

# NOTICE

*to traders, owners, managers or persons in charge of a relevant premises as outlined in Statutory Instrument number 296 of 2020 (the “Statutory Instrument”), which came into operation on 10th August 2020 and shall continue in operation until 9th November 2021 (unless extended)*

This notice is published as an aid to assist traders, owners, managers or persons in charge of a relevant premises (as defined in the Statutory Instrument) to comply with the law (thereby ensuring they do not expose themselves to liability and legal costs) and to assist in providing for public safety.

This Statutory Instrument makes it a criminal offence to enter or remain in a relevant premises without wearing a face covering unless the person concerned has a “*reasonable excuse*” as defined in the Statutory Instrument at paragraph 5.

It is understood that the only persons who may converse with customers in this regard are the owner, manager or person in charge of a premises - there is no right to delegate this authority to another person.

Owners, managers or persons in charge of a relevant premises should ensure that everyone dealing with members of the public on such issues meets the definition for a “*responsible person*” under the Statutory Instrument and that any such person(s) are fully informed as to the law in this area to ensure the owner of the premises / employer is not exposed to vicarious liability.

Failure to properly apply the law (which includes the provisions of the Statutory Instrument and the Equal Status Acts) has the potential to expose the owner, manager or person in charge of a relevant premises to liability arising from a claim of victimization, harassment, discrimination, breach of the Statutory Instrument and the Equal Status Acts (which prohibits discrimination in the provision of goods and services).

For your information, please be aware that:

1. Under paragraph 4.4 of the Statutory Instrument only a Responsible Person (who is defined as the occupier, owner or person in charge) may engage with persons as to the requirement to wear a face covering in a relevant premises.
2. In accordance with s4(1) and s5(1) of the Equal Status Acts 2000 to 2015, a person shall not discriminate in disposing of goods to the public generally or a section of the public.
3. At paragraph 4.1 of the Statutory Instrument confirms that the requirement to wear a face covering shall not apply to a person who has a “*reasonable excuse*”.
4. There is no requirement or authority under the Statutory Instrument to inquire into or request proof of a person’s “*reasonable excuse*”. On this point, it is worthy of note that the requirement to provide proof of reasonable excuse is specifically called for in the Public Transport Regulation (S.I. 244 of 2020), which was enacted one month prior to Statutory Instrument 296 of 2020, thereby illustrating the fact that the Minister for Health did not consider it appropriate or necessary to request evidence of reasonable excuse in a relevant premises.

DISABILITY  
RIGHTS  
ARE  
HUMAN  
RIGHTS



Paragraph 5 of the Statutory Instrument defines as having “*reasonable excuse*”, among others, any person who cannot wear a face covering because of any physical or mental illness, impairment or disability, or without severe distress.

While a private business is free to create its own rules, which may be in excess of the Statutory Instruments, those rules may not be in breach of the law.

In this regard, in particular, I draw your attention to the Equal Status Acts, which outlaw discrimination in the provision of goods and services on the basis of 9 protected grounds, which include disability.

## Under the Equal Status Acts disability includes:

- “(a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,*
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,*
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,*
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or*
- (e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.”*

The refusal of services or admission to a relevant premises of a person who has a “*reasonable excuse*” falls under the definition of disability under the Equal Status Acts and therefore is considered illegal under the law.

The wrongful refusal of services may cause serious embarrassment and humiliation for the person affected, especially where the whole ordeal is played out in front other customers.

Traders risk exposing themselves to liability for discrimination under Section 2(1) of the Equal Status Acts 2000 – 2015, and to claims made to the **Workplace Relations Commission** on the grounds of such refused service.

## What about Staff Safety?

The Government clearly deduced, on the basis of scientific evidence from NPHET, that such limited exemptions for disabled people would not enhance the risk of Covid 19 amongst the general population.

This means that one cannot attempt to justify discriminatory practices on the unfounded basis that such actions protect staff and customers, particularly when such practices are in breach of the law.

While everyone is prioritising public health and safety, lack of clarity regarding the law has led to differing policies and some are inadvertently in breach regarding disability rights.

There have already been a number of cases taken on the grounds of discrimination and settlements have been imposed for breaches of the law - traders should review their policies to ensure compliance with the above-cited law - it applies to both staff and customers.

It is important in these times that the rule of law is upheld.

## What about Signage?

Traders should be aware that “**No Mask, No Entry**” signage discriminates against i) people with disabilities (under the Equal Status Acts) and; ii) people who have a reasonable excuse (under Statutory Instrument 296 of 2020) and as such Traders should make certain that no discriminatory signage is displayed on their premises, to ensure they do not expose themselves to legal liability by refusing service to those unable to wear a mask.

### **Note Regarding the Type of Premises Covered by Mask Orders**

a ‘*relevant premises*’ (as defined) does **not** include the following:

1. Any premises in which the principal activity is the sale of Food and Beverages for consumption on the premises, or
2. Any premises in which the principal activity is the provision of Medical, Dental or other Healthcare services, including Opticians and outlets providing Hearing tests.