020 to instead cease on May 5th 2020.

Summary

(I) HEALTH (PRESERVATION AND PROTECTION AND OTHER EMERGENCY MEASURES IN THE PUBLIC INTEREST) ACT 2020 (HEREINAFTER THE “HEALTH ACT 2020”)

1. The Ceann Comhairle of the 33rd Dail Seán Ó Feargháil exceeded his powers as set out and prescribed in the Standing Orders Relative To Public Business 2020 and acted *ultra vires* in writing to party leaders on Friday 13th March advising that no more than 30-48 deputies should attend the next sitting of the 33rd Dail on Thursday 19th March and adopt the practice of “social distancing” in the Chamber. No provision exists in the Standing Orders Relative To Public Business 2020 which prescribes and sets out the role and parameters of the Ceann Comhairle to write to party leaders directing that elected deputies refrain from attending a tabled sitting of the Dail. Furthermore, despite having no legal and binding authority in any event, no public health advice from either the Department of Health or Chief Medical Officer existed or had issued up to and including Friday 13th March directing that indoor gatherings of more than 48 persons be cancelled and therefore no legal or clinical justification whatsoever existed for the Ceann Comhairle to seek to suppress, restrict and impede the right and obligation of elected deputies to attend such scheduled sitting of the 33rd Dail. As such the direction of the Ceann Comhairle in such correspondence directly impeded consideration by all elected deputies of the 33rd Dail of the contents of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020 before the House on Thursday 19th March.

2. Furthermore the Ceann Comhairle of the 33rd Dail Seán Ó Feargháil not only exceeded his powers by issuing such direction in writing on Friday 13th March but demonstrated foreknowledge of the existence of the draft Bill three days before its publication by the Minister for Health on Monday 16th March and by issuing such correspondence on Friday 13th March to party leaders sought to directly interfere with and skew the composition of the House by directing without lawful authority and without due cause a reduced sitting on Thursday 19th March at which the Bill would be presented and considered.

3. The alleged bias and *ultra vires* acts of the Ceann Comhairle as set out in paragraphs 1 and 2 above are confirmed by the contents of the preamble address given by the Ceann Comhairle at the opening of Dail business on Thursday 19th March and his delivered personal commentary on “coronavirus” (as set out herein at paragraph 26 of Background Facts in this within Statement) in which the Ceann Comhairle acted in breach of the Declaration made by him upon his appointment as Ceann Comhairle to the 33rd Dail, that being:

“I do solemnly declare that I will duly and faithfully and to the best of my knowledge and ability, execute the office of Ceann Comhairle of Dáil Éireann without fear or favour, apply the rules as laid down by this House in an impartial and fair manner, maintain order and uphold the rights and privileges of members in accordance with the Constitution and the Standing Orders of Dáil Éireann”

evidenced in particular by his unlawfully biased statements as follows:

“We have before us this afternoon legislation for debate which addresses some of the key concerns people have as the coming weeks seem to open up into dark, uncharted waters”

and

“This legislation is one step in that long and difficult journey but each step forward is a step closer to our final goal, namely a resolution to this dreadful crisis.”

4. The Bill proceeded through the Second, Third and Fourth Stages of the Dail on Thursday 19th March with an unlawfully directed and reduced composition of deputies in attendance, minimal debate of the Bill’s contents, amendments tabled by deputies in attendance unlawfully ruled out of order by the Ceann Comhairle and the Bill then deemed passed at Fifth and Final Stage without any final vote being cast and a direction from the Ceann Comhairle that the business of the House must be concluded by 5p.m. on public health grounds and then signed by the President without any reference to the Council of State or the Supreme Court as to its constitutionality.

5. The 33rd Dail being a caretaker administration pending the election of a new Taoiseach and appointment of a new government, has exceeded its authority in rushing through the Oireachtas the Health Act 2020 and its far-reaching provisions that are directly repugnant to the provisions of the Irish Constitution. This is especially to be questioned and overturned in circumstances whereby these Acts and instruments were made possible by an irregular mode of enactment via the Oireachtas, the Act being passed by a caretaker incarnation of Dáil Éireann being the 33rd Dail and an outgoing incarnation of Seanad Éireann being the 25th Seanad contrary to the requirement that legislation introduced by a caretaker government is required to be passed by the newly elected Houses of the Oireachtas.

Preamble

6. The Preamble to the Health Act 2020 is as follows:

“An Act, to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of the disease known as Covid-19, to amend the Health Act 1947 to confer a power on the Minister for Health to make regulations prohibiting or restricting the holding of certain events or access to certain premises and to provide for enforcement measures; to provide for powers for certain medical officers of health to order, in certain circumstances, the detention of persons who are suspected to be potential sources of infection with the disease known as Covid-19 and to provide for enforcement measures in that regard; and to confer on the Minister for Health the power to designate areas as areas of infection of Covid-19 and to provide for related matters; to amend and extend the Social Welfare Acts to provide for amendments in relation to entitlement to illness benefit for persons who have been diagnosed with, or are a probable source of infection with the disease known as Covid-19; and to provide for amendments in relation to jobseeker’s benefit and jobseeker’s allowance to mitigate the economic effects of the spread of the disease known as Covid-19; and to provide for related matters.

WHEREAS an emergency has arisen of such character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to deal with the immediate, exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of the disease known as Covid-19; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or slow the risk of persons being infected with the disease known as Covid-19;

AND WHEREAS as a consequence it is necessary for the State to take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity; Be it enacted by the Oireachtas as follows:”

7. Article 28.3.3 of the Constitution of Ireland prescribes (and reinforced by the Supreme Court) that a state of emergency may only be declared "in time of war or armed rebellion", which may, if so resolved by both Houses of the Oireachtas, include an armed conflict in which the state is not a direct participant. No such motion or resolution has been set before either House of the Oireachtas prior to the drafting of the Bill and enactment of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the procedural requirements for the declaration of a national emergency have not been met. As such, no state of emergency has been formally ratified or declared by the Houses of the Oireachtas in accordance with the Constitution and the “emergency” referred to throughout the draft Bill initiated by the Minister and pursuant to which it was enacted does not in fact exist and therefore the references to “emergency” therein and the alleged requirement for “extraordinary measures” arising therefrom constitutes a systemic misstatement throughout the Bill on the part of the Minister for Health and accordingly no present circumstances arise whereby the 33rd Dail may pass an Act or Statutory Instrument containing provisions which are repugnant to and/or exceed the constraints and safeguards of Bunreacht na hÉireann 1937 and its Articles as set out therein.

