

THE CORONAVIRUS BILL 2020

A BRIEF OVERVIEW BY KINGS CHAMBERS

The Coronavirus Bill 2020 was introduced to the House of Commons and given its First Reading on Thursday 19 March 2020. The proposals set out in the bill will significantly enhance the ability of public bodies across the UK to provide an effective response to tackle this epidemic. Under Article 2 of ECHR the State has a positive obligation to protect its citizens. The government can derogate from the ECHR if there is a “public emergency threatening the life of the nation” and already has extensive legal powers under the Public Health (Control of Disease) Act 1984 and Civil Contingencies Act 2004.

The Bill has four primary categories of effect:

Enhancing capacity and the flexible deployment of staff

Easing of legislative and regulatory requirements

Containing and slowing the virus

Managing the deceased

ENHANCED CAPACITY AND FLEXIBLE DEPLOYMENT OF STAFF

1. Mental health and mental capacity

A large portion of the bill discusses the new powers introduced for detention under mental health legislation in order to ease the burden on frontline staff. As such, the bill in its current form temporarily amends the Mental Health Act 1983 (MHA). It allows for fewer health care professionals to undertake certain functions; and grants extensions or removal of time limits relating to detention and transfer of patients. For instance, one of the amendments would mean that an approved mental health professional may decide to detain a person on the advice of one doctor approved under s.12 MHA, as opposed to two doctors. Further flexibilities will change the number of doctors' opinions and time limits required for detention and movement between court, prison and hospital.

This may result in people being detained for prolonged periods without their cases being reviewed so that many people suffering with mental health will be subject to longer periods of delays in treatment.

2. NHS and local authority care and support

The Care Act 2014 (CA) will also be amended to the extent that Local Authorities (LAs) will be in a position to prioritise the services they offer in order to ensure the most urgent and serious care needs are met, rather than being required to meet all eligible assessed needs. LAs may lawfully determine whether and the extent to which it will carry out assessments of individuals' needs or review care plans or carry out financial assessments. This will now be a discretion as opposed to a requirement.

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While the NHS core duty of care is not affected, how it prioritises patients will change. This will affect those who are at most risk including the elderly and disabled people. Concerns of the treatment of disabled people has already come under fire.

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EASING OF LEGISLATIVE AND REGULATORY REQUIREMENTS

1. Investigatory powers

The bill confers regulation-making power on the home secretary to alter the warrant issuing procedures contained in the Investigatory Powers Act 2016. Under the bill, the Home Secretary at the request of the Investigatory Powers Commissioner may vary the appointment process for Judicial Commissioners to allow for the Investigatory Powers Commissioner to directly appoint temporary Judicial Commissioners. Furthermore, the Home Secretary may vary the time period for urgent warrants from the current 3 days to 12 days, a clear interference with Article 8 ECHR (right to privacy).

The Investigatory Powers Act of 2016 dramatically enhanced the government's ability to access people's personal data. The variation would allow the Commissioner to directly appoint temporary Judicial Commissioners for a term of up to 6 months, renewable to a maximum period of 12 months.

CONTAINING AND SLOWING THE VIRUS

1. Restrictions on events and gatherings and premises

The aim is to reduce unnecessary social contact. As such, the bill allows for the government to restrict or prohibit events and gatherings during the pandemic in any place, vehicle, train, vessel or aircraft, any movable structure and any offshore installation and, where necessary, to close premises.



2. Detention powers for the police, immigration and public health official

In order to enforce the above, the bill enables the police, immigration officers and public health officials to detain a person, for a limited period who is or maybe infections and remove them to a suitable place to enable screening and assessment.

The concerns these proposals present are the extent to which they interfere on to an individual's right to liberty and the right to private and family life. These rights can be restricted but any restriction must be proportionate. It is noteworthy that the Human Rights Assessment which usually accompanies Bills has not been published at the same time as the Bill. These official would be able to detain people who have coronavirus (or are carriers) but are refusing to self-isolate; and essentially quarantine entire areas and put them into lock-down. Those found to have breached certain restrictions will find themselves subject to fines and possible imprisonment, as this would be considered a criminal offence.

The obvious difficulty this also presents is how this power will be exercised by such, the details as to where detainees' will be held and how the exercise of such power will be monitored.

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MANAGING THE DECEASED WITH RESPECT AND DIGNITY

1. Suspension of requirement to hold inquest with jury

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2. Treatment of a deceased's body

Schedule 27 of the Coronavirus Bill will allow designated local authorities to disregard section 46(3) of the Public Health (Control of Disease) Act 1984, which is designed to prevent a local authority from being able to cremate a body against the wishes of the deceased.

The policy behind this rule is to deal with a potential surge in deaths and lack of grave space capacity arising from an outbreak. The sanctity of the dead body and the importance of religious burial is a fundamental component of religious practice for various religious groups. The ECHR has repeatedly affirmed the importance of freedom of religion as being one of the foundations of a democratic society.¹ In contrast, however, the manifestation of religion or belief may be subject to the imposition of restrictions by the state as long as such restrictions are in accordance with the three criteria under Article 9(2) prescribed by law', in pursuance of one of the legitimate aims listed, and necessary in a democratic society,' with this last requirement meaning that any restriction must be proportionate to the aim that the state is claiming to protect².

Furthermore, it could be said that this particular section may be seen as indirectly discriminatory for those religious group where burial is compulsory.

CONCLUSION

All these changes are unprecedented. However, any confinement on human rights must be proportionate and changes that are made must be constitutional. The law will be in force for a two-year period. It will interfere with many human rights, and certain aspects will curtail the democracy and the checks and balances and the rule of law, that are synonymous to the system.

We will update further once amendments are known.

By [Sam Karim QC](#), [Shaylla Shabbir](#) and [Mark Howells](#)

Endnotes

1 Kokkinakis v Greece (1993) 17 EHRR 397

2 Handyside v UK (1981) 4 EHRR 149 at [49]