| INFORMATION | | | |
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| **Covid-19: EMERGENCY LEGISLATION** | | | |
| *Date:* | *09 March 2020* | *From:* | *Katharine Hammond, Mark Sweeney*<br>*Cabinet Secretariat* |
| *Deadline:* | *10 March 2020* | | |

## SUMMARY


1. Covid-19 looks increasingly likely to become a global pandemic, although this is not yet fully certain. The UK's approach is underpinned by science. We have a clear plan for a phased response, guided by clinical and scientific advice, as set out in the Action Plan published last week.

2. To most effectively manage a Coronavirus outbreak in the UK we will need to introduce new fast-tracked legislation. A DHSC-led Bill is being prepared at pace, with input from other departments.

3. This is a four nations Bill, and the Devolved Administrations have been engaged with at both Official and Ministerial level on the proposed clauses, as well as the timetable for the Bill. It is important that the proposals in the Bill reflect a policy consensus so that the public feels there is equitable treatment across the UK.

4. Work to finalise content and draft provisions has developed at pace. Once the Bill measures have been agreed, engagement with the Usual Channels will begin in order to agree a fast-tracked passage in order to achieve Royal Assent by 31 March, ahead of the expected peak.


## BACKGROUND

5. Contingency work has previously taken place to ensure the UK would be prepared for a severe influenza pandemic. DHSC and CCS led a cross-Government work programme, scoping the provisions to be included in a free-standing draft Pandemic Flu Bill.

6. This draft Pandemic Flu Bill has formed the basis for the bespoke Covid-19 Bill. Departments were asked to confirm that previously discounted measures are not needed for a Covid-19 response, and what else might be required in a reasonable worst case scenario specific to this virus.

## CONTENT

7. All departments and Devolved Administrations have been asked to verify that the Bill's provisions are *necessary* to prevent significant harm, and that such provisions could *only* be provided by primary legislation. Prospective additions which have not been deemed necessary, or which can be resolved by other means, have been discounted.

8. 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; and managing the deceased. These will help ensure that COBR's objectives of maintaining services and mitigating the impact on UK citizens as far as possible are met. A full table of measures is set out at **Annex A**.

9. The content of the Bill is almost finalised, and there are just a small number of outstanding issues to be resolved. These include:

    a. SSP retrospection: DWP are assessing whether the Statutory Sick Pay provisions will be applied retrospectively.
    b. Passenger Information: DHSC is confirming whether provisions are required for Scotland, if not then this will be removed.
    c. Data sharing: the Civil Contingencies Secretariat is working with departments to confirm that there are no data sharing regulations that could hinder an effective response.
    d. Food supply chain data: DEFRA have requested that the provisions drafted for Yellowhammer are included in this Bill. These give the DEFRA SoS powers to require the provision of specified information from the food industry if they refuse to provide the information voluntarily. This is subject to activation by SI and would only be used if the food industry refused to provide the information being requested.

## HANDLING RISKS

10. By its nature, emergency legislation has the potential to be controversial, as the subject matter is sensitive and the powers potentially wide. A number of clauses have been identified as particularly controversial. These include flexibilities for LAs under the Care Act and the power to direct Local Authorities with respect to measures for dealing with excess deaths (for example, to extend the working hours of crematoria).

11. The Bill's narrative and parliamentary handling plan will therefore be crucial in agreeing its fast-tracked passage with the Usual Channels as well as how the Bill lands more widely with the Public.

12. We are clear that the purpose of the Bill is to provide powers for use only if needed, judged on the basis of the clinical and scientific advice. However Depending on Usual Channel discussions, we may need to build in safeguards to ensure that powers are only used as necessary, for example during the peak of a pandemic. Our aim is to balance the need for speed, as appropriate to the risk posed by the virus, with safeguards to ensure proper Parliamentary oversight and accountability. For example, provisions in relation to the Care Act will not be commenced until the peak of the outbreak and are expected to be used only for a small number of weeks.

## TIMING

13. The Bill will need to have reached Royal Assent by a small number of weeks before the peak of the pandemic. The current intention is to seek Royal Assent for the Bill by the 31 March. This will allow the powers to be operationalised, and ensure they are in place at the point in the outbreak when they will be most effective.

14. To support the parliamentary handling, the Bill will 'sunset' after two years. There is also the power to sunset the Bill at an earlier point of time in the event that its provisions are no longer required. Whilst primary legislation would be required to reactivate a provision after sunsetting, provisions may alternatively be 'suspended', which enables their revival within the 2 year period. This suspension and revival would be employed in the event that we see further waves of the pandemic.

## STAKEHOLDER ENGAGEMENT

15. COBR on 4 March agreed that engagement with trusted stakeholders and operational partners should begin on a confidential basis. This engagement will be necessary to ensure the operationalisation of the Bill's powers.

16. Consideration is still being given to the most appropriate time to communicate further the details of the provisions in the Bill. It is important that this decision is taken with the Devolved Administrations and takes into account the impact of public communications on public confidence in the Action Plan and passage through the House. Since many of the measures are for use in the 'mitigate' phase, to manage the peak of the outbreak, they will focus public attention on what that might mean in practice.

## ENGAGEMENT WITH DEVOLVED ADMINISTRATIONS

17. The Devolved Administrations have been active partners in the policy scoping, both of the draft Pandemic Flu Bill, and the recent work on the emergency Bill. Ministers in the Devolved Administrations have been engaged in discussion at

COBR on the requirement for the Bill and have indicated support for this legislative process.

18. The Bill includes clauses that are specific to Scotland and Northern Ireland, as well as clauses whose extent covers Wales. These will be enacted by Legislative Consent Motion (LCM), the timings of which are under discussion.

19. DHSC has agreed with the Devolved Administrations an approach that gives them appropriate control over the use of provisions in areas of devolved responsibility, an issue they have raised in COBR meetings.

20. Emergency powers in the legislation are designed to be switched on/off – in order to ensure they are in force only for the minimal period necessary over the two year lifetime of the Act, to deal with the outbreak effectively but also proportionately. For those areas that are England-only or reserved, these powers will be switched on/off by UKG Ministers. For those areas that are within the DAs' competence, these powers will be switched on/off by the DAs, or by UKG Ministers with the DAs' consent (which, in the interests of speed, they are happy to do via a minuted decision at COBR(M)). This approach has been agreed with the DAs at official level, and also now by their Ministers. We are confident that once COBR(M), acting on the advice of the four CMOs and of SAGE, make a policy decision that requires one or more of these powers to be switched on/off, then that can be readily and speedily achieved in a manner consistent with the devolution settlement.

## NEXT STEPS

21. Engagement with the Usual Channels on the timetable for the passage of the Bill will determine how quickly we need to introduce the Bill, however we are working on the assumption that the Bill will be introduced next week in order to achieve Royal Assent by 31 March. This engagement may result in some requests for changes to the content of the Bill; we anticipate these will largely be related to safeguards, particularly for the more controversial measures.

22. Final Ministerial agreement to the Bill's policy content will be sought at COBR on Wednesday 11 March.

**This paper has been written by the Civil Contingencies Secretariat, in consultation with the Parliamentary Business and Legislation Secretariat and the Health and Care Secretary**

## Annex A: Provisions for the Bill

### Enhanced capacity and flexible deployment of staff

### Clause: Emergency Registration of Healthcare Workers

**Policy Lead name, area and department**
NR, DHSC, NR@dhsc.gov.uk
NR, DHSC, NR@dhsc.gov.uk
Mark Bennett, DHSC, mark.bennett@hsc.gov.uk

**Explanation of Clause**
Allows the Registrar of the Nursing and Midwifery Council (NMC) to temporarily register Nurses, Midwives, and Nursing Associates and the Registrar of the Health and Care Professions Council (HCPC) to register Physiotherapists, Paramedics, Biomedical scientists, Clinical scientists, Operating department practitioners, Practitioner Psychologists and any other of the 'Relevant Professions' required to deal with the increase in those needing medical care and the shortage of approved staff to help.

**Rational and Impact**
This allows the Registrar of the Nursing and Midwifery Council (NMC) to temporarily register Nurses, midwives, and Nursing Associates and the Registrar of the Health and Care Professions Council (HCPC) to register Physiotherapists, Paramedics, Biomedical scientists, Clinical scientists, Operating department practitioners, Practitioner Psychologists and any other of the 'Relevant Professions' required to deal with the increase in those needing medical care and the shortage of approved staff to help. This might include, for example, those who have recently retired. Needs line on how this will help the response e.g. increase workforce.

**Timing of Use**

- Delay / mitigate phase.
- Likely to need in place throughout

**Risk and Mitigation**

- Not expected to be controversial – has already been made public as a potential measure.

- Labour have already raised questions about safeguards and fitness to practice tests.
- Potential operational challenges around managing this additional workforce appropriately.