Part 3 – Amendment to Health Act 1947

8. Section 10 of the Health Act 2020 amends the Health Act 1947 (hereinafter: “the 1947 Act”) by inserting a new Section 31A into such 1947 Act.

Section 31A(i) of the 1947 Act as inserted by the Health Act 2020 empowers the Minister to make certain regulations providing for, inter alia, and including but not limited to: restrictions on travel into and out of the State; prohibiting travel into or out of areas within the State to which an affected areas order applies; requiring persons to remain in their homes; prohibiting events; authorising An Garda Síochána to issue directions to comply with such regulations including the power of arrest without warrant and providing for the issue of a Class C fine and/or a custodial sentence of up

to 6 months for failure to comply with any direction issued by a member of An Garda Siochana pursuant to the regulations; the breaking and entering of premises at the direction of indeterminate persons other than members of An Garda Siochana and the detention of persons present therein and the subordination of the powers of An Garda Siochana to such indeterminate persons within the context of such regulations.

In the first instance such Section 31A(i) of the 1947 Act is repugnant to the provisions of Article 15.2.1 of the Constitution which provides that the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas and no other legislative authority has power to make laws for the State and accordingly no basis exists for the Minister for Health to unilaterally make regulations pursuant to Section 31A(i) of 1947 Act and he is not so empowered.

9. Section 31A(1)(a) to (k) of the 1947 Act as inserted by the Health Act 2020 provides for the making of regulations by the Minister including but not limited to:

- Restrictions on travel into and out of the State;
- Prohibiting travel into or out of areas within the State to which an affected areas order applies;
- Requiring persons to remain in their homes;
- Prohibiting events.

Section 31A(6) to (17) provides for the making of regulations by the Minister including but not limited to:

- Authorising An Garda Siochana to issue directions to comply with such regulations including the power of arrest without warrant and providing for the issue of a Class C fine and/or a custodial sentence of up to 6 months for failure to comply with any direction issued by a member of An Garda Siochana pursuant to the regulations;
- The breaking and entering of premises at the direction of indeterminate persons other than members of An Garda Siochana
- The detention of persons present therein and the subordination of the powers of An Garda Siochana to such indeterminate persons within the context of such regulations.

This new Section 31A of the 1947 Act as inserted by the Health Act 2020 is directly repugnant without lawful basis or justification or cause to the following provisions of Bunreacht na hEireann 1937:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

and the unenumerated Constitutional right to bodily integrity.

Article 40:4

1°. No citizen shall be deprived of his personal liberty save in accordance with law.

Article 40:5

The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

Article 40:6

1°. ii. The right of the citizens to assemble peaceably and without arms.

Article 41

1 1° The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the state.

3 1° The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.

Article 44:2

1°. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

Article 45:2

i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

The assertions as set out in Section 31(A)(2) of the 1947 Act as amended by the Health Act 2020 that the Minister in making regulations shall have regard to the following:

(i) the fact that a national emergency has arisen of such character that there is an immediate and manifest risk to human life and public health as a consequence of which it is expedient in the public interest that extraordinary measures should be taken to safeguard human life and public health;

(ii) the fact that a declaration of Public Health Emergency of International Concern was made by the World Health Organisation in respect of Covid-19 and that Covid-19 was duly declared by that Organisation to be a pandemic;

(iii) the fact that Covid-19 poses significant risks to human life and public health by virtue of its potential for incidence of mortality;

(iv) the policies and objectives of the Government to take such protective measures as are practicable to vindicate the life and bodily integrity of citizens against a public health risk;

(v) the need to act expeditiously in order to prevent, limit, minimise or slow the spread of Covid-19

(vi) the resources of the health services, including the number of health care workers available at a given time, the capacity of the workers to undertake measures, to test persons for Covid-19 and to provide care and treatment to persons infected with Covid-19, the necessity to take such measures as are appropriate to protect health care workers from infection from Covid-19, and the capacity of hospitals or other institutions to accommodate and facilitate the provision of care and treatment to infected persons;

(vii) the resources, including the financial resources, of the State;

(viii) the advice of the Chief Medical Officer of the Department of Health, and (b) may, have regard to any relevant guidance (including, in particular, any guidance relating to the risk assessment for, and case definition relating to, Covid-19) provided by the World Health Organisation, the European Centre for Disease Prevention and Control, the Health Protection Surveillance Centre of the Health Service Executive and other persons with relevant medical and scientific expertise

do not constitute satisfactory justification or cause for the imposition of the provisions of the aforementioned Section 31(A) of the 1947 Act as inserted by the Health Act 2020 in light of the international clinical evidence and public health guidance and incidence of COVID-19 both at the time of enactment of the Health Act 2020 and up to and including the present date and this Honourable Court should note that such legislation self-described as “extraordinary measures” on the basis of a “national emergency” which has not been the subject of a resolution by a validly convened Dail was not enacted on any of the previous five occasions that the WHO declared a pandemic and accordingly the provisions of Section 31(A) of the 1947 Act as inserted by the 2020 Act are not only repugnant *ab initio* to the provisions of the Constitution as set out above but furthermore are wholly disproportionate to the incidence and effects of COVID-19 and published international public health guidance including but not limited to that published by WHO to prevent its spread.

The provisions of such Section 10 of the Health Act 2020 amending the Health Act 1947 also are directly repugnant to Articles 5, 6, 7, 8 and 11 of the European Convention on Human Rights and Articles 1, 6, 7, 8, 9, 10, 12, 15 and 16 of the Charter of Fundamental Rights and the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548/2015) implementing Directive 2004/38/EC authorising

the citizens of Member States to move and reside freely within the territory of Member States.

9. Section 11 of the Health Act 2020 amends the Health Act 1947 (hereinafter: “the 1947 Act”) by inserting a new Section 31A into such 1947 Act.

