

Fourth Report of Session 2019-21

Select Committee on the Constitution

Coronavirus Bill

Introduction

1. The UK government's coronavirus action plan, published on 3 March, set out measures to respond to the COVID-19 pandemic that are reasonable, proportionate and based on the latest scientific evidence. Specifically, it detailed:
 - what we know about the virus and the disease it causes
 - how we have planned for an infectious disease pandemic
 - what we are planning to do next, depending on the course the coronavirus pandemic takes
 - the role the public can play in supporting this response, now and in the future
2. The plan also includes information on the government's 4-stage strategy: contain, delay, research, mitigate. It sets out advice for how the public should respond in each stage, including what to expect as the pandemic advances.
3. It also envisaged that changes to legislation might be necessary in order to give public bodies across the UK the tools and powers they need to carry out an effective response to this emergency. On 25 March, the Coronavirus Act 2020 received Royal Assent and became law. This paper sets out the elements of the Act and the reasons why they are needed.
4. The development of an effective response to the pandemic required several actions. Some of these involved the use of tools and powers that are set out in statute. The governments of the UK therefore resolved to review and where necessary amend existing legislation, to ensure that the UK's response was consistent and effective.
5. The Coronavirus Act gives us the powers we need to take the right action at the right time to respond effectively to the progress of the pandemic.
6. Some of the measures the Act introduced deal with easing the burden on frontline NHS and adult social care staff, some help staff by enabling them to work without financial penalty, and some support people and communities in taking care of themselves, their families and loved ones, and their wider community.
7. A balance has had to be struck between protecting the public's health, and safeguarding individuals' rights; and between acting swiftly to respond to fast moving events, whilst ensuring accountability and transparency. A two-year life span for this Act has been chosen to ensure that its powers remain available for a reasonable length of time, with the option for the provisions in the Act being extended by the relevant national authority .
8. These provisions are also subject to a six-monthly review and renewal vote in the House of Commons. They may also be terminated early, if the science warrants it. They are also subject to a two-monthly report to Parliament, and an annual debate. Many of the provisions can be suspended if the scientific advice is that they are not needed and revived again if it says that they are. This is a flexible and proportionate response to a major crisis.
9. The Act enabled action in 5 key areas:
 - a) increasing the available health and social care workforce – for example, by removing barriers to allow suitably experienced people, such as recently retired NHS staff and social workers to return to work
 - b) easing and reacting to the burden on frontline staff – by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork, and introducing a power to suspend individual port operations if necessary for the security of the border

- c) containing and slowing the virus – to manage the spread of coronavirus by for example providing certain powers to Public Health Officers, constables and immigration officers for the purposes of protecting the public from the health risks associated with the Coronavirus
- d) managing the deceased with respect and dignity – by enabling the death management system to deal with increased demand for its services
- e) supporting people – for example, by allowing individuals to receive Statutory Sick Pay from day one, and supporting businesses, for example by providing powers that will ensure the governments of the UK are able to support the food industry to maintain supplies

10. The Act significantly enhances the ability of public bodies across the UK to provide an effective response to tackle this pandemic

The Constitution Committee published its report on 24 March 2020. This is the Government response to the Committee's report.

Government responses to the Committee

Fast-tracking (Paragraphs 8 & 9): SCC conclusion: *The inclusion of sunset provisions in the Bill is essential. Two years would have been too long for these powers to have operated without reapproval by Parliament and we welcome the cross-party agreement to reduce the period to six months*

Fast-tracking (Paragraphs 8 & 9): SCC recommendation: Modification and improvement of this fast-track legislation, which was drafted at speed, may be required in the coming months. The Government should be prepared to consider amendments ahead of the six-month renewal vote, rather than seeking only to perpetuate the existing provisions

1.1 The Government notes the committee's view and will of course bear in mind that there may be a case for further primary legislation, depending upon how the course of the disease develops. There have already been many occasions for engaged and comprehensive debates on all aspects of the pandemic. Leading up to the six-monthly renewal debate there will no doubt be very many more, when Parliament can make known its views on the case for such a change.