## Clause: Emergency Registration of Social Care Workers

**Policy Lead name, area and department**
NR DHSC, NR @dhsc.gov.uk
NR, DHSC, NR @dhsc.gov.uk

**Explanation of Clause**
Powers to permit registration of social workers who have recently retired and or to register those who are close to completing their education/training.

**Rational and Impact**
Temporary registration of social workers, e.g. of those recently retire, or have almost completed training. This will be subject to checks by the employer on fitness to practice.
This is the equivalent of the above provision for healthcare workers.

**Timing of Use**

- Delay / mitigate phase.
- Use powers as needed, dependent on pressures on social care, particularly in a peak

**Risk and Mitigation**
Likely to be controversial in Parliament. Changes or additional safeguards may be requested by the Opposition prior to introduction.

**Clause name: Indemnity for healthcare workers during a pandemic**

**Policy lead name, area and department (include email and tel number)**

NR, GP Indemnity Policy Lead, Department of Health and Social Care, NR@dhsc.gov.uk, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

This provision allows the Secretary of State for Health and Social Care to provide indemnity cover for health care workers assisting in dealing with a Coronavirus pandemic in respect of clinical negligence liabilities where they are not already covered by an existing indemnity or insurance arrangement.

**Rationale for intervention**

If the reasonable worst-case scenario for a Coronavirus pandemic were to occur, there could be a serious negative impact on staff capacity to manage the surge in demand for health and social care services. Staff may be required to undertake tasks which are not in their normal day to day activities. In addition, medical practitioners and healthcare workers from other disciplines may be required to assist in the response. This clause will ensure staff are indemnified for work they are required to undertake as part of the response to the Coronavirus pandemic, which is not covered by their existing indemnity arrangement.

**Other policy options considered**

The coverage of the state-backed indemnity schemes for the NHS in England, the Clinical Negligence Scheme for Trusts (**CNST**) and the Clinical Negligence Scheme for General Practice (**CNSGP**) may not be sufficient for this work. The Secretary of State's (**SoS**) general powers under Section 2 or Section 254A of the NHS Act 2006 have also been reviewed. Other indemnity arrangements such as those of the Medical Defence Organisations (**MDOs**) and Commercial Insurers have also been considered. These could be arranged but the proposed option better complements existing indemnity arrangements and would be quicker to implement in event of a pandemic.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

It is anticipated this would need to be implemented immediately to manage workforce confidence and patient expectations.

**How would clause be operationalised and time taken?**

At the time the Bill receives Royal Assent, the indemnity clause will automatically come into force. We expect, as with the Pan Flu Bill, that whilst the clause will provide indemnity cover for Coronavirus during the emergency period only, the long-

tail nature of indemnity claims means that claims may continue to arise and be handled/settled/litigated for a number of years after the emergency comes to an end. This is because the nature of clinical negligence incidents means that a claim is rarely made at the time an incident occurs, rather the effect of any mis-diagnosis/treatment that is classified as clinically negligent may take months or years to surface. As such, we would not expect a great deal to happen at the outset of the clause's activation. In terms of the operational/mechanical implementation of the 'safety net' created by the clause, we would expect that NHSR would lead on the claims handling aspects, along with the support of NHSE/I and DHSC. The most important initial steps will be to engage with the healthcare workforce and the general public, to ensure that the safety net provision is known about and reassure healthcare professionals that they have adequate indemnity arrangements to treat and diagnose Coronavirus. As to what the claims handling procedure will look like, we are currently unable to discuss this with our ALBs and stakeholders (NHSE/I, NHSR, the MDOs and commercial insurers), as it would necessarily include discussion of the clause provisions. Once we have clearance from SofS to engage with non-Government bodies, we can approach the relevant bodies to map out the implementation process.

**Anticipated public reaction/controversy**

Negative reaction is not anticipated as this will offer re-assurance to staff that they will be indemnified for all work done, and that patients will be able to receive compensation or support for any issues that they encounter as a result of the response to a pandemic.

**Have details of the clause been shared with DAs?**

Yes and they have replicated it for their own administrations. They have been made aware of the clause for England.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

The DAs where this is devolved and has been communicated to are: Wales, Northern Ireland and Scotland.

**Spending implications**

There may be a substantial cost associated with this provision; however, the exact number of healthcare workers the indemnity would cover is dependent on the severity of the pandemic and availability of healthcare workers. The number of potential claims and the cost of successful cases are very difficult to quantify given this uncertainty.

**Clause: Mental Health – DH011**

**Coronavirus Emergency Bill – DH011 Mental Health Act**

**Policy Lead name, area and department (include email and tel number)**

NR, Mental Health, DHSC I&S

Vulnerable Offender Policy, MoJ I&S

**Explanation of Clause (i.e. cost, importance to Health Security, who is involved)**

Mental health services provided under the Mental Health Act involve the detention and treatment of patients. Safeguards include requirements for second medical opinions – from doctors specifically authorised to make decisions under the Act - as well as strict time limits. These temporary easements would help allow the Act to function in the event of NHS staff levels being reduced, so that people with severe mental illness can continue to be diverted from the criminal justice system as required.

**Rationale for intervention**

To maintain the provision of mental health services for mental health patients subject to the criminal justice system.

**Other policy options considered**

In 2011, there were additional proposals to allow non-qualified staff to act up as approved Mental Health Act staff.

Needs to be considered alongside NHS E/I plans for hospital management.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

Only required when staff levels hit a certain reduced level.

**How would clause be operationalised, and time taken?**

The clauses provide options for easement. They do not need to be taken. No one who follows the usual procedures would be acting unlawfully, and the clause are written in terms of their only being used when necessary. NHS E/I would be needed to share guidance. Guidance would need to be written. Temporary statutory forms may be required.

**Anticipated public reaction/controversy**

Possible that stakeholders would respond to the weakening of safeguards, but for this group could be seen to be to the advantage to patients.

**Have details of the clause been shared with DAs?**

Yes.

**Special considerations for Das (i.e. which Das, is this devolved or reserved?)**
Health is devolved but criminal justice is reserved. Wales have the same Act as England, and are aware. Northern Ireland's Act is part of the Bill. Scotland have been informed through legal channels.

**Spending implications**
Designed to be cost neutral, and to allow the Act to function as close to normally as possible.

**Clause: Mental Health – DH008**

**Policy Lead name, area and department (include email and tel number)**
NR, Mental Health, DHSC I&S

**Explanation of Clause (i.e. cost, importance to Health Security, who is involved)**
Mental health services provided under the Mental Health Act involve the detention and treatment of patients. Safeguards include requirements for second medical opinions – from doctors specifically authorised to make decisions under the Act - as well as strict time limits. These temporary easements would help allow the Act to function in the event of NHS staff levels being reduced, so that patients can continue receive the services they need.

**Rationale for intervention**
To maintain the provision of mental health services subject to the Act.

**Other policy options considered**
In 2011, there were additional proposals to allow non-qualified staff to act up as approved Mental Health Act staff.
Needs to be considered alongside NHS E/I plans for hospital management.

**Timing of when the clause will be needed in pandemic (weeks from peak)**
Only required when staff levels hit a certain reduced level.

**How would clause be operationalised, and time taken?**
The clauses provide options for easement. They do not need to be taken. No one who follows the usual procedures would be acting unlawfully, and the clause are written in terms of their only being used when necessary. NHS E/I would be needed to share guidance. Guidance would need to be written. Temporary statutory forms may be required.

**Anticipated public reaction/controversy**
Possible that stakeholders would respond to the weakening of safeguards. There are human rights implications to making it easier for the state to detain people.

**Have details of the clause been shared with DAs?**
Yes

**Special considerations for Das (i.e. which Das, is this devolved or reserved?)**

Wales have the same Act as England and are aware. Northern Ireland's Act is part of the Bill. Scotland have been informed through legal channels.

**Spending implications**

Designed to be cost neutral, and to allow the Act to function as close to normally as possible.

**Clause name: NHS Pension Scheme**

**Policy lead name, area and department (include email and tel number)**

- Tim Sands – Deputy Director, NHS Pay and Pensions; tim.sands@dhsc.gov.uk,
- I&S NR - Section Head, NHS Pensions; NR @dhsc.gov.uk,
- I&S NR – Policy Manager, NHS Pensions; NR @dhsc.gov.uk,

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

The clause would give SofS powers to suspend two NHS Pension Scheme rules which currently act as a barrier for staff in the 1995 Scheme who wish to return to work. The rules currently suspend the pensions of returning staff and abate special class members, so suspending them would remove these barriers and allow staff to return to work without losing their pension.

**Rationale for intervention**

The NHS workforce may need greatly increased capacity in the event of a Coronavirus outbreak, as we would expect a large increase in the number of hospital admissions. There could also be a large number of NHS staff who are sick at the same time (estimated 20% at any given time during the outbreak). Removing pension barriers would allow retired staff to return and increase workforce capacity.

**Other policy options considered**

We initially considered making these changes to scheme regulations using a Statutory Instrument. However, this would require a public consultation process and would therefore not be achievable by w/c 23rd March.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

We expect the clause would be needed from the start of the outbreak to give staff time to return to work in anticipation of a pandemic.