Section 38A of the 1947 Act as inserted by the Health Act 2020 empowers the Minister to make certain regulations providing for, inter alia, the detention and isolation of persons as follows:

(1) Where, having regard to the matters specified in subsection (2), a medical officer of health believes in good faith that—

(a) a person is a potential source of infection, and

(b) the person is a potential risk to public health, and

(c) his or her detention and isolation is appropriate in order to— (i) prevent, limit, minimise or slow the spread of Covid-19, and (ii) minimise the risk to human life and public health, and

(d) 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 Health Service Executive,

the officer may in writing order the detention and isolation of such person in a hospital or other place specified in the order (including such other hospital or other place as may subsequently be appropriate and specified in the order) until such time as the medical officer certifies that the person’s detention is no longer required for the purposes of this section.

(4) A medical officer of health who makes an order under subsection (1) shall keep the detention order under review and 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 has been detained.

(5) A person who is the subject of an order under subsection (1) may request that his or her detention be reviewed by a medical officer of health, other than the officer who makes the order concerned, on the grounds that he or she is not a potential source of infection.

(6) Where a request is made by a person under subsection (5), his or her detention shall be reviewed as soon as practicable and, where a medical officer of health who carries out the review considers that the person is not, at time of review concerned, a potential source of infection, the medical officer shall certify that the person is no longer 15 S.11 [No. 1.] Health (Preservation and Protection and [2020.] other Emergency Measures in the Public Interest) Act 2020. required to be detained for the purposes of the section and the person shall be discharged accordingly.

(7) Subject to the requirements in relation to medical examination and the period of detention specified in subsection (4)— (a) the provisions of subsections (2)(a) to (g), (3) and (4) of section 38 shall with any necessary modification apply to a person who

is subject to detention and isolation under the provisions of this section, and (b) the provisions of subsection (5) of section 38 shall with any necessary modification apply to a person who— (i) 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, (ii) 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 (iii) obstructs or interferes with the exercise of any power conferred by this section.

(8) A person who is guilty of an offence under this section shall, on summary conviction thereof, be liable to a class C fine or, at the discretion of the Court, to imprisonment for a term not exceeding three months or to both.

In the first instance such Section 38A of the 1947 Act is repugnant to the provisions of Article 15.2.1 of the Constitution which provides that the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas and no other legislative authority has power to make laws for the State and accordingly no basis exists for the Minister for Health to unilaterally make regulations pursuant to Section 38A of 1947 Act and he is not so empowered.

This new Section 38A of the 1947 Act as inserted by the Health Act 2020 is directly repugnant without lawful basis or justification or cause to the following provisions of Bunreacht na hEireann 1937:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

and the unenumerated Constitutional right to bodily integrity.

Article 40:4

1°. No citizen shall be deprived of his personal liberty save in accordance with law.

Article 40:5

The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

Article 40:6

1°. ii. The right of the citizens to assemble peaceably and without arms.

Article 41

1 1° The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the state.

3 1° The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.

Article 44:2

1°. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

Article 45:2

i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

The assertions as set out in Section 31(A)(2) of the 1947 Act as amended by the Health Act 2020 that the Minister in making regulations shall have regard to (as set out in paragraph 8 above) do not constitute satisfactory justification or cause for the imposition of the provisions of the aforementioned Section 38A of the 1947 Act as inserted by the Health Act 2020 in light of the international clinical evidence and public health guidance and incidence of COVID-19 both at the time of enactment of the Health Act 2020 and up to and including the present date and this Honourable Court should note that such legislation self-described as “extraordinary measures” on the basis of a “national emergency” which has not been the subject of a resolution by a validly convened Dail and Seanad was not enacted on any of the previous five occasions that the WHO declared a pandemic and accordingly the provisions of Section 38(A) of the 1947 Act as inserted by the 2020 Act are not only repugnant *ab initio* to the provisions of the Constitution as set out above but furthermore are wholly disproportionate to the incidence and effects of COVID-19 within the State and published international public health guidance including but not limited to that published by WHO to prevent its spread.

10. Section 38A(10) of the 1947 Act as inserted by the Health Act 2020 provides:

(10) In this section— ‘potential source of infection’ means, in relation to a person, a person who meets one or more of the following criteria:

(a) a person who has been in recent contact with a person whom the medical officer of health believes in good faith to be—

(i) a probable source of infection of Covid-19, or

(ii) suffering from Covid-19;

(b) a person who has attended an event which the medical officer of health believes in good faith was attended by a person or persons who— (i) is or are a probable source

of infection with Covid-19, or (ii) is or are suffering from Covid-19; 16 [2020.] Health (Preservation and Protection and [NO. 1.] S.11 other Emergency Measures in the Public Interest) Act 2020

(c) a person who has travelled from, or been in contact with a person or persons who has or have travelled from a place outside the State that the medical officer of health believes in good faith to have a significant number of cases of persons infected with Covid-19;

(d) a person who has travelled from, to or within, or been in contact with a person or persons who has or have travelled from, to or within a geographical area to which an affected areas order applies;

(e) any other person whom the medical officer of health believes in good faith to be a potential source of infection with Covid-19.”

are gratuitously hostile and repugnant to the following provisions of Bunreacht na hEireann:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Article 40:4

1°. No citizen shall be deprived of his personal liberty save in accordance with law.

Article 40:5

The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

Article 40:6

1°. ii. The right of the citizens to assemble peaceably and without arms.

Article 41

1 1° The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the state.

3 1° The State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack.

Article 44:2

1°. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

Article 45:2

i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

and are draconian and grossly disproportionate to the alleged justification for their introduction as set out in Section 31(A)(2) of the 1947 Act as amended by the Health Act 2020 (as set out in paragraph 8 above) as in tandem with the provisions of Section 38 of the 1947 Act as inserted by Section 11 of the Health Act 2020 they provide for the indefinite detention of a person without any medically certified justification and who is not suffering from the disease known as COVID-19 by an indeterminate “medical officer of health” who may or may not be a clinical practitioner but who is not a member of An Garda Síochána but at whose direction a member of An Garda Síochána must comply in procuring the detention and isolation of such person of indefinite duration and furthermore the withholding of the appeal process afforded to a person detained under the Health Act 1947 from appealing to the Minister for Health if they are detained pursuant to the insertions into the 1947 Act by the Health Act 2020.

The provisions of such Section 11 of the Health Act 2020 amending the Health Act 1947 also are directly repugnant to Articles 5, 6, 7, 8 and 11 of the European Convention on Human Rights and Articles 1, 6, 7, 8, 9, 10, 12, 15 and 16 of the Charter of Fundamental Rights and the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548/2015) implementing Directive 2004/38/EC authorising the citizens of Member States to move and reside freely within the territory of Member States.