1.2 Many provisions in the Act came into force on the day of Royal Assent. Others were commenced subsequently. The Act allows the four governments of the UK to switch these new powers on and off when they are needed, as the spread of the disease requires it. The Secretary of State is required to report to Parliament every two months on the status of the non-devolved provisions in Part 1 of the Act and confirm he is satisfied that the status of those provisions is appropriate. The first such report was presented to Parliament on 29 May, and can be found here - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

1.3 These (non-devolved) provisions are also subject to a six-monthly parliamentary review and renewal vote in the House of Commons (if still in force). They may be terminated or suspended early. They are also subject to an annual debate.

1.4 The Government believes that these measures strike the right balance between allowing public services to act swiftly and effectively to tackle the outbreak, without restricting individuals' freedoms unnecessarily. The Act provides Parliament with opportunities to hold the Government to account, and also enables public bodies to take swift action when needed, in circumstances that are difficult to predict.

Power to suspend port operations (Paragraph 12): SCC conclusion: *The maximum period of imprisonment varies in the different parts of the UK. In England and Wales it is 51 weeks;¹³ in Scotland 12 months;¹⁴ and in Northern Ireland six months.*

Power to suspend port operations (Paragraph 12): SCC recommendation: *The Government should explain why different maximum sentences are proposed for different parts of the United Kingdom.*

2.1 Section 50 and Schedule 20 provide a power for the Secretary of State to direct that the operator of a port (which may include an airport, ferry port or international rail terminal in the UK) suspend such operations as are specified in the direction. The power will only be available where the Secretary of State considers that there is a real and significant risk that as a result of the Coronavirus pandemic there is, or will be, insufficient border officials available to maintain adequate border security at one or more UK ports. This is to ensure the UK can maintain adequate border security throughout the pandemic.

2.2 The power also enables the Secretary of State to issue a consequential direction requiring other relevant parties (for example NATS, the main air navigation service provider in the UK, which functions as the UK's air traffic control) to take such measures as the Secretary of State considers appropriate in consequence of the primary direction to suspend relevant operations.

2.3 The power for the Secretary of State to issue a direction under section 50 and Schedule 20 is UK-wide. Failure to comply with such a direction is an offence, subject to a defence of reasonable excuse, and liable on summary conviction to a fine and period of imprisonment. Although this power is UK-wide, the

devolved administrations in Scotland and Northern Ireland are responsible for justice in their respective jurisdictions.

2.4 As outlined by the committee, the maximum penalty for failure to comply varies in the different parts of the UK. This is a standard approach that is used when setting the maximum sentences for summary offences across the jurisdictions and the penalties are set within respective legal and administrative arrangements.

2.5 The maximum sentence of imprisonment in **England and Wales** for this offence is stated in paragraph 6(4)(a) of Schedule 20 to be 51 weeks but, by virtue of paragraph 6(5), until revised sentencing provisions in section 281(5) of the Criminal Justice Act 2003 are commenced that is to be read as a reference to a sentence of 6 months. This ensures alignment with existing offences by persons connected with ships or aircraft or with ports in section 27 of the Immigration Act 1971. Those offences currently attract a maximum custodial sentence of 6 months, but if and when section 281(5) of the 2003 is commenced, this will be raised to 51 weeks.

2.6 The maximum sentence in **Scotland** is set at 12 months in line with Section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 which provides a maximum term of imprisonment of 12 months to which a person is liable on summary conviction of a relevant offence.

2.7 The maximum sentence in **Northern Ireland** is set at 6 months as it is the usual maximum term of imprisonment for summary only offences in Northern Ireland.

Power to suspend port operations (Paragraph 13): SCC conclusion: This is a broad power to issue directions. As they are directions, there is no automatic parliamentary scrutiny over their exercise. Neither is there any provision for appeal to the courts

Power to suspend port operations (Paragraph 13): SCC recommendation: *It is essential for the purpose of accountability that the exercise of this power to issue directions is subject to judicial review in the High Court or Court of Session. We would welcome confirmation by the Government of our understanding that this is the case.*

3.1 The Government agrees with the Committee's view that the exercise of this power to issue directions is subject to judicial review.