**How would clause be operationalised and time taken?**

The powers can be operationalised upon Royal Assent of the Bill and we will ensure communication is circulated to staff/employers informing them of the changes.

**Anticipated public reaction/controversy**

We do not expect this to be controversial. Removing pension barriers allows staff to return to work in whilst in receipt of their pension without having their pension suspended/abated

**Have details of the clause been shared with DAs?**

The NHSPS covers England and Wales. Scotland and NI have their own schemes. We have shared details of the Clause with Scotland and NI to allow them to make similar changes in their respective schemes.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

The powers in this clause will cover England and Wales. We are working with Scotland and NI to ensure similar changes are made in their respective schemes.

**Spending implications**

Non. Staff currently modify their working behaviour post-retirement to fit within the pension rules by either not returning to work or working less than 16 hours. We understand less than 30 members of the scheme are currently abated. Suspending these rules will allow staff to return to work on a full-time basis and increase their working commitments. The cost pressure of this will be met by employers.

**Clause: Primary Care, Health, Community and Social Care, Volunteer Employment Rights and Pay Protection**

To mandate employers to protect the employment rights and pay of appropriately qualified individuals that are required to volunteer in a health care or social care setting for a duration of 4 weeks.

**Explanation of Clause**

Volunteers are central to the delivery of day to day health and social care services and are a core component to local contingency plans in the event of an emergency. Around 3m individuals volunteer in a Community Health and Social Care setting, and there are around 40,000 individual volunteers in organisations such as the British Red Cross and St John Ambulance. In the event of a pandemic, we will need to maximise the number of volunteers and the amount of time that they can commit to supporting the health and social care system. This will help to shore up resilience across the health, community health and social care systems at the point of maximum pressure.

As such, the clause would mandate the safeguarding of employment rights and remuneration of appropriately qualified individuals (these would be clearly specified in the clause) that support local health and social care systems for a duration of 4 weeks.

The clause will result in costs for employers – both in terms of remuneration (pay, pensions etc) and loss of productivity. We could therefore:

- Mandate employers to cover the costs themselves;
- Compensate or reimburse employers either partially or in full through a Volunteer Relief Fund.

Further work is required to understand the exact costs involved for these options and the potential source of HMG funding. .

A model is being developed around the paternity leave model, using legal and policy expertise from BEIS. Essential public services (police, medical, fire), the military, Crown Servants, some Civil Servants and some protected industries would be exempt.

**Operationalising the Clause**

We are working with partners across DHSC and BEIS to set out the operationalisation required. Conclusions from initial conversations are:

- Should we decide reimburse/compensate employers we will need to develop a system that employers can use to claim and the timeframe in which payments will be made.
- Guidance will need to be developed for employers and volunteers.

- An opt out system will also be required to ensure that small or medium sized businesses are able to request exemption should this result in staffing shortages that threaten the viability of the business.

**Timing**

The clause could be triggered to come into effect by one or all the below:

- by the declaration by government of a national emergency; and/or
- core essential services being at significant risk of collapse; and/or
- overall clinical workforce not being sufficient to deliver pandemic and non-pandemic related services.

**Public Reaction**

More work is needed to assess this.

**Applicable to DAs**

Employment law is reserved for England, Scotland and Wales, but devolved for Northern Ireland.

*Contact:* NR *(DHSC)*

**Clause name: Emergency Registration - Pharmacists (Northern Ireland)**

**Policy lead name, area and department (include email and tel number)**

NR, Professional Regulation, DHSC (NR@dhsc.gov.uk) (Mon-Weds only)
Mark Bennett, Branch Head, Professional Regulation, DHSC
(mark.bennett@dhsc.gov.uk)

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

1. temporary registration of pharmacists (or pharmaceutical chemists) in Northern Ireland
2. extension of prescribing powers to pharmacists in Northern Ireland

Both clauses are to increase workforce flexibility should there be either an unprecedented demand or significant numbers of the workforce incapacitated due to the pandemic to enable care to be continued to be supplied to patients access to medicines.

The first would for example allow recently retired professionals or those still in their pre-registration year following their degree to be added to the pharmacist list and practice as a fully qualified pharmacist. Increasing the pharmacist workforce to maintain the sale or supply of medicines.

The second provision allows registered pharmacists who have not undergone specific training for prescribing to be treated as pharmacist prescribers. As prescribers they will be able to write prescriptions and maintain the ability for patients to continue to access prescription only medicines.

The second provision would complement arrangements that can be made under the Human Medicines Regulations 2012 (HMRs). This sets aside the usual prescribing arrangements and allows medicines to be supplied by any named person under a protocol approved by Ministers or an NHS Body.

Pharmacists and pharmacy technicians in Great Britain are regulated by the GPhC which is governed by the Pharmacy Order 2010. The Pharmacy Order includes provisions for both temporary registration and temporary annotations in emergencies. In Northern Ireland, the Pharmaceutical Society NI regulates pharmacists. Therefore, these clauses only apply to NI.

**Rationale for intervention**

Provision of additional staff to deal with the increase in those needing medical care and the shortage of registered staff.

**Other policy options considered**
As part of the response to the pandemic, the health service has a number of plans in place to deal with the additional demand. The UK Influenza Strategy set out the UK approach for planning to respond to a future pandemic. This provides the basis for responding to similar outbreaks such as the new COVID-19 strain.
There would be an option of "do nothing" beyond plans already in place to deal with the new COVID-19 strain and using the powers already available. However, the route of emergency registration is favoured as a way of additionally adding resource into the system.

**Timing of when the clause will be needed in pandemic (weeks from peak)**
As drafted the clauses require SofS to notify when they apply. The clauses can be 'live' but not actually active. They would only been needed when workforce has been significant impacted or demand for medicine has significant increased.

**How would clause be operationalised and time taken?**
Updating guidance for healthcare professionals on procedures.

**Anticipated public reaction/controversy**
Cautious that pharmacists are suitable qualified (and regulated) but broadly supportive.

**Have details of the clause been shared with DAs?**
We have discussed the policy with colleagues in NI, but have not shared the draft clause

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
These clauses only apply to NI

**Spending implications**
There will be potential set up costs for the PSNI to run the registration scheme and the additional wages costs.

**Clause Name: Flexibilities for LAs under the Care Act**

Protecting LAs from challenge if they are forced to stop meeting assessed needs because of the pressures caused by Covid-19.

Amending assessment processes to remove the burden of this process on LAs while ensuring that they can identify and meet urgent needs.

Our initial recommendation is to consider the inclusion of these clauses in the Bill. However, they would both represent significant changes to the Care Act and the protections that it provides to individuals. We are therefore still developing the evidence base for these clauses to understand the risk/benefit balance of their inclusion in the Bill.

**Policy Lead name, area and department**

NR, DHSC, NR@dhsc.gov.uk
NR, DHSC. NR@dhsc.gov.uk

**Explanation of Clause**

Increased demand on the sector and a reduced workforce could force LAs to ration the care they provide. This could lead to scenarios in which LAs are not able to meet individuals' assessed needs, as required under the Care Act, leaving them open to legal challenge.

Simultaneously, these pressures could also make it difficult for LAs to perform needs assessments in accordance with the Care Act. Assessments could become a blocker within the system or be suspended by the LA during the emergency period, leaving them open to legal challenge.

In the face of these pressures, LAs will need to undertake a systematic prioritisation of provision, including the suspension of full Care Act needs assessments. Concerns around legal challenge could cause LAs to delay this process beyond the point of viability, resulting in poor decision making and worse outcomes than if a mandated move to emergency footing had been taken.

These two clauses therefore act to:

- protect LAs from legal challenge if they are forced by the pressures of the pandemic to cease meeting individuals' assessed needs for the duration of the emergency period. LAs would still have a duty to meet individuals' needs to the extent that not meeting them would risk serious neglect or harm.
- permit LAs to provide urgent care to individuals without a full Care Act assessment, and without a financial assessment, for the duration of the emergency period. LAs would be required to fully assess individuals after the end of the RWCS emergency period.

A clearly defined trigger point for the above clauses coming into force will be included in the clauses, as these would only be appropriate and proportionate if LAs were at imminent risk of failing to fulfil their duties under the Care Act as a result of the RWCS.

The suspension of financial assessments during the RWCS emergency period will result in short term financial pressures on LAs. This could be recouped when full assessments take place subsequently.

These two clauses, and the clause outlined in the following template, form part of the Department's broader work to support the Adult Social Care Sector during the RWCS.

**Operationalising the Clause**
The immediate operationalisation of these clauses involves the ceasing of current practices and is intended to reduce operational burden. However, LAs will need to develop and undertake some new processes:

- The ethical and consistent prioritisation of care down to the level of the basic requirements set out in the clause. We are considering the provision of an ethical framework to support this decision-making.
- The organisation of urgent evaluations of basic care needs (replacing the usually mandated Care Act assessment).