11. This Honourable Court critically should note that the Health Act 1947 which the Health Act 2020 seeks to amend and the powers afforded to the Minister therein are inherently designed to apply to specific and identifiable categories of people however the Sections 31A and Section 38 inserted by the Health Act 2020 are unprecedented in applying to the entire population present in Ireland including persons who are not suffering from COVID-19 and not only are repugnant to the provisions of the Constitution as set out above but are at jarring odds with the intent and operation of the Health Act 1947 as enacted *ab initio*.

12. This Honourable Court should also note that although the provisions of Part III of the Health Act 2020 ostensibly expire on 9th November 2020 that the Act also provides for its renewal if passed by both Houses of the Oireachtas and accordingly the provisions of the Health Act 2020 are not time limited and notwithstanding its repugnancy to the Constitution no clinical, medical or statistical evidence warrants the extension of the measures of Part III in any event to 9th November 2020 and the date inserted by the Minister is arbitrary and disproportionate relative to the facts.

(II) EMERGENCY MEASURES IN THE PUBLIC INTEREST (COVID-19) ACT 2020 (HEREINAFTER: “EMERGENCY MEASURES ACT 2020”)

13. The Bill was initiated on Tuesday 24th March 2020 proceeded through the Second, Third and Fourth Stages of the Dail on Thursday 19th March [with an unlawfully directed and reduced composition of deputies in attendance, minimal debate of the Bill’s contents, amendments tabled by deputies in attendance unlawfully ruled out of order by the Ceann Comhairle and the Bill then deemed passed at Fifth and Final Stage without any final vote being cast] and then signed by the President without any reference to the Council of State or the Supreme Court as to its constitutionality.

14. The 33rd Dail being a caretaker administration pending the election of a new Taoiseach and appointment of a new government, has exceeded its authority in rushing through the Oireachtas the Emergency Measures Act 2020 and its far-reaching provisions that are directly repugnant to the provisions of the Irish Constitution. This is especially to be questioned and overturned in circumstances whereby these Acts and instruments were made possible by an irregular mode of enactment via the Oireachtas, the Act being passed by a caretaker incarnation of Dáil Éireann being the 33rd Dail and an outgoing incarnation of Seanad Éireann being the 25th Seanad contrary to the requirement that legislation introduced by a caretaker government is required to be passed by the newly elected Houses of the Oireachtas.

Preamble

14. The Preamble to the Act is as follows:

“An Act, to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of that disease and to mitigate the adverse economic consequences resulting, or likely to result from the spread of that disease and to mitigate its impact on the administration of vital public service functions;

to make provision in relation to the operation of certain provisions of the Residential Tenancies Act 2004 during the period of 3 months following the enactment of this Act and such further period (if any) as may be specified by order of the Government;

to amend the Planning and Development Act 2000 to provide, in certain circumstances, for the disregard of a certain period in the calculation of time limits referred to in that Act and in certain other enactments; to provide for the registration of certain health and social care professionals to fulfil the need for medical resources to alleviate the risk from Covid-19 to human life and public health and for those and related purposes to amend the Dentists Act 1985, the Health and Social Care Professionals Act 2005, the Pharmacy Act 2007, the Medical Practitioners Act 2007, and the Nurses and Midwives Act 2011;

to make provision, due to the exigencies of the public health emergency posed by the spread of Covid-19, for certain amendments and modifications to the provisions of

the Mental Health Act 2001 relating to the carrying out of reviews under section 18 of that Act; to amend the Defence Act 1954 to enable the re-enlistment of formerly enlisted persons;

to enable the provision of a temporary wage subsidy to certain employees; to make provision in relation to the operation of certain provisions of the Redundancy Payments Act 1967 for a certain period following the enactment of this Act and such further period (if any) as may be specified by order of the Government and, for that purpose, to amend the Redundancy Payments Act 1967;

to make provision allowing for the modified operation of certain aspects of the civil registration system, if required, for a limited period and such further period (if any) as may be specified by order of the Government, including by way of allowing certain persons to provide particulars to a registrar in writing rather than by appearing in person, and by allowing the staff of an tArd-Chlárathóir to perform the functions of certain registrars in circumstances where the civil registration system is not available or able to perform its statutory functions as it ordinarily would 5 [No. 2.] Emergency Measures in the [2020.] Public Interest (Covid-19) Act 2020 be, and for those purposes, to amend the Civil Registration Act 2004; and to provide for related matters. [27th March, 2020]

WHEREAS an emergency has arisen in the State by virtue of the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of that disease; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or reduce the risk of persons being infected with that disease;

AND WHEREAS the emergency that has arisen is of such a character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to mitigate, to the extent practicable, the adverse economic consequences resulting, or likely to result, from the spread of that disease and to mitigate its impact on the administration of vital public service functions; Be it enacted by the Oireachtas as follows:”

15. Article 28.3.3 of the Constitution of Ireland prescribes (and reinforced by the Supreme Court) that a state of emergency may only be declared "in time of war or armed rebellion", which may, if so resolved by both Houses of the Oireachtas, include an armed conflict in which the state is not a direct participant. No such motion or resolution has been set before either House of the Oireachtas prior to the drafting of the Bill and enactment of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the procedural requirements for the declaration of a national emergency have not been met. As such, no state of emergency has been formally ratified or declared by the Houses of the Oireachtas in accordance with the Constitution and the “emergency” and “emergency

period” and “extension of emergency period” referred to throughout the draft Bill initiated by the Minister and pursuant to which it was enacted does not in fact exist and therefore the references to “emergency” and “emergency period” therein and the alleged requirement for “extraordinary measures” arising therefrom constitutes an act of fraud with intent to mislead *ab initio* on the part of the Minister for Health and accordingly no present circumstances arise whereby the 33rd Dail may pass an Act or Statutory Instrument containing provisions which are repugnant to and/or exceed the constraints and safeguards of Bunreacht na hEireann 1937 and its Articles as set out therein.

