

The Coronavirus Act 2020 – A Brief Outline Guide

Introduction

1. The Coronavirus Act 2020 would have been unthinkable only a few months ago. What follows is a very brief summary of its principal provisions as they apply in England.
2. The Act contains 102 sections and 29 schedules. There is some duplication by reason of the need for some separate treatment of the four UK jurisdictions.
3. It is, obviously, not possible to analyse any section in detail in a note such as this. The reader is referred to the Act itself for further reading.
4. The sections of the Act can be grouped together under, broadly, the following headings.

The Definition

5. Section 1 defines the virus and what the Act means by referring to a person infected by it. Importantly, this '*...does not (unless the contrary intention appears) include persons who have been infected but are clear of coronavirus (unless re-infected)*'.

Provisions dealing directly with healthcare and death

6. Section 2 and schedule 1 insert sections into the *Nursing and Midwifery Order 2001* and the *Health Professions Order 2001* entitled '*Temporary registration in emergencies involving loss of human life or human illness etc*'. These cover nurses, nursing associates, midwives and members of a 'relevant profession' as defined in schedule 3 of the *Health Professions Order*.
7. Section 45 suspends the restrictions on returning to work in NHS pension schemes.
8. Section 11 provides that the Secretary of State may indemnify or make arrangements for the indemnifying of persons working in the NHS and not already insured or indemnified for liability in tort arising out of the coronavirus services set out in the section.
9. Section 14 removes the duty in regulation 21 (2) (a) and (12) of the *National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012* and direction 2 (2) and (10) of the *Delayed Discharges (Continuing Care) Directions 2013* to take reasonable steps to ensure that assessments of eligibility for NHS Continuing Healthcare are carried out and to have regard to the National Framework.
10. Section 15 and schedule 12 (which is not yet in force) make detailed modifications to the powers and duties of local authorities in the *Care Act 2014* and related legislation.
11. Section 18 and schedule 13 deal with registration of deaths and still births. They include provisions expanding the list of persons qualified to give information concerning deaths in sections 16 and 17 of the *Births, Deaths and Marriages Act 1953* to include funeral directors. They widen the range of medical practitioners who can sign death certificates and take other steps. They also widen the range of permitted methods of communicating information.

12. Section 30 states that Coronavirus is not a notifiable disease within the meaning of section 7 (2)(c) *Coroners and Justice Act 2009*.
13. Section 19 removes the requirement for a confirmatory medical certificate for cremation and makes consequential amendments to the *Cremation (England and Wales) Regulations 2008*.
14. Section 58 and schedule 28 contain detailed provision to facilitate the transportation, storage and disposal of bodies and human remains. They grant information gathering powers (backed by criminal penalties), power to give directions and power to compensate those complying with directions. Importantly, Part 4 of Schedule 28 provides that local and national authorities:

'...must have regard to the desirability of disposing of a dead person's body or other remains

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(a) In accordance with the person's wishes, if known, or

(b) Otherwise in a way that appears consistent with the person's religion or beliefs, if known'

It also requires the Secretary of State or the Minister for the Cabinet Office to give guidance and that local authorities must have regard to the guidance.

Provisions dealing with social workers and emergency volunteering leave

15. Section 6 and schedule 5 insert a *'Temporary registration in emergencies involving loss of human life or human illness etc'* section into the *Social Workers Regulations 2018*.
16. Sections 8 and 9 and schedule 7 create a regime for 'emergency volunteering leave'. These provisions are not yet in force. They would apply to people with an 'emergency volunteering certificate' approving them as an emergency volunteer in health or social care. They would permit them to be absent from work for up to 4 weeks in any 16 week period. The regime would not apply to those employed in an undertaking with less than 10 staff, those employed by the Crown, Parliament or the police. The schedule preserves employment and pension rights and inserts relevant sections into the *Employment Rights Act 1996*. There are also provisions dealing with agency workers.

Provisions dealing with the food supply

17. Sections 25 to 29 would permit the Secretary of State to require information from persons who are in or closely connected to a food supply chain. There would be a financial penalty for non-compliance. They would also restrict the use and disclosure of any information provided. These sections are also not yet in force.