**Timing**
Peak of the pandemic.

**Public Reaction**
The removal of Care Act duties could raise significant concerns among stakeholders and the wider public. The Department would need to be clear that these clauses would only be triggered if the conditions of the pandemic meant that LAs were at imminent risk of failing to fulfil their duties under the Care Act.

**Applicable to DAs**
No

## Easing of legislative and regulatory requirements

### Clause: Discharge

**Policy Lead name, area and department**

NR, DHSC, NR@dhc.gov.uk

**Explanation of Clause**

Early discharge of patients from NHS hospitals/trusts and local authorities to free up hospital space for those who are ill.

**Impact and Rationale**

This clause is aimed at ensuring that acute care resources are used effectively.

Currently, patients with social care needs go through several stages before they are discharged from hospital. For some patients, one of these stages is an NHS Continuing Healthcare (NHS CHC) Assessment a process that can take several weeks. This provision allows NHS providers to delay undertaking the NHS CHC assessment until after the RWCS emergency period has ended. Pending that assessment, the patient will continue to receive NHS care.

**Timing of Use**

- Delay / mitigate
- Use powers as needed, dependent on pressures on health service, particularly in a peak

**Risk and Mitigation**

There is a risk that by delaying the CHC assessment process until a time when there is more capacity in the system will lead to several patients continuing to receive NHS-funded care when they are not applicable to do so.

**Financial Implications**

There may be a substantial cost associated with this provision, but this is difficult to quantify as it depends on NHS operational decisions and we can't necessarily model yet for flow and demand

**Clause: Power to disapply provisions in relation to education and childcare**

**Policy lead name, area and department (include email and tel number):**

Bill Lead – NR @education.gov.uk, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

This gives the SoS the power to temporarily disapply existing requirements in education and childcare legislation e.g. staff ratios, qualifications of staff, teaching of the curriculum, timings of national assessments, specialist requirements regarding children with SEND, requirements to provide free school meals. This will enable LAs, education and childcare establishments to operate a service level different from usual practice, without being in breach of regulatory requirements. The intention is that this would, however, not extend to essential requirements such as safeguarding, health and safety, appropriateness of the curriculum or permanent exclusion. It will also enable the SoS to suspend duties, such as those on parents in respect of child attendance at school and those on local authorities to provide sufficient childcare for parents who want it.

**Rationale for intervention**

In the event of an emergency, the education and childcare systems will need to operate in a way that continues to benefit children and young people, but in a way that is operationally viable. Relaxing existing requirements may be desirable and necessary to allay any concerns that Local Authorities, schools, FE and HE institutions, and childcare providers may have when operating in these difficult circumstances and would help to maintain staff morale and wellbeing. This power would enable us to act quickly to remove these duties on a temporary basis, and provide clarity and certainty to those working in the education and childcare systems, parents and the public about what legislative requirements must be complied with.

**Other policy options considered**

We considered whether guidance and comms alone was sufficient, however this may not give the sector the clarity they need or provide for necessary consistency in interpretation because of the scope for confusion and variation in practice. In addition, the sector and those who insure them may be concerned that institutions may be open to litigation or judicial review for failing to comply with requirements – this may stymie the sector's ability to respond quickly or pragmatically . Similarly, we considered simply not enforcing requirements, but reject this on the same basis and also that in some cases it is not within the SoS' power to decide not to enforce.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

Congruently with the trigger of an emergency in a local or region and the temporary closure of educational institutions, and the requirement that specific education centres/schools/quarantine centres deliver education as a temporary measure.

**How would clause be operationalised and time taken?**

Comms and guidance to the sector, and users particularly parents, will be issued at the same time of deployment of this power. We anticipate that this will be done on day one, through our usual operational comms channels (e.g. school/LA email, website), press channels, and cross-government comms approaches.

**Anticipated public reaction/controversy**

We expect the sector and public to welcome this, as part of necessary steps to manage an emergency, although given previous experience of attempting to alter child: staff ratios in the early years, there may be some resistance there. However, we need to be clear that these arrangements do not relax requirements such as safeguarding or health and safety, and that any action taken will be focused on the interests of children and young people and their wellbeing. Some parents may be resistant to the relaxation of certain measures which may result in pupils not receiving a normal service, such as disabled pupils not receiving some elements of their EHCP or children not being able to attend their normal school. We would seek to reassure parents that requirements will be reinstated as soon as it is practical to do so once any declared medical emergency for the area is lifted.

**Have details of the clause been shared with DAs?**

This is in progress.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

No special considerations – Education and training is a devolved matter.

**Spending implications**

We do not expect the measures to have significant spending implications.

**Clause: Power to require schools to stay open/take on additional functions**

Power to make directions in connection with the running of the education and registered childcare system and other education / childcare functions e.g. for educational institutions / providers to stay open or re-open, staff or pupils / students to attend different premises, to control or restrict attendance where there is a risk of spreading disease to others

**Policy lead name, area and department (include email and tel number)**

Bill Lead – NR @education.gov.uk, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

These powers would be needed to stop the spread of the disease and ensure welfare and safety of those working and studying in all schools and other educational institutions, including childcare providers, by closing or re-opening institutions as required. These decisions currently sit with the organisations' management arrangements, such as governing bodies for schools, and would continue to do so in the first instance. However, this power enables the SoS to override a decision if, for example, a school decided to close where there are no compelling grounds for them to do so. Where schools, other educational institutions (including further and higher education) and childcare providers have to close it may be necessary to ensure that at least some children (e.g. children of key workers) can continue to attend educational institutions and childcare provision during working hours so that parents can continue to work. For example this power would enable the Secretary of State or, more likely, local authorities (as we propose to take a power to sub-delegate this power, subject to discussions with DHSC and MHCLG) to be able to direct schools to temporarily let specified children or kinds of children attend but without becoming 'pupils' (with all the legal consequences of that status) but still ensuring that those children are able to participate in school life to the greatest extent reasonably practicable while they're there.

Specifically, it would allow us to be able to make arrangements, including directing schools who are refusing entry, for students whose institution was closed to study or sit assessments for regulated qualifications (e.g. GCSEs and A levels) at a different location, where voluntary cooperation had failed. The power would also give flexibility if we need the few remaining teachers / members of providers' staff to join teachers in another school or location to make it viable to take pupils/allow for redeployment of teachers/staff to address shortages. In circumstances where it's safe for an educational institution or childcare provider to remain open but its management are excessively cautious and want to close, there may be a desire to require it to remain open to avoid unnecessary disruption to education or the economy as a result of parents needing to take time off work or pupils not being able to take assessments. This power would also allow for safeguarding existing people in educational institutions and childcare where someone has visited an affected area or may have come into contact with the virus but has not self-isolated and needs to be prevented

from attending (this might be the case for example where a student without symptoms insists on being allowed to sit an A level exam).

If these powers are not taken, we would not be able to ensure that the schools, childcare providers and other educational establishments continue to operate and ensure that parents, and particularly key workers, are able to continue working and economy continues to function. These powers also enable us to act quickly and decisively to prevent the spread of the virus amongst children and young people in locations where there is a significant risk of spreading the virus.

[*N.B. Given that a large proportion of the early years sector comprises private providers, further consideration is being given to how we exercise the intention of this power uniformly in the sector.*]

**Rationale for intervention**

There is a risk that these institutions may remain open despite being advised to close, or where there is significant risk to health. This power would enable directions to be issued to them to stay close. There is also a significant risk that some schools, educational institutions and childcare providers may decide to close where there is no need to do this. This power would enable directions to be issued to them to stay open. It is also necessary to be able to require such schools and educational establishments to re-open in the event they do need to close, again where they may be reluctant to do so. This power also allows the SoS to make secure other establishments, for example, public halls, church halls, to provide these services.

If we did not take powers for staff, pupils and teachers to attend different premises, there is a risk that where some schools have closed, they would not be able to attend other premises. This would be a particular risk for students who need to sit exams which will affect their future lives.

**Other policy options considered**

We have considered taking powers to close all schools and educational institutions. This power is taken elsewhere in the Bill.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

Congruently with the trigger of an emergency in a local or region.

**How would clause be operationalised and time taken?**

Directions would be issued through the normal and emergency comms processes by the SoS, or LA where sub-delegated, as soon as the need arises. We will need to have a clear, responsive and pragmatic approach, and local conversations before exercising the power.

**Anticipated public reaction/controversy**

We do not expect to make extensive use of these directions, which should help the passage of the powers in Parliament, but do need to have them in case schools and other educational institutions do not follow wider communications.

These powers by their nature are potentially controversial. For example, there may be concern that the government is not taking health issues seriously, if it directs an institution to stay open, even where the evidence suggests this is the rational approach. There is also a risk that, someone falls ill after a direction is issued for the institution to remain open. This is why it will be vital to be responsive and engage closely at the local level, bit before and after a direction is made.

**Have details of the clause been shared with DAs?**

This is underway.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

Education is a reserved matter and so discussions will need to take place with the DAs on use of alternative premises for education.