Emergency Provisions in the Public Interest (COVID-19) Act, 2020, Part 5, 15-22

Under the existing legislation, the Mental Health Act 2001, upon receipt of the involuntary admission order, the Mental Health Commission must put the case before a tribunal comprising three persons, appoint a legal representative for the patient (if he does not already have one), and direct in writing a member of the panel of consulting psychiatrists to (i) interview the patient, (ii) discuss details of the case (including proposed treatment) with the consulting psychiatrist who is treating the patient, and (iii) review any relevant records. His report is then passed to the tribunal which, having reviewed the facts of the case and determined that all necessary procedural steps have been completed satisfactorily, approve the involuntary admission order. To assist with its review the tribunal may in writing direct that certain persons attend before it on a date and time specified to give evidence. If he decides to appeal the making of the order, the patient may do so within 14 days and have his case reviewed by the Circuit Court.

These procedures are radically transformed by the Emergency Measure in the Public Inters (COVID-19) Act 2020, by dint of which the assessing tribunal is reduced from three members to one. This lone member must be a lawyer with at least 7 years’ experience in the practice of law. He is not required to have any medical qualifications. The consulting psychiatrist does not have to interview the patient if “the exigencies of the public health emergency” prevent him from doing so. If that is the case, then the Commission can appoint another member off the panel, but he too can claim that the same “exigencies” prevent him from doing so. In fact, the tribunal itself can claim that the same “exigencies” prevent it from consulting with a member of the panel. There is no requirement under the 2020 legislation to interview the patient or discuss details of the case (including proposed treatment) with the consulting psychiatrist who is treating the patient. These draconian, regressive and unnecessary measures have no role or function in addressing or mitigating the situation vis a vis COVID-19, which the Government has claimed as the basis for the contents of this legislation, and place at grave risk the liberty, safety and well-being of vulnerable people and others and in doing so set backwards many of the gains that have been made in recent decades in safeguarding the rights of psychiatric patients for no ostensible purpose related to the present claimed circumstances.

These Sections are directly repugnant without lawful basis or justification or cause to the following provisions of Bunreacht na hEireann 1937:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Article 40:4

1°. No citizen shall be deprived of his personal liberty save in accordance with law

16. Part 2 “Residential Tenancies Act 2004” of the Emergency Measures Act 2020

17. Sections 3 and 4 of the Emergency Measures Act 2020 refer to “emergency”, “emergency period” and “extension of emergency period”. As stated in paragraph 16 no state of emergency presently exists which has been ratified by the Houses of the Oireachtas in accordance with the provisions of the Constitution.

18. As such Section 5 providing that no landlord may serve a Notice of Termination on a tenant within such alleged “emergency period” is invalid *ab initio* and repugnant to the provisions of Article 40:3 which provides:

2°. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen

and constitutes a direct interference by the Minister with the ability of a person to occupy and dispense with property in their ownership and which they maintain.

19. Section 6 of the Emergency Measures Act 2020 also is repugnant to the provisions of Article 40:3 as same provides for a prohibition on rent increases that but for the emergency period would have taken effect – despite no state of emergency being ratified by the Houses of the Oireachtas. Such Section 6 is also repugnant to Article 45:2 by constituting a direct inhibition on right to make reasonable provision for one’s domestic needs via the exercise of one’s livelihood.

20. Section 7 of the Emergency Measures Act 2020 is repugnant to the provisions of Article 40:3 as same provides for a suspension of proceedings before the Tenancy Tribunal in which landlord and tenant disputes are adjudicated thereby directly interfering with the rights of landlords and tenants to resolve disputes relating to occupancy and rental payments among other matters as set down by the Residential Tenancy Act 2004 and constitutes a direct impediment to the access of justice in respect thereto despite no state of emergency being ratified by the Houses of the Oireachtas. Notwithstanding that no state of emergency in actuality exists nothing in the alleged emergency as stated by the Minister in the Preamble justifies in any respect the suspension of Residential Tenancy Tribunal proceedings before the Residential Tenancy Tribunal or should have any bearing on its operation and the

suspension of the work of the Tribunal is grossly disproportionate to the aims set out in the Preamble.

21. Section 8 of the Emergency Measures Act 2020: Entitlement to remain in occupation of dwelling during emergency period 8 is also repugnant to the provisions of Article 40:3 and notwithstanding that no state of emergency in actuality exists constitutes a direct interference by the Minister with the ability of a person to occupy and dispense with property in their ownership and which they maintain.

(III) HEALTH ACT 1947 (SECTION 31A - TEMPORARY RESTRICTIONS) (COVID-19) REGULATIONS 2020 (HEREINAFTER: “THE RESTRICTIONS REGULATIONS 2020”)

22. The Preamble to the Regulations states:

“The Minister for Health, in exercise of the powers conferred on him by sections 5 and 31A (inserted by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (No. 1 of 2020)) of the Health Act 1947 (No. 28 of 1947) and - (a) having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and to the matters specified in subsection (2) of section 31A, and (b) having consulted with the Minister for Finance, the Minister for Public Expenditure and Reform and the Minister for Justice and Equality, hereby makes the following regulations:”

In the first instance such such Preamble to the Restrictions Regulations 2020 is repugnant to the provisions of Article 15.2.1 of the Constitution which provides that the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas and no other legislative authority has power to make laws for the State and accordingly no basis exists for the Minister for Health to unilaterally make such regulations and he is not so empowered.

23. Sections 1(2) and 2 provide that the Regulations shall come into effect on 8th April 2020 and cease effect on 12th April 2020.

Restriction of Movement of Applicable Persons

24. Section 4 of the Restrictions Regulations provides as follows:

“4. (1) An applicable person shall not leave his or her place of residence without reasonable excuse.

