Covid-19 Emergency Legislation

1. COBR(M) on 2nd March 2020, agreed as part of Reasonable Worst Case Scenario planning to bring forward emergency legislation, led by the DHSC.

2. Work to finalise content and draft provisions has developed at pace. We are seeking your agreement to the measures to be included within the Bill. Following this agreement, 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.

3. This paper sets out the final measures for the Bill for agreement, handling risks, timing and stakeholder management considerations.

Decisions

4. We are asking COBR to:
   - **Agree** to the proposed content of the Bill.
   - **Note** the handling risks, timing and stakeholder management considerations for the Bill.
   - **Agree** to timing for officials to share the detail of clauses with operational organisations.

Bill content

5. 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 measures are included to 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 detailing measures is set out at **Annex A**.

6. This is a four nations Bill, and the Devolved Administrations have been engaged 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.

7. 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. Those measures that are for specific nations are included to 'level up' to harmonise powers across the nations.

8. The measures are designed to be switched on/off, in order to ensure they are in force only for the minimal period necessary 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.

9. It should further be noted that:

    a. the on/off switch will be carried out by a type of commencement regulation, which means that it is simply made by a competent Minister, with no form of Parliamentary control
    b. there is however a separate provision for SofS to report to Parliament on the use of these powers
    c. the commencement of the power to make these on/off regs is itself a commencement regulation that proceeds from the Act itself and not only do these regs have no form of Parliamentary control, they do not need (and never have needed) the consent of the DAs. This is because the idea of commencing an Act of Parliament is a corollary of the Act itself, and is consonant with the DAs original Legislative Consent for the Act.

10. In developing the legislative measures, 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.

11. In developing these measures, policy officials have given consideration to the Public Sector Equalities Duty and the Family Test.

12. Officials have been engaging with HMT officials on the financial implications of the proposed measures.

Handling Risks

13. 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). **Annex A** sets out handling considerations for each measure.

14. 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

15. 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.

16. 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

17. 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.

18. COBR(M) on 4th 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.

19. As a next step, officials are looking to engage on details of the Bill with operational organisations (e.g. relevant charities) now, in confidence and on a need-to-know basis.

Next Steps

20. 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.

Department of Health and Social Care

11th March 2020