Whilst qualifications policy is reserved, the GCSE and A level exam system is coordinated across England, Wales and Northern Ireland, so it would make sense for parallel powers to be taken there. Similar issues will also arise in Scotland, though their exams system is different.

**Spending implications**

Potentially, there will be cost implications if for example a direction takes an institution beyond what we have funded them to do. In the absence of certainty on what we will be asking, and numbers involved, there is no sensible way to cost this. We have the mechanisms in place e.g. powers to pay grants.

**Clause name**

Power to require educational institutions and registered childcare providers to temporarily take on additional functions e.g. extended opening or childcare where education or the full range of education normally offered cannot be provided, and to require the owners / controllers of premises not normally used for education or childcare to make those premises available for such use.

**Policy lead name, area and department (include email and tel number)**

Bill Lead – NR @education.gov.uk, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

These powers would be needed to stop the spread of the disease and avoid unnecessary disruption to parents' working lives by making premises available to be used for education and childcare purposes as well as Higher and Further education establishments. If the public exams timetable is disrupted due to widespread closure of schools and colleges and needs to be rescheduled it may also be necessary to require schools or colleges to open for additional hours, at weekends or during scheduled holidays to enable students to sit their exams. In the event that schools, educational institutions, Local Authorities and childcare providers needed larger or different premises to be able to provide new or expanded provision, we would expect a group of childcare providers or the local authority to work together to consider alternative suitable premises. This could, for example, be local halls or larger venues where a large number of children may need to be together. We would expect those who own those premises to make them available in the event of a large scale viral outbreak, but this power would require them to do so if they were unwilling to do so voluntarily.

**Rationale for intervention**

In the event of a serious Covid-19 outbreak resulting in large-scale closure of schools and other educational institutions, Local Authorities and other providers may need to set up new education and/or childcare provision or extend provision as far as reasonably practicable. These powers would be needed to stop the spread of the disease and avoid unnecessary disruption to parents' working lives where provider closures are unwarranted. There may also be a specific need to require education providers to open outside normal hours and/or for non-education providers to make premises available in order to allow exams (eg for GCSEs and A levels) to go ahead.

**Other policy options considered**

We have considered not taking these powers but that feel it is necessary to take them to support the economy by enabling parents to work where possible and ensuring examinations can go ahead.

**Timing of when the clause will be needed in pandemic (weeks from peak)**
Weeks from peak as we would need time to reschedule exams.

**How would clause be operationalised and time taken?**
Early years and childcare
Once LAs have made the decision to move childcare elsewhere, they would need to:

- Instruct any new venues to give over their premises for a period, along with any changes that might be required (e.g. clearing away equipment that isn't suitable for children to play with), and a date from which it should be ready
- Instruct providers to move children and staff to that new premises from a certain date, and give them info to share with parents
- Let DfE know of any changes they have instructed, issues etc.

Schools and other education institutions
Education institutions would close in line with DHSC declaration of a health emergency. LAs would, by order, declare where school-based education should be provided or where exams should be sat (if the emergency occurred during exams season). Education should be 'suitable' but would not have to follow the national curriculum.

**Anticipated public reaction/controversy**
We expect the sector to welcome this, as part of necessary steps to manage an emergency.

However, publically requisitioning non-educational premises may been seen as controversial and private entities may want some sort of compensation for this.

For the early years this would focus on the suitability of new venues, which would not be subject to the usual pre-opening inspection.

**Have details of the clause been shared with DAs?**
This is in progress.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
No special considerations.

**Spending implications**
This needs to be considered further, as there are likely to be costs attached to using private venues for examination or other use. Similarly, if providers are asked to take on additional functions or stay open longer, that will incur costs including for staff overtime. For the early years, parents may not be in a position to buy additional hours beyond the free entitlements (e.g. key workers doing extended shifts) if that's what's

required. There may be funding constraints but there is currently no central funding available to meet such costs.

There may be also be transport costs if we close institutions and move children elsewhere.

**Clause name: Suspension of port operations**

**Policy lead name, area and department (include email and tel number)**

NR, Border Security, Visa and Identity Policy, Home Office
NR@homeoffice.gov.uk; NR

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

A power to enable HO Ministers to direct a port operator to suspend port operations (wholly or in part e.g. one terminal) for a specified limited period (48 hours initially which may be extended on a rolling 48-hour review basis) where there is insufficient Border Force capacity to secure the border. This would necessitate inbound services having to be diverted to other locations (such as happens now due to fog/ice) until such times as Border Force operations can be satisfactorily resumed at the original port.

The power would be exercised once other appropriate mitigating measures had been exhausted by Border Force or by the port on health and safety grounds to operate (e.g. insufficient fire cover at an airport). The power would be explicit as to the criteria which would need to be met before the power could be used e.g. where derogation from mandated checks had been deployed in full (or was not appropriate in a particular situation for border security reasons) and where Border Force were unable to meet minimum security control requirements. It is a power for the Secretary of State which in practice we would propose only the BF Director or COO would be authorised to operate. It would not have extraterritorial effect (and would not therefore apply at juxtaposed ports in France or Belgium).

**Rationale for intervention**

We have identified a legislative gap to deal with a scenario whereby there are insufficient Border Force resources to operate a minimum viable border control at a port as a direct, or indirect consequence of Covid-19. Where alternative contingency measures are inappropriate or ineffective, this could result in control breaches and a risk to border security (e.g. potential non-detection of national security or criminality threats, importation of drugs or other prohibited items).

**Other policy options considered**

None

**Timing of when the clause will be needed in pandemic (weeks from peak)**

From introduction

**How would clause be operationalised and time taken?**
Immediately - guidance being developed concurrently will detail the steps, measures and trigger points before such a power is utilised. It will also detail the authority level (likely to be delegated from Secretary of State to [senior] Director level to ensure operational effectiveness).

**Anticipated public reaction/controversy**
As the consequence of a suspension of port operation may impact upon, and displace, arriving passengers there may be a degree of concern about the likelihood of disruption. Given the lack of consultation and the absence of a non-legislative remedy, the provisions may be viewed as controversial and disproportionate by port operators and other relevant stakeholders.

**Have details of the clause been shared with DAs?**
Not yet drafted

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
Immigration is a reserved matter and it is our view that the proposals raise no devolution issues (despite other provisions in the wider Bill relating to devolved matters).

**Spending implications**
None

**Clause name: Expansion of Video hearings (including fully video hearings) to enable Proceedings in Court and meet open justice obligations**

**Policy lead name, area and department (include email and tel number)**
NR, Access to Justice Policy, NR @justice.gov.uk

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**
The clauses would: (i) permit the expansion of the use of fully video and video-enabled hearings in various criminal proceedings; (ii) make provision for public participation in those fully video hearings to ensure that the principle of open justice is protected; and (iii) make provision for certain civil proceedings in the magistrates' courts in relation to the Public Health (Control of Diseases) Act 1984 and the Health Protection (Coronavirus) Regulations 2020 to be conducted via telephone or video. These arrangements would enable the use of fully video and video enabled courts, so that proceedings could be conducted with all parties at remote locations.

**Rationale for intervention**
To ensure that proceedings can be conducted in more circumstances then currently allowed (such as those on bail and victims and witnesses) and also entirely by video and or telephone to avoid the risk of the spread of disease through public congregation in public places.
While video is already used to enable participation in limited circumstances; the legal basis underpinning these arrangements, and to expand their use to apply to wider circumstances including by fully video hearings, is uncertain LPP/LAP
LPP/LAP

**Other policy options considered**
Primary legislation is needed to expand the circumstances and to hold fully video hearings and this cannot be done through secondary legislation or rules.

**Timing of when the clause will be needed in pandemic (weeks from peak)**
As soon as possible. These measures would be used to deal with defendants on bail, witnesses and victims who do not need special measures, and other parties will be used for urgent business during the pandemic. Other arrangements would be used to manage the non-urgent business of the courts.

**How would clause be operationalised and time taken?**
Immediately for video-enabled and audio. Fully video hearings will take few weeks.

**Anticipated public reaction/controversy**
Medium. Video is already used in a number of criminal and civil proceedings in the courts but Parliament and legal stakeholders have previously expressed concern about the use of fully video enabled proceedings, where all participants are remote. However, we consider that these concerns could be managed in the context of an emergency response to this public health issue.

**Have details of the clause been shared with DAs?**
The video and open justice clauses were included in the Prisons and Courts Bill. They were shared with the DAs in 2017.
The clauses in respect of magistrates' courts have not yet been drafted or shared with DAs.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
These arrangements apply only to England and Wales.

**Spending implications**
None. The costs of the roll out of fully video enabled proceedings is being funded from the HMCTS court reform programme.

**Clause name: HMT Lords Commissioner signatories**

**Policy lead name, area and department (include email and tel number)**

- NR, Health Spending, HMT, NR@hmtreasury.gov.uk I&S
- NR, Treasury Legal Advisers, Government Legal Department, NR@hmtreasury.gov.uk I&S
- NR, HMT, NR@hmtreasury.gov.uk I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

The clause will enable HMT to discharge its function in a pandemic emergency.