(2) Without prejudice to the generality of what constitutes a reasonable excuse for the purposes of paragraph (1), such reasonable excuse includes an applicable person leaving his or her place of residence (in this paragraph referred to as the “relevant residence”) to - (a) provide, or assist in the provision of, an essential service, whether for remuneration or not, (b) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of

the relevant residence), or accessing services provided in the outlet, for the applicable person or any other person residing in the relevant residence,

(c) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances, other medical or health supplies or products, essential items for the health and welfare of animals, or supplies for the essential upkeep and functioning of the place of residence of a vulnerable person), or accessing services provided in the outlet, for a vulnerable person,

(d) obtain money for - (i) the applicable person, (ii) any other person residing in the relevant residence, or (iii) a vulnerable person,

(e) attend a medical appointment or accompany, to a medical appointment, any other person residing in the relevant residence or a vulnerable person,

(f) seek essential medical, health or emergency dental assistance for - (i) the applicable person, (ii) any other person residing in the relevant residence, or (iii) a vulnerable person,

(g) donate blood or accompany any other person residing in the relevant residence to donate blood,

(h) seek veterinary assistance,

(i) exercise, either alone or with other persons residing in the relevant residence, within a 2 kilometre radius of that residence,

(j) attend to vital family matters (including to provide care to vulnerable persons),

(k) attend the funeral of - (i) another person who resided in the relevant residence before his or her death, or (ii) a close family member of the applicable person,

(l) fulfil a legal obligation (including attending court, satisfying bail conditions, or participating in ongoing legal proceedings), attend a court office where required, initiate emergency legal proceedings or execute essential legal documents,

(m) access an essential service, or assist any other person residing in the relevant residence or a vulnerable person to access an essential service, where the access is immediately required and the applicable person, other person residing in the relevant residence or vulnerable person, as the case may be, cannot access the service concerned from the person's place of residence,

(n) if the applicable person is a parent or guardian of a child, or a person having a right of access to a child, give effect to arrangements for access to the child by - (i) the applicable person, or (ii) another person who is - (I) a parent or guardian of the child, or (II) a person having a right of access to the child,

(o) in the case of a minister of religion or priest (or any equivalent thereof in any religion) - (i) lead worship or services remotely through the use of information and communications technology, (ii) minister to the sick, or (iii) conduct funeral services,

(p) move to another residence where, in all the circumstances of the case, such movement is reasonably necessary, or

(q) provide emergency assistance, avoid injury or illness, or escape a risk of harm, whether to the applicable person or another person.

(3) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947”

the definition in the Restrictions Regulations 2020 of “*applicable person*” being “*a person whose place of residence is located within a relevant geographical location*” and the definition of “*relevant geographical location*” being “*a geographical location to which an affected areas order applies*”.

This Section 4 is directly repugnant without lawful basis or justification or cause to the following provisions of Bunreacht na hEireann 1937:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

The operation of such Section 4 limits the grounds on which an applicable person who may or may not be suffering from the disease known as COVID-19 may depart from their place of residence and as such the personal rights of the citizen to exercise their right to depart their home and engage in lawful activities, including earning the means of livelihood deemed to be “non-essential” by the authorities, and thereby to make provision for themselves and their dependents, and procure goods and services from providers not listed as Essential Outlets and Essential Services in Schedule 1 and Schedule 2 of the Restrictions Regulations 2020 respectively but which may constitute essential activities to that person in the exercise of their personal rights but not expressly described as a “reasonable excuse” unilaterally by the Minister in the Restrictions Regulations 2020 outside of their residence are inhibited and restricted thereto with no legal or clinical justification or cause, and with no evidence being presented to the public that such measures have ever succeeded in any comparable situation in achieving the stated purpose of the Government, and with no state of emergency being formally declared by the Houses of the Oireachtas either and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and is furthermore described as a penal provision and the Minister accordingly has acted *ultra vires* the Constitution and the rights of the individual pursuant to Article 8 of the European Convention on Human Rights and Article 7 of the Charter of Fundamental Rights of the European Union.

Article 40:4

1°. No citizen shall be deprived of his personal liberty save in accordance with law

The operation of such Section 4 in particular subsection (1) restricts an applicable

person who may or may not be suffering from the disease known as COVID-19 to remain in their place of residence save for departing to engage in one of the activities designated a “reasonable excuse” unilaterally by the Minister and as such all persons to whom the definition “applicable persons” applies are as of the signing of the Regulations by the Minister the subject of an unlawful movement restriction by the Minister with no legal or clinical justification or cause for same with and with no state of emergency being formally declared by the Houses of the Oireachtas either and and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and is furthermore described as a penal provision and the Minister accordingly has acted *ultra vires*.

Article 40:6

1°. ii. The right of the citizens to assemble peaceably and without arms.

iii. The right of the citizens to form associations and unions.

The operation of such Section 4 by restricting a person designated an “applicable person” who may or may not be suffering from the disease known as COVID-19 to remain in their place of residence save for departing to engage in one of the activities designated a “reasonable excuse” unilaterally by the Minister directly prevents and impedes the right to peaceful assembly whether for the purpose of peaceful protest or otherwise in a social context including the assembly of “applicable persons” with whom a consanguineal relationship exists and “applicable persons” who may be parties to a personal intimate relationship whilst not being members of a common residence or household and for the purpose of forming associations and unions and as such the inalienable right of the citizen (even if such citizen is not suffering from COVID-19) to assemble and engage with other citizens (who also may or may not be suffering from COVID-19) for the purposes of social engagement and/or peaceful protest and or the forming of associations and/or unions is now unilaterally estopped at the direction of the Minister with no state of emergency being ratified by the Houses of the Oireachtas and the Applicants state to this Honourable Court that such unilateral estoppel by the Minister of the right of “applicable persons” to assemble with other “applicable persons” as directed by the Regulations which has the direct effect of enforcing the isolation and separation of “applicable persons” and citizens from other “applicable persons” and citizens by way of a penal provision will cause significant mental hardship and psychological distress to all persons within the State affected thereto with no legal or clinical or public health justification or cause and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and the Minister accordingly furthermore is failing to uphold the unenumerated Constitutional right to bodily integrity and the health of the “applicable person” and citizen as affected and the operation of such Section 4 of the Restrictions Regulations 2020 is directly injurious to the health of such “applicable persons” described therein and citizens accordingly.

The operation of Section 4(i) in particular which prescribes:

“exercise, either alone or with other persons residing in the relevant residence, within a 2 kilometre radius of that residence”

notwithstanding the fact that no state of emergency has been ratified by the Houses of the Oireachtas in any event constitutes a grossly disproportionate restriction on the personal rights of the citizen and the rights of assembly pursuant to the Articles as previously set out and no legal or clinical or public health justification whatsoever exists to limit an “applicable person” or citizen’s right to exercise to a mere 2km radial range from their residence and the Minister is acting *ultra vires* accordingly.