Emergency police powers

18. These powers have been given the most publicity and the government was criticised by some for the manner in which they were announced. There are two sets of powers: (a) powers relating to potentially infectious persons (section 51 and schedule 21); and (b) power to issue directions relating to events, gatherings and premises (section 52 and schedule 22).

(a) Potentially infectious persons

19. Schedule 21 confers powers on public health officers, constables and immigration officers. A person is 'potentially infectious' for the purposes of the schedule if (paragraph 2 (1)):

(a) the person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus, or

(b) the person has been in an infected area [an area abroad declared by the Secretary of State] within the 14 days preceding that time.

20. The powers are exercisable during a 'transmission control period'. This is a period declared by the Secretary of State (who must consult the Chief Medical Officer or his deputies) if he is of the view that (paragraph 4 (1)):

(a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in England, and

(b) the powers conferred by this Part of this Schedule will be an effective means of delaying or preventing significant further transmission of coronavirus in England,

21. An outline of the powers is as follows:

(a) Paragraph 6 permits a public health officer who has reasonable grounds to suspect that a person is potentially infectious to direct that the person go immediately to 'a place suitable for screening and assessment', to remove the person to that place or to request a constable to do so;

(b) These powers can only be exercised if the public health officer 'considers that it is necessary and proportionate to do so-':

(a) in the interests of the person,

(b) for the protection of other people, or

(c) for the maintenance of public health.

(c) The public health officer must inform the person of the reason for the direction or removal and that it is an offence to fail, without reasonable excuse, to comply with a direction or abscond from a removal;

(d) paragraph 7 gives almost identical powers (and on the same terms) to constables and immigration officers 'in the course of exercising any of their functions'. However, paragraph 7 (5) provides that:

(5) An immigration officer or constable must, before exercising the powers conferred by this paragraph, consult a public health officer to the extent that it is practicable to do so.

- (e) Paragraphs 8 to 11 confer powers on public health officers at ‘places suitable for screening and assessment’ whether or not the person is there by reason of the powers conferred by paragraphs 6 and 7. The pre-requisites to the exercise of the powers is the same as for the former paragraphs (*‘reasonable grounds to suspect..’* and *‘necessary and proportionate to do so...’*). The powers are:
- to require the person to remain at the place for up to 48 hours. The person must be told why, what the maximum period is and that it is an offence not to comply. The public health officer or a constable (see below) may ‘keep’ the person at the place;
 - to require that the person be screened and assessed (including taking biological samples) and to ‘impose other requirements’;
 - to require a person to answer questions ‘about their health and other relevant matters’ (such as travel or contact history), to produce any documents ‘which may assist in their assessment’ and to provide contact details ‘during such subsequent period as the public health officer may specify’; and
 - to direct, move or request a constable to move the person to another place suitable for assessment.

- (f) Paragraph 13 gives constables and immigration officers ancillary powers at places suitable for screening and assessment. A constable may keep a person at the place for up to 24 hours (extendable by a further 24 hours (if not practicable for a public health officer to exercise his or her functions sooner) with the consent of a superintendent or above). An immigration officer may keep a person for up to 3 hours (extendable by a further 9 hours (on the same grounds) with the consent of at least a chief immigration officer). There is the same ‘necessary and proportionate’ test and notification requirements. In addition, paragraph 13 (8) provides:

(8) An immigration officer or constable must, before exercising the powers conferred by this paragraph, consult a public health officer to the extent that it is practicable to do so.

- (g) Perhaps the most draconian powers are those exercisable after assessment (in paragraphs 14 to 17). They apply to any person in England where (in the alternative) the screening has confirmed that the person is infected or contaminated, where the screening was inconclusive or where, after assessment, a public health officer ‘has reasonable grounds to suspect that the person is potentially infectious’. The basic power is to impose (backed up by criminal penalties for non-compliance) (paragraph 14 (2)):

‘...such requirements and restrictions on the person as the officer considers necessary and proportionate—

- (a) in the interests of the person,*
- (b) for the protection of other people, or*
- (c) for the maintenance of public health.’*

These 'may include' (paragraph 14 (3)) requirements:

(a) ...