**Rationale for intervention**

Flexibility around signatories for the Treasury Commissioners to ensure that the Treasury is not prevented from discharging its functions by the possible unavailability of sufficient Commissioners of Her Majesty's Treasury during a pandemic emergency period.

**Other policy options considered**

An alternative approach would have been to make provision for senior officials in the Treasury to act on behalf of the Commissioners. However, although these officials can already act on behalf of the Treasury in accordance with Carltona principles, we considered it unnecessary and inappropriate to take action of this type. We consider it more appropriate to retain existing procedures (that is, signature by the Commissioners) as far as possible and only to alter those procedures (to allow for signature by Treasury Ministers on behalf of the Commissioners) in ways which are consistent with the practices of other government departments.

It is considered that by allowing a single Commissioner or a single Treasury Minister to sign instruments and acts on behalf of the Commissioners during a pandemic influenza emergency period, the provision strikes the right balance between constitutional propriety and making necessary provision for the Treasury.

Key considerations:

The only impact is that clause will enable a single Commissioner or a single Treasury Minister to sign instruments and acts on behalf of the Commissioners during a pandemic influenza emergency period. There are no implementation issues.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

The clause will be immediately operational at the beginning of the emergency period when the act comes into force.

**How would clause be operationalised and time taken?**

The clause will be immediately operational at the beginning of the emergency period when the act comes into force.

**Anticipated public reaction/controversy**

N/A

**Have details of the clause been shared with DAs?**

We have not shared the clause with the DA's as we do not expect the clause to be contentious

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

This is reserved

**Spending implications**

It enables HMT to carry out normal functions and therefore enable spending as part of that.

## Containing/ Slowing the Virus

### Clause name: Quarantine Powers

The new Health Protection (Coronavirus) Regulations 2020 were made on 10th February and enable the Secretary of State or registered public health consultant to impose restrictions on individuals where the SofS or a registered public health consultant have reasonable grounds to believe that the individuals is, or may be, infected or contaminated with the novel Coronavirus or has arrived in the UK and there are reasonable grounds to believe they were in an infected area within the 14 days prior to arrival.

### Explanation of Clause

We see three reasons to incorporate the existing powers within the Regulations into the new Bill:

- **The Regulations only apply to England.** We are taking a four-nation approach to the Bill overall, so legislative consent motions (LCM) will be required from the three administrations to allow Parliament to legislate in areas of devolved competence. The risk of LCMs not being granted is low given the objectives of the Bill.
- **The Regulations do not contain provision for enforcement by border force officers.** It has been raised with us by CCS and Border Force that it would be advantageous to allow border force officers to detain individuals who they suspect are or may be infected or contaminated with Coronavirus at points of entry to the UK. At present, only a police constable, a registered public health consultant (i.e. a PHE official) or someone who could be considered to act on behalf of SofS has those powers under the new Regulations. Since Border Force exercise powers across the UK, it would have been difficult to incorporate powers for them when our Regulations only cover England.
- **The Regulations contain some minor inconsistencies, although these do not affect their overall operation and effectiveness.** This is inevitable given the extreme pace at which the Regulations were drafted and the unwieldy nature of the powers in the enabling Act. By incorporating the powers in the Regulations into the new Bill, we would be able to address these issues without seeking to amend the current Regulations. We have also noted some criticism in the legal sphere around the powers taken which could result in a legal challenge. If this occurs, the Regulations could be quashed.

We recommend incorporating the powers in the Regulations into the new Coronavirus Bill. We also recommend that a debate on the current regulations is held so that they can remain in force while the Bill is being drafted and during the parliamentary passage. We will keep this under review and put further advice to you if new factors come to light.

**Operationalising the Clause**

We are already working with PHE, Home Office, Border Force and the police to operationalise the current Regulations. In addition to this, we will need to engage with the DAs to implement any powers under the new Bill.

**Timing**

As soon as possible – although the Regulations are in force in England, there is no provision for similar quarantine powers in the Devolved Administrations

**Public Reaction**

The previous announcement of the new regulations was reported widely by the media. While some outlets ran sensationalist headlines suggesting that people would be forcibly detained, coverage was mostly sensible and positively received in the context of protecting people from the virus.

**Applicable to DAs**

Yes

**Contact:** NR (DHSC)

**Clause name: Powers of immigration officers**

**Policy lead name, area and department (include email and tel number)**

NR, Border Security, Visa and Identity Policy, Home Office

NR@homeoffice.gov.uk; I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

The proposed powers will allow an immigration officer to detain initially for up to 3 hours (which can be extended on the authority of a senior officer for up to 12 hours) a person who they reasonably suspect to be infectious and to take that person to a hospital or other suitable place so that they can be handed over to a medical officer or other appropriate person to be screened, detained, assessed and treated (as relevant) under public health powers.

A person who obstruct an immigration officer in the exercise of this function will be committing an offence and liable on summary conviction to a level 3 fine.

The powers will apply in respect of any person who an immigration officer reasonably suspects may be carrying the virus, including British and EEA citizens, and will provide immigration officers with an additional capability which is both responsible in principle and proportionate in scope/application.

**Rationale for intervention**

The policy aim is to give immigration officers the necessary powers to help halt the spread of Coronavirus where they encounter a person who is, or may be, infectious during the course of their immigration functions. Immigration officers may come into contact with such individuals at the border when dealing with arriving passengers or crew or while exercising immigration enforcement functions in country.

**Other policy options considered**

None

**Timing of when the clause will be needed in pandemic (weeks from peak)**

From introduction

**How would clause be operationalised and time taken?**

Immediately - guidance being developed concurrently will detail the requirements placed on immigration officers, the extent of the powers and scenario-based examples where the use of such powers will be appropriate. That guidance will be ready to publish upon assent of the Bill.

**Anticipated public reaction/controversy**
We would expect the public reaction to be low controversy; although Border Force and Immigration Enforcement officers exercise law enforcement-related powers, these are very limited in respect of British citizens. However, the Covid-19 focus of the provisions and the sunset clause will help mitigate any concerns.

**Have details of the clause been shared with DAs?**
Scotland; we have requested details of policy leads in Wales and Northern Ireland

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
Immigration is a reserved matter and it is our view that the proposals raise no devolution issues (despite other provisions in the wider Bill relating to devolved matters). However, it is possible that the devolved authorities may consider otherwise as, although the powers are exercised by immigration officers, it is in support of a devolved matter.

**Spending implications**
None

**Clause Name: Police powers to detain persons for screening and assessment**

**Policy Lead name, area and department**

NR, Home Office, NR3@homeoffice.gov.uk
NR, Home Office, NR@homeoffice.gov.uk

**Explanation of Clause**

Powers to detain a person to enable screening and assessment for range of police forces and DAs

**Impact and Rationale**

The policy aim is to give Police Forces the necessary powers to help halt the spread of Coronavirus where they encounter a person who is, or may be, infectious.

**Timing of Use**

- Delay/Mitigate Phase
- Immediately activated upon Royal Assent.

**Risk and Mitigation**

We would expect the public reaction to be low controversy. While some outlets ran sensationalist headlines suggesting that people would be forcibly detained, coverage was mostly sensible.

**Clause name: Power to close educational institutions and childcare providers (**

**Policy lead name, area and department (include email and tel number)**

Bill Lead – NR @education.gov.uk, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

These powers would be needed to stop the spread of the disease and ensure welfare and safety of those working and studying in schools and other educational institutions, including childcare providers, by temporarily closing or re-opening institutions as required. This would involve schools, including independent schools, Further and Higher Education institutions as well as early years and childcare providers closing temporarily to prevent the spread of the virus.

**Rationale for intervention**

Closing such institutions and providers will reduce the risk of the virus spreading amongst children and students where it is likely that due to the numbers and close proximity in such places, the virus may spread rapidly.

**Other policy options considered**

We have considered whether we will require some institutions to remain open in tandem, so in relation to schools 'centres' remain open to provide education. These might be quarantine centres or schools.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

Congruently with the trigger of an emergency in a local or region.

**How would clause be operationalised and time taken?**

This would be closely linked to, and work in tandem with, operational arrangements by DHSC in designated areas e.g. response trigger also triggers closure unless direction is made otherwise.

**Anticipated public reaction/controversy**

Whilst we don't anticipate controversy with the need to have this power, there is likely to be concern with how it will operate in practice and during execution. This is likely to be in line with reaction to emergency measures more broadly in designated areas. For example, people not being able to work because of childcare arranges, particularly where compensation is not available.

**Have details of the clause been shared with DAs?**

Yes re the Flu Bill, and further conversations underway.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

Education is developed. However, consistency across borders is likely to come under scrutiny. For early years providers, Wales is considering whether compensation for lost income might be appropriate

**Spending implications**

We do not expect the measures to have significant spending implications, unless compensation is provide.