Article 45:2

i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

The operation of Section 4(2) of the Restrictions Regulations 2020 is directly repugnant to Article 45.2 of the Constitution in directly preventing an applicable person or citizen from finding the means of making reasonable provision for their domestic needs unless they are engaged in employment by “essential retail outlets” designated unilaterally by the Minister set out in Schedule 1 of the Restrictions Regulations 2020 or the provision of “essential services” as designated unilaterally by the Minister set out in Schedule 2 of the Restrictions Regulations 2020 with no legal or clinical or public health justification or cause and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and furthermore will have a significant and directly injurious effect on the ability of such applicable persons and citizens affected to provide for their domestic needs and by extension a directly injurious effect on their unenumerated Constitutional right to bodily integrity and health and the Minister by issuing such restrictions on the right to an adequate means of livelihood is acting *ultra vires*.

Restriction on Events

25. Section 5 of the Restrictions Regulations provides:

“5. (1) A person shall not - (a) hold an event in a relevant geographical area unless - (i) the event is a relevant event, and (ii) the number of participants in the event is limited to not more than is reasonably necessary having regard to the nature of the purposes for which the event is held, or (b) participate in an event in a relevant geographical area unless - (i) the event is a relevant event, and (ii) the person is a relevant participant.

(2) Paragraph (1) is a penal provision for the purposes of section 31A of the Act of 1947.

(3) In this Regulation - “relevant event” means an event held for the purposes of any matter which falls within any subparagraph of Regulation 4(2); 6 [121] “relevant participant”, in relation to a relevant event, means a person who participates in the event in order to engage in any activity required to be undertaken for the purposes for which the event is held.”

This Section 5 is directly repugnant without lawful basis or justification or cause to the following provisions of Bunreacht na hEireann 1937:

Article 40:3

1°. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

and

Article 40:6

1°. ii. The right of the citizens to assemble peaceably and without arms.

iii. The right of the citizens to form associations and unions

The operation of such Section 5 by restricting a person designated an “applicable person” who may or may not be suffering from the disease known as COVID-19 to refrain from holding a “relevant event” unilaterally by the Minister directly prevents and impedes the personal right of the “applicable person” and the right to peaceful assembly whether for the purpose of peaceful protest or to convene a social event or otherwise in a social context including the assembly of “applicable persons” with whom a consanguineal relationship may exist and “applicable persons” who may be parties to a personal intimate relationship whilst not being members of a common residence or household and for the purpose of forming associations and unions and as such the inalienable right of the citizen (even if such citizen is not suffering from COVID-19) to assemble and engage with other citizens (who also may or may not be suffering from COVID-19) at events for the purposes of social engagement and/or peaceful protest and or the forming of associations and/or unions is now unilaterally estopped at the direction of the Minister with no state of emergency being ratified by the Houses of the Oireachtas and the Applicants state to this Honourable Court that such unilateral estoppel by the Minister of the right of “applicable persons” to assemble with other “applicable persons” as directed by the Regulations which has the direct effect of enforcing the isolation and separation of “applicable persons” and citizens from other “applicable persons” and citizens by way of a penal provision will cause significant mental hardship and psychological distress to all persons within the State affected thereto with no legal or clinical or public health justification or cause and the Minister accordingly furthermore is failing to uphold the unenumerated Constitutional right to bodily integrity and the health of the “applicable person” and citizen as affected and the operation of such Section 4 of the Restrictions Regulations 2020 is directly injurious to the health of such “applicable persons” described therein and citizens accordingly.

Article 41

1 1° The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the state.

The operation of Section 5 of the Restrictions Regulations 2020 furthermore is repugnant to Article 41 of the Constitution in preventing, impeding and restricting activities in a social context between persons who may be parties to a family unit but not residing in the same household and who may or may not be suffering from COVID-19 and as such the Minister's direction pursuant to Section 6 directly undermines and interferes with the inalienable rights of association of parties to a family unit and the inalienable antecedent right of peaceful, uninterrupted and quiet enjoyment of family life with no state of emergency being ratified by the Houses of the Oireachtas and no legal or clinical justification or cause and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and the Applicants and the Minister accordingly furthermore is failing to uphold the unenumerated Constitutional right to bodily integrity and the health of the "applicable person" and citizen as affected and the operation of such Section 5 of the Restrictions Regulations 2020 is directly injurious to the health of such "applicable persons" described therein and citizens accordingly.

Article 44:2

1°. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

The operation of Section 5 of the Restrictions Regulations 2020 in tandem with Section 4(o) of the Regulations is repugnant to Article 44.2 of the Constitution in directly preventing the convening of religious services and the physical attendance in congregation of "applicable persons" thereto such persons who may or may not be suffering from COVID-19 and as such the Minister's direction pursuant to Section 5 directly undermines and interferes with the free practice of religion with no state of emergency being ratified by the Houses of the Oireachtas and no legal or clinical justification or cause and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and by the restriction and prevention of the convening of such religious services the Minister accordingly furthermore is failing to uphold the unenumerated Constitutional right to bodily integrity and the health of the "applicable person" and citizen as affected and the operation of such Section 5 of the Restrictions Regulations 2020 is directly injurious to the health of such "applicable

persons” described therein and citizens accordingly.

Article 45:2

i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.

The operation of Section 5 of the Restrictions Regulations 2020 is directly repugnant to Article 45.2 of the Constitution in directly preventing the convening of events and the physical attendance in congregation of “applicable persons” thereto such persons who may or may not be suffering from COVID-19 and as such the Minister’s direction pursuant to Section 5 directly undermines and interferes with the right of an “applicable person” or citizen to earn a livelihood by the convening of lawful and licensed events for whatever purpose to which “applicable persons” and citizens may attend by way of monetary payment save for events convened pursuant to the outlets and services set out in Schedules 1 and 2 of the Restrictions Regulations by the Minister with no state of emergency being ratified by the Houses of the Oireachtas and no legal or clinical justification or cause and notwithstanding the fact that no state of emergency in actuality exists is grossly disproportionate to the aims (irrespective of their validity) of the Minister as set out in the Preamble and by the restriction and prevention of the convening of such events the Minister accordingly furthermore is directly damaging the right of the “applicable person” and citizen as affected to find the means of making reasonable provision for their domestic needs by extension will have a devastating impact on the wider economy.

The Minister furthermore irrespective of the unconstitutionality of the Restrictions Regulations in any event directly seeks to undermine the unenumerated right to bodily integrity and health of an affected person and citizen by failing to specify as an Essential Service in Schedule 2 the right to dental services other than emergency dental services and fails to make any provision for the provision of personal care services as such the Minister’s failure to make provision in this respect is directly contributing to the spread of inadequate hygiene and infection accordingly and accordingly directly contradicts his stated aims of the Restrictions Regulations 2020 set out in the Preamble.