(d) to remain at a specified place (which may be a place suitable for screening and assessment) for a specified period;

(e) to remain at a specified place in isolation from others for a specified period.

And (paragraph 14 (4)) restrictions on

(a) the person's movements or travel (within or outside the United Kingdom);

(b) the person's activities (including their work or business activities);

(c) the person's contact with other persons or with other specified persons.

The public health officer must notify the person of the reason for the restriction (s) and that it is an offence to fail to comply. Crucially, the officer is required when deciding whether to impose a requirement to stay at a place or to isolate, to have regard to '*a person's wellbeing and personal circumstances*';

- (h) The specified period for the specific restrictions set out above is a maximum of 14 days (paragraph 15 (1)). The person must be assessed within 48 hours and the requirements reconsidered (paragraph 15 (2)). If the restriction is removed, the Secretary of State has the power to re-instate it (paragraph 15 (4)). It can be extended for upto a further 14 days (paragraph 15 (6) - or longer in the case of an isolation requirement). If it is so extended it must be reviewed every 24 hours in that extension period (paragraph 15 (7)). The requirements in paragraphs 14 (3)(d) and (e) can be enforced by a constable (paragraph 16). The restrictions may be appealed to a magistrates' court (paragraph 17) and section 56 of the Act and schedule 26 amend the *Magistrates' Courts Act 1980* to make special provision for these hearings;
- (i) Paragraph 18 makes specific provision for dealing with children. Paragraph 20 gives public health officers, constables and immigration officers 'ancillary powers', also backed by criminal penalties;
- (j) Paragraph 23 is the offence creating provision. In addition to those matters already mentioned, it is an offence to 'knowingly provide false or misleading information' or to obstruct a person exercising powers under the schedule. The penalty for all these offences is a fine not exceeding level 3.

(b) Directions relating to events, gatherings and premises

- 22. The powers set out in schedule 22 are exercisable in a 'public health response period'. This is a period declared by the Secretary of State if he is of the view (after consulting the Chief Medical Officer or his deputies) that (paragraph 3):

(a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in England, and

(b) the powers conferred by this Part of this Schedule will be an effective means of—

(i) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in England, or

(ii) facilitating the most appropriate deployment of medical or emergency personnel and resources in England,

23. There are two sets of powers in such a period (both of which require consultation with the Chief Medical Officer or his deputies):

(a) paragraph 5 permits the Secretary of State to issue a direction prohibiting, or imposing requirements or restrictions in relation to the holding of an event or gathering in England. Such a direction may apply to a specified event or specified categories of events. It can only impose prohibitions, requirements or restrictions on the owner or occupier of the premises, the organiser or ‘any other person involved in holding it’. It cannot do any of these things in relation to a person whose only involvement is attendance at the event.

(b) Paragraph 6 permits the Secretary of State to issue a direction imposing prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in, premises in England. The sorts of directions envisaged are set out in paragraph 6 (5) and (6).

24. It is an offence to fail, without reasonable excuse, to comply with a direction (paragraph 9). The penalty is a fine on summary conviction. In addition (paragraph 11):

(1) A person, or description of person, designated in writing for the purpose of this subparagraph by the Secretary of State may take such action as is necessary to enforce compliance with a direction issued under this Part of this Schedule.

Provisions dealing with wider societal effects of the public health situation

25. Section 10 and schedule 8 (which is largely not yet in force) would modify the *Mental Health Act 1983* so as to reduce various requirements during the period of the 2020 Act (such as to take account of a reduction in available medical personnel).

26. Section 22 deals with potential shortages of judicial commissioners for the purposes of the *Police Act 1997*, the *Regulation of Investigatory Powers Act 2000* and the *Investigatory Powers Act 2016*. Section 23 gives the Secretary of State powers, by regulation, to modify the *Investigatory Powers Act 2016* to extend certain periods.