**Clause: Gatherings, events and closure of buildings**

**Policy Lead name, area and department**

Port Health Team, DHSC, PortHealthTeam@dhsc.gov.uk
Tim Jones, DHSC, tim.jons@dhsc.gov.uk
Giles Smith, DCMS, giles.smith@culture.gov.uk

**Explanation of Clause**

To be able to stop mass gatherings in the event of a pandemic. Premises are defined as any place, and in particular includes any vehicle, train, vessel or aircraft; any movable structure and any offshore installation.

**Impact and Rationale**

Measures to prevent mass gatherings that could result in a large number of infections.

**Timing of Use**

On assent, but in-built triggers to only use when needed

**Risk and Mitigation**

Detail tbc - low risk

**Financial Implications**

Compensation where paid gatherings or events or commercial premises are closed - Raises ECHR A1P1 issues

**Clause name: Public Health Regulation Making Powers for Northern Ireland**

**Policy lead name, area and department (include email and tel number)**
Nigel McMahon, Chief Environmental Health Officer, Department of Health, nigel.mcmahon@health-ni.gov.uk Tel I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**
The Secretary of State for Health made The Health Protection (Coronavirus) Regulations 2020. The Regulations only apply to England. In particular, the 2020 Regulations allow for further restrictions and requirements relating to the isolation of persons suspected to be infected with COVID-19 and for the detention of persons in isolation where that is deemed to be necessary.
This Clause will allow the Department to make regulations for additional measures to be introduced to help delay or prevent further transmission of an infectious agent which constitutes a serious imminent threat to public health.

**Rationale for intervention**
NI currently has no legislative equivalent to the main provisions of Part 2A of the Public Health (Control of Disease) Act 1984 or the provisions of The Health Protection (Coronavirus) Regulations 2020. Clauses required to provide public health protection against infectious disease which is broadly equivalent to that available in the rest of the UK and in the quickest possible time given the current level of threat. Given the legislative deficit in NI, it would be advantageous to have the relevant public health regulation making powers not subject to a sunset clause. This would mean that the provisions would remain extant and the situation could be reviewed when the proposed revision of Northern Ireland Public health legislation takes place.

**Other policy options considered**
Taking new primary legislation through the NI Assembly.
Making COVID-19 a notifiable disease under the Public Health Act (NI) 1967 to provide some limited powers.

**Timing of when the clause will be needed in pandemic (weeks from peak)**
It is hoped to have regulations drafted to be introduced to the NI Assembly as soon as the UK Bill receives Royal Ascent.

**How would clause be operationalised and time taken?**
Powers would become available once the regulations are made. This could be some weeks after the UK Bill receives Royal Ascent.

**Anticipated public reaction/controversy**
Introducing powers and restrictions that could affect public freedoms and liberties is likely to attract significant media attention.

**Have details of the clause been shared with DAs?**
Proposed clauses have been shared with all UK contacts.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
Health is a devolved matter.

**Spending implications**
Not explored, however, the proposed clauses provide for regulation making powers and so financial implications are unlikely.

## Managing the Deceased

**Clause name**

1. Notification of Deaths to Coroners by Medical Practitioners
2. Confirmatory medical certificate not required for cremations: England and Wales [

**Policy lead names, area and department (include email and tel number)**

Policy: NR, Coroners, Cremations and Burials and Inquiries Policy Projects, MoJ; NR@justice.gov.uk; I&S; Judith Bernstein. Coroners, Burials, Cremation, Inquiries and Miscarriages of Justice Compensation Operations and Casework; judith.bernstein@justice.gov.uk: I&S

Legal: NR, MoJ Legal Advisers, Government Legal Department, NR@justice.gov.uk: I&S

**Explanation of Clauses (i.e. who is involved, importance to Health Security, key considerations)**

1. The proposed Bill provisions which cover death registration allow doctors who never attended the patient to fill out a medical certificate cause of death (MCCD). The Notification of Deaths Regulations 2019 impose a duty on doctors to report a death to the coroner when there is no attending doctor to sign the MCCD (or such a doctor is not available to sign the MCCD within a reasonable time). During the emergency period, if a non-attending doctor has signed the MCCD, we want to ensure that doctors are not obliged to report the death to the coroner on this basis.

2. This clause amends the Cremation (England and Wales) Regulations 2008 to allow for cremation to be authorised on the basis of one medical certificate instead of two during the emergency period.

**Rationale for intervention**

1. A death from Covid-19 would generally be considered a death from natural causes which the coroner has no duty to investigate in most cases. We want to ensure that coroners do not become overburdened with obligations to conduct an unmanageable number of investigations into deaths from natural causes as well as placing additional burdens on pathology services and body storage capacity. If this amendment is not made, non-attending doctors who are able to complete the MCCD in cases of death from Covid-19 would nonetheless be required to report such deaths to the coroner.

2. We want to ensure quick and safe disposal of the dead during a period where there are likely to be fewer doctors available to fill out forms and more deaths occurring.

**Other policy options considered**
None considered appropriate.
**Timing of when the clause will be needed in pandemic (weeks from peak)**
These clauses will be needed when a pandemic is declared.

**How would clause be operationalised and time taken?**
Both clauses would be implemented instantly. They would involve a change in the processes doctors undertake around cremation certification and in what circumstances deaths are notified to coroners.

**Anticipated public reaction/controversy**
These changes are likely to be regarded as sensible and proportionate in the event of a significant number of excess deaths which will put considerable strain on coroner services and medical professionals. a N/A

**Have details of the clause been shared with DAs?**
No, given that both clauses apply to England and Wales only.

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**
Both clauses only apply to England and Wales on the basis that cremation and coroner policy are devolved in Scotland and Northern Ireland.

**Spending implications**
None for MoJ – coroner services are funded by individual local authorities; doctors are paid by individual NHS trusts and cremation services are funded by local authorities or private providers.

**Clause: Excess deaths. MCCD Signature**

**Policy Lead name, area and department**

NR, HMPO, NR@hmpo.gov.uk

**Explanation of Clause**

Allows registered medical practitioners to provide a medical certificate of cause of death without having attended the deceased.

**Impact and Rationale**

To enable deaths to be processed more expediently at a time when there may be additional burden from excess deaths and reduced staff (through sickness absence) to manage them. This will free up medical practitioner time to focus on treating the sick.

**Timing of Use**

- Delay / mitigate
- Activate as needed, particularly in advance of a peak

**Risk and Mitigation**

This could be perceived as removing safeguards, particularly considering the concerns highlighted in the Shipman Inquiry. However, a balance needs to be struck with the effective management of excess deaths and most effective use of medical practitioners' time and are likely to be perceived as proportionate in the event of a significant number of excess deaths.

**Financial Implications**

No direct costs associated with this change. Staff costs within the local registration service during and after the emergency period may be impacted - these would be costs to Local Authorities

**Clause: Death Registration - Increasing registration capacity – without face to face appointment**

**Policy Lead name, area and department**

NR, HMPO, NR@hmpo.gov.uk

**Explanation of Clause**

LAs to continue to provide a registration service without the need for face to face contact.

**Impact and Rationale**

To enable deaths to be registered more expediently and without requiring unnecessary social mixing at a time when we are trying to limit spread of the virus.

**Timing of Use**

- Delay / mitigate
- Activate as needed, particularly in advance of a peak

**Risk and Mitigation**

Unlikely to be contentious.

**Financial Implications**

No direct costs associated with this change. Staff costs within the local registration service during and after the emergency period may be impacted - these would be costs to Local Authorities

**Clause: Death Registration - Increasing list of informants who can register death**

To provide administrative flexibility in the types of health professional that can sign off death certification.

This is a current draft clause of the Pandemic Flu Bill which permits a non-attending doctor to sign a death certificate in specified circumstances.

**Explanation of Clause**

Under normal circumstances, death certificates are completed by an attending doctor. In the event of a pandemic, flexibility is required to enable other senior health professionals to sign off certification, who may not have attended to the patient but are able to confirm cause of death. This would clause would impact on deaths from all clauses not simply pandemic related mortalities.

**Operationalising the Clause**

Updating guidance for healthcare professionals on procedures.

**Timing**

From the moment a pandemic is declared.

**Public Reaction**

More work is needed to assess this.

**Applicable to DAs**

Scotland, Wales and Northern Ireland would replicate any changes that England would make.

**Clause: Death Registration – Sending documents by other means**

**Policy Lead name, area and department**

NR, HMPO, NR@hmpo.gov.uk

**Explanation of Clause**

Allow for the necessary documents needed for a death registration to be provided to a registrar without the need for the document to be posted or the personal attendance at either a register office or elsewhere

**Impact and Rationale**

To enable deaths to be registered more expediently and without requiring unnecessary social mixing at a time when we are trying to limit spread of the virus.