The provisions of such Sections 4 and 5 of the Restrictions Regulations 2020 also are directly repugnant to Articles 5, 6, 7, 8 and 11 of the European Convention on Human Rights and Articles 1, 6, 7, 8, 9, 10, 12, 15 and 16 of the Charter of Fundamental Rights and the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548/2015) implementing Directive 2004/38/EC authorising the citizens of Member States to move and reside freely within the territory of Member States.

(IV) HEALTH ACT 1947 (SECTION 31A - TEMPORARY RESTRICTIONS) (COVID-19) (AMENDMENT) REGULATIONS 2020 (HEREINAFTER: “THE AMENDMENT RESTRICTIONS REGULATIONS 2020”)

26. The **Preamble** to the Amendment Restrictions Regulations 2020 states:

“The Minister for Health, in exercise of the powers conferred on him by sections 5 and 31A (inserted by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (No. 1 of 2020)) of the Health Act 1947 (No. 28 of 1947) and - (a) having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and to the matters specified in subsection (2) of section 31A, and (b) having consulted with the Minister for Finance, the Minister for Public Expenditure and Reform and the Minister for Justice and Equality, hereby makes the following regulations:”

27. Section 2 of the Amendment Restrictions Regulations 2020 provides:

“Regulation 2 of the Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) Regulations (SI No 121 of 2020) is amended by the substitution of “the 5th day of May 2020” for “the 12th day of April 2020”.

28. The Restrictions Regulations 2020 were signed by the Minister on 7th April 2020 providing for an operative period of 8th April 2020 terminating on 12th April 2020. Yet on 10th April 2020, a mere two days into the five day operative period the Minister signed the Amendment Restrictions Regulations 2020 providing for an extended termination date of 5th May 2020, an additional 23 days beyond the original expiry date of April 12th.

Notwithstanding the fact that the Restrictions Regulations 2020 *ab initio* are repugnant to the Constitution and no state of emergency was ratified in any event by the Houses of the Oireachtas, no legal or clinical or public health grounds whatsoever arose between 8th April and 10th April to justify the Minister extending the operation of the Restrictions Regulations 2020 to provide for an extended termination date of 5th May 2020, merely two days after the signing of the Restrictions Regulations 2020 themselves. As such the actions of the Minister by signing the Amendment Restrictions Regulations 2020 on April 10th are grossly disproportionate (irrespective of their validity) to the stated intentions of the Regulations as set out in the Preamble and will unjustly exacerbate the negative effects of the Restrictions Regulations as set out by the Applicants herein.

This Honourable Court should also note that Part III of the Health Act 2020 provides for Part III of such Act to be enforced until 9th November 2020 and with a right of extension beyond such date if ratified by the Houses of the Oireachtas and therefore at a minimum the Minister could ostensibly extend the Restricted Regulations 2020 to be in effect up to and including 9th November 2020 with the devastating and negative consequences for affected persons and citizens and the State following therefrom.

(V) HEALTH ACT 1947 (AFFECTED AREAS) ORDER 2020 (HEREINAFTER: “THE AFFECTED AREAS ORDER 2020”)

29. The **Preamble** to the Affected Areas Order 2020 states:

“The Minister for Health, in exercise of the powers conferred on him by Section 31B of the Health Act 1947 (No. 28 of 1947) having regard to the matters specified in

Section 31A(2) of that Act and to the advice of the Chief Medical Officer of the Department of Health and having consulted with the Minister for Justice and Equality, the Minister for Finance and the Minister for Public Expenditure and Reform hereby orders as follows:”

30. Section 2 of the Affected Areas Order 2020 states:

“It is hereby declared 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”.

31. As stated in paragraph 11 of the within Statement of Grounds the powers contained in the Health Act 1947 apply to specific and identifiable categories of persons however the inserted Section 31A authorises measures directed at the entire population irrespective of whether an affected person or citizen is a carrier of COVID-19.

However Section 31A of the 1947 Act as inserted by the Health Act 2020 is unprecedented by affording such wide powers to the Minister for Health to order every citizen in the State to stay indoors no matter where in the country the house is located. However Section 31A(1)(b) authorises the Minister to enact regulations which restrict travel to or from or within geographical locations to which an affected areas order applies.

This therefore is not a reference to the entire area of the State but to sections thereof in respect of which an affected areas order can be made by the Minister and this in fact was reinforced by the Minister for Health himself at the Second Stage of the Bill in the Dail on Thursday 19th March wherein he stated:

“The new Section 31B provides that the Minister may, by means of an order, specify an area or region to be an affected area. This means an area where there is a high risk of infection or importation of Covid-19. Travel and event restrictions relate here. When making an affected area order, the Minister will have regard to the advice of the Chief Medical Officer and will consult other relevant Ministers.”

As such, the Affected Areas Order 2020 in which the Minister has deemed every area within the State as an affected area and therefore placed the entirety of the Republic of Ireland itself as a unitary affected area into lockdown and furthermore based on a presumption or thought as set out in the Order as opposed to fact whilst concurrently not restricting or closing access to the Republic of Ireland to persons outside the State via its ports and airports renders vanquished any assertions by the Minister for Health in the Preambles to the Health Act 2020, the Emergency Measures Act 2020, the Restrictions Regulations 2020, the Amendment Restrictions Regulations 2020 and the Affected Areas Order 2020 that such Acts and Statutory Instruments and the restrictive provisions therein directly affecting the residents and

citizens of the Irish State are necessary to prevent the spread of COVID-19 within or outside the State and the execution of the Affected Areas Order 2020 by the Minister is wholly and unequivocally *ultra vires* his powers (irrespective of the repugnancy of the Health Act 2020 to the Constitution in any event) as such Order /Statutory Instrument can only give effect to what is authorised by the Act and in particular Section 31A(1)(b) and therefore in terms of the legislation amending the 1947 Act itself the Minister has elected to act in an extreme and draconian fashion and in excess of the powers afforded to him without precedent and as such the Affected Areas Order 2020 should be struck out and annulled by this Honourable Court immediately.

GEMMA O'DOHERTY

JOHN WATERS

Applicants in Person

Dated this day of April 2020