27. Section 24 gives the Secretary of State power (for 3 months after the passing of the Act), by regulations, to extend the retention period for fingerprints and DNA profiles by up to 12 months in total.

28. Sections 37 and 38 and schedules 16 and 17 deal with the temporary closure and continuity of educational institutions and childcare premises.

29. Section 50 and schedule 20 give the Secretary of State power to suspend ports, airports and the Channel Tunnel (again backed by criminal penalties).

Provisions dealing with the courts and the administration of justice

30. Section 53 and schedule 23 contain detailed provisions for the use of live links in criminal proceedings. Section 54 and schedule 24 contain detailed provisions for the use of live links in other criminal hearings. These provisions have been analysed elsewhere. They apply to persons other than jurors (in relation to which no direction for participation by live audio or video link may be made).

31. Section 55 and schedule 25 deal with participation by the public in proceedings conducted by video or audio. Paragraph 1 inserts sections into the *Courts Act 2003*. The inserted section 85 A provides for a direction that the proceedings be broadcast. Inserted section 85 B creates offences of recording or transmission of a broadcast. Inserted section 85 C creates offences of recording or transmitting participation through live link. In each case, the punishment is a fine. Paragraph 2 makes equivalent provision for the First Tier Tribunal and the Upper Tribunal.

Provisions designed to alleviate the economic impact of the restrictions

32. These provisions of the Act are also covered elsewhere. In summary, there are provisions dealing with:

- (a) Statutory sick-pay. These relate to employers' liabilities (section 39), employees (section 40) and regulation making powers (section 41);
- (b) National Insurance contributions. Sections 72 to 74 contain facilitative provisions for the administration of NI;
- (c) Financial assistance to industry. Section 75 disapplies the limit under section 8 (4) and (5) of the *Industrial Development Act 1982* if the assistance is designated as being 'coronavirus related';
- (d) HMRC. Section 76 gives the Treasury wide powers to direct that functions be exercised by HMRC;
- (e) Working tax credit. Section 77 provides for the up-rating of working tax credits;
- (f) Evictions. Section 81 and schedule 29 provide for an (extendable) moratorium period for eviction from certain residential tenancies. Section 82 provides protection from re-entry and forfeiture in relation to a relevant business tenancy.

Provisions suspending aspects of the democratic process

33. Section 60 provides for the postponement of certain elections. Section 61 gives the Secretary of State or the Minister of the Cabinet Office the power to postpone other

elections. Section 62 gives the same people the power to postpone a recall petition under the *Recall of MPs Act 2015*. Section 63 gives them additional related powers, including as to setting terms of office, the manner of voting in postponed elections and the membership or governance arrangements of a local authority in certain circumstances.

34. Section 78 gives wide powers to make regulations in relation to Local Authority meetings (which are widely defined).

Provision for review of the Act and the making of delegated legislation

35. Section 88 gives a minister of the Crown the power to suspend and revive parts (although not all of the provisions) of the Act.
36. By section 89, most (although not all) of the Act expires after 2 years. Ministers of the Crown are given powers to make 'transitional, transitory or saving provisions'. Under section 90, a minister may bring the Act to an end earlier or extend it for up to 6 months (subject to the Parliamentary requirements in section 93).
37. By section 97, the Secretary of State is required to report every 2 months on the status of the non-devolved provisions in Part 1 of the Act (the sixth such report must be considered by Parliament in accordance with section 99).
38. Section 98 requires that each six months 7 sitting days be devoted to the motion that the temporary provisions in the Act not expire. If the government loses such a motion, the temporary provisions must be brought to an end within 21 days.
39. Section 101 provides that the Act may be extended in whole or in part to the Isle of Man by Order in Council.

Conclusion

40. As I said at the beginning, an Act of this kind would have been unthinkable only a few months ago. It gives enormous power to the Secretary of State, to public health officers and to the police. It makes emergency provision for a swathe of aspects of national life. At least at the moment, the public is able to see the public health necessity of such a momentous statute. No-one can predict accurately how events will develop over the coming months.

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