**Timing of Use**

- Delay / mitigate
- Activate as needed, particularly in advance of a peak

**Risk and Mitigation**

This could be perceived as removing safeguards, particularly in light of the concerns highlighted in the Shipman Inquiry. However, a balance needs to be struck with the effective management of excess deaths and most effective use of medical practitioners' time and are likely to be perceived as proportionate in the event of a significant number of excess deaths.

**Financial Implications**

No direct costs associated with this change. Staff costs within the local registration service during and after the emergency period may be impacted - these would be costs to Local Authorities

**Clause: Death Registration – Increasing timeframe for doctors to have seen deceased prior to death.**

**Policy Lead name, area and department**

NR, HMPO, NR@hmpo.gov.uk

**Explanation of Clause**

To increase the time period that a doctor had previously seen the deceased before their death to 28 days.

**Impact and Rationale**

To enable deaths to be processed more expediently at a time when there may be additional burden from excess deaths and reduced staff (through sickness absence) to manage them. This will free up medical practitioner time to focus on treating the sick.

**Timing of Use**

- Delay / mitigate
- Activate as needed, particularly in advance of a peak

**Risk and Mitigation**

This could be perceived as removing safeguards, particularly in light of the concerns highlighted in the Shipman Inquiry. However, a balance needs to be struck with the effective management of excess deaths and most effective use of medical practitioners' time and are likely to be perceived as proportionate in the event of a significant number of excess deaths.

**Financial Implications**

No direct costs associated with this change. Staff costs within the local registration service during and after the emergency period may be impacted - these would be costs to Local Authorities

**Clause name: Certification of Death Scotland**

**Policy lead name, area and department (include email and tel number)**

NR, Health Protection Division, Scottish Government,
NR@gov.scot, I&S

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**

This clause will suspend the referral of certificates to the Death Certification Review Service (DCRS) for review in Scotland, should Scottish Ministers make a decision to do so.

**Rationale for intervention**

Preparation in light of COVID-19 outbreak and potential for pandemic leading to excess deaths.

**Other policy options considered**

DCRS operates in Scotland only and policy options for streamlining the service without legislative intervention have been explored and are being progressed where appropriate.

**Timing of when the clause will be needed in pandemic (weeks from peak)**

Unknown. Decision to be made by Scottish Ministers.

**How would clause be operationalised and time taken?**

Immediately by instruction to National Records of Scotland (NRS) to suspend referral of certificates to DCRS.

**Anticipated public reaction/controversy**

Not expected to be controversial.

**Have details of the clause been shared with DAs?**

**Special considerations for DAs (i.e. which DAs, is this devolved or reserved?)**

The Certification of Death (Scotland) Act 2011 is entirely devolved legislation.

**Spending implications**

None.

**Clause: Requiring the exercise of skills or use of expertise / powers of direction**

**Policy Lead name, area and department**

NR, Cabinet Office, NR@cabinetoffice.gov.uk

**Explanation of Clause**

LAs to have ability to direct private actors in the death management industry (funeral directors, mortuaries, crematorium) to implement their central plans. Such as ability to direct crematorium to extend opening hours, direct funeral directors to move bodies to regional storage facilities or place of disposal, assigning of roles and responsibilities.

**Impact and Rationale**

The UK typically deals with roughly 600,000 deaths per year. The current reasonable worst case scenario for Covid-19 is 520,000 additional deaths over a 24 week period. The death management industry will be rapidly overwhelmed.

**Timing of Use**

- Delay/Mitigate Phase
- To be activated on notice of SofS for given regions or local authorities.

**Risk and Mitigation**

There are exceptional measures which we would not use except in an emergency where the situation warranted it. There may be some push back from those subject to direction, and media concern. Their inclusion in the Bill may generate more immediate anxiety over the anticipated scale of the outbreak.

**Financial Implications**

Currently cannot be determined

## Other Clauses

## Clause: Funding of employers' liabilities in respect of statutory sick pay

### Policy Lad name, area and department

NR, DHSC, NR@dhsc.gov.uk
NR, DWP, NR@dwp.gov.uk

### Explanation of Clause

The clause provides the power for regulations to be made regarding the recovery of payments of Statutory Sick Pay (SSP) by employers from HMRC. The ability to recover SSP in the current incident is important to ensure that employers are supported in a period when their payments of SSP are likely to escalate, and that employees are incentivised not to attend work when advised not to for reasons of health security.

### Impact and Rationale

In the event of a severe outbreak of Covid-19, the number of people off work would increase significantly. This would include those who are displaying virus-like symptoms, as well as those who are self-isolating as a precautionary measure in accordance with government public health advice. In a stretching scenario, it is possible that up to one fifth of employees may be absent from work during peak weeks. This would present a significant financial burden on employers through increased SSP costs. The legislative changes proposed are intended to provide the ability to provide relief to employers, with the current primary focus being on SMEs.

### Timing of Use

As soon as HMRC have systems in place to operate the scheme.

### Risk and Mitigation

It is anticipated that this will be welcomed by the business community and reassuring to the public that the government is responding to business pressures.

### Financial Implication

Potentially, there will be cost implications if for example a direction takes an institution beyond what we have funded them to do. In the absence of certainty on what we will be asking, and numbers involved, there is no sensible way to cost this.

Early estimates put costs at around £2.9 billion

**Clause: Suspension of Waiting Days**

**Policy Lad name, area and department**

NR, DHSC, NR@dhsc.gov.uk
NR, DWP, NR@dwp.gov.uk

**Explanation of Clause**

The clause provides the power for regulations to be made to temporarily suspend the waiting days rule. The ability to suspend waiting days will be an important measure in ensuring employers do not attend work in the event of a severe outbreak.

**Impact and Rationale**

An important measure in ensuring employees do not attend work in the event of a severe outbreak. There is concern that not paying sick pay for the first three days of sickness absence will encourage people to go into work even if they are sick, or if they are not sick but have been advised to self-isolate. This will reduce the effectiveness of efforts to contain or limit the spread of the virus.

**Timing of Use**

Few weeks from peak.

**Risk and Mitigation**

There has been increasing media criticism of the rule that SSP is not paid for the first three days of sickness absence, including from trade unions.

It will place a direct additional financial burden on employers as they will now be liable to pay SSP from day one of sickness (including cases of self-isolation). It will not be possible to differentiate between cases of sickness absence relating to coronavirus or to other sickness reasons.

If this measure is linked to the rebate of SSP to employers, then the costs to government of providing the rebate could increase.

**Financial Implication**

If this measure is linked to the rebate of SSP to employers, then the costs to government of providing the rebate could increase.

**Clause: Commencement and Sunsetting**

**Policy Lad name, area and department**

NR, DHSC, NR@dhsc.gov.uk

**Explanation of Clause**

Sets out how the Bill will be commenced and the process for sunsetting the clauses, and which may need to remain for a period after the pandemic.

**Impact and Rationale**

The option to turn certain measures on or off depending on the latest scientific and clinical advice on what is most effective in managing the virus' impacts, enabling the measures to be reactivated if necessary if the virus re-emerges in subsequent "waves" after the peak.

**Timing of Use**

Emergency legislation for use during period of necessity only, with elements being turned on and off

**Risk and Mitigation**

On/off options will provide reassurance that the measures will be used proportionately and only as strictly necessary. Mechanism for triggering activation and de-activation needs to be agreed by the DAs.

**Clause: Prescribed Rights - NI**

**Policy Lead name, area and department**

NR, DoH (NI), NR@health-ni.gov.uk

**Explanation of Clause**

Emergency registration of pharmaceutical chemists and extension of prescribing powers. Northern Ireland

**Impact and Rationale**

Increase flexibility with the workforce should there be either an unprecedented demand or significant numbers of the workforce incapacitated due to the pandemic to enable care to be continued to be supplied to patients access to medicines

**Timing of Use**

When workforce has been significantly impacted or demand for medicine has significantly increased.

**Risk and Mitigation**

Likely to be controversial in Parliament. Changes or additional safeguards may be requested by the Opposition prior to introduction.

**Clause name: Extension of provision of vaccines (Scotland)**
Section 40 – National Health Service (Scotland) Act 1978

**Policy lead name, area and department (include email and tel number)**
NR, Primary Care Division, Community Health and Social Care, Health and Sport, Scottish Government (NR@gov.scot, I&S).

**Explanation of Clause (i.e. who is involved, importance to Health Security, key considerations)**
Clause restricts the provision of vaccines by Health Boards to registered medical practitioners and persons under their direction or control. We are looking to amend, suspend or possibly repeal the operation of this section to allow a wider range of health professionals to administer vaccinations in the event of an outbreak without this restriction.

**Rationale for intervention**
The clause is restrictive during a crisis and prevents Health Boards arranging vaccination by other healthcare professionals.

**Other policy options considered**
Existing powers (eg to use Patient Group Directions) are available; however section 40 would seem to place a potential restriction on the operation of existing powers such that it might be helpful to clarify that doctor direction and control (other than as set out in appropriate Ministerial directions or patient group directions) would not always be required. There does not appear to be an equivalent of section 40 in England and Wales so the restriction would see