Parliamentary accountability and oversight (Paragraph 14): SCC conclusion: The Bill and the Delegated Powers Memorandum make clear that it is envisaged that even as late as two years into the operation of the Bill's provisions, it may be possible that Parliament is unable to sit. The same may be expected of the Welsh Assembly, Scottish Parliament and Northern Ireland Assembly. Even when these bodies are able to sit, the participation of members may be restricted before, during and after the peak of the epidemic

Parliamentary accountability and oversight (Paragraph 14): SCC recommendation: It is essential that Parliament and the devolved legislatures scrutinise the use of the powers in this Bill, given their breadth and significance. We will consider how best to ensure that scrutiny and accountability are maintained in these exceptional circumstances

4.1 We note that this conclusion relates to the procedures of Parliament, which are for each House to determine. Where appropriate, the Government has worked with political parties and House Authorities to create new ways of working to facilitate the continued functioning of Parliament during the lockdown. We note the Committee's upcoming inquiry into the effect of Coronavirus on Parliament and will respond to that report in due course. The Government remains committed to ensuring robust scrutiny in both Houses during this period, and thanks House staff for all their work to facilitate operations during this time.

4.2 We are grateful for the cooperation and close support of the Devolved Administrations and Legislatures in passing the Coronavirus Act 2020, which embodied a UK-wide approach to dealing with the pandemic. The manner in which all of the four nations of the UK came together in the spirit of collaboration to respond to this unprecedented crisis ultimately demonstrates the strength of our Union.

Legal accountability (p.19): SCC conclusion: The Government could take two additional administrative steps to ensure that affected persons have a realistic opportunity to challenge decisions applicable to them. It could provide that legal aid applications in relation to powers under the Bill should be determined as a matter of priority and that the evidentiary hurdles associated with demonstrating legal aid eligibility should be relaxed, so that persons unable to satisfy the applicable burdens, due to the coronavirus, do not thereby lose the possibility of vindicating their public law rights

Legal accountability (P.19): SCC recommendation: We recommend the Government considers how the role of the High Court and the process of judicial review can be strengthened and supported in the exceptional circumstances of the coronavirus pandemic.

5.1 Throughout the coronavirus outbreak we have been working closely with the courts and judiciary to uphold the delivery of justice. Despite the considerable challenges, thousands of hearings across all jurisdictions have been heard over the last couple of months. This progress has been possible because of the spirit of collaboration across the justice system (including with our criminal justice partners) which will ensure that justice can continue to be done in a way that is safe for all court users.

5.2 The Court of Appeal (civil and criminal) has continued at a reduced pace and the High Court has been operating at 80% capacity. The County Courts have continued with high priority cases to ensure access to justice is maintained.

5.3 Open justice remains a fundamental principle of the operation of courts and tribunals, so that what happens during proceedings can be done transparently. In all jurisdictions where there is an open hearing, in a physical setting, the longstanding arrangements for media and public access remain in place albeit with rules relating to social distancing. We would ask members of the public to observe the Government guidance on social distancing to ensure the safety of themselves and others. In addition, the media, public and other interested parties can contact the court, in advance, to make arrangements to observe open hearings remotely. As before, the court may determine that a hearing should be held in private if it is in the interests of justice to do so.

5.4 Legal aid may be available via the exceptional case funding scheme, where failure to provide legal aid would breach, or risk breaching, an applicant's human rights. Applicants must also satisfy the relevant means and merits tests.

5.5 The Legal Aid Agency (LAA) have set out a number of measures to help providers continue to provide legal aid services for clients during the Coronavirus outbreak. The LAA is committed to supporting the legal aid sector and flexing their processes appropriately. These can be found on the following website: <https://www.gov.uk/guidance/coronavirus-covid-19-legal-aid-agency-contingency-response#contents>. One such measure is highlighting the existing provisions in the contract which allow for providers to assess financial eligibility where the client may not be able to provide evidence

Functioning of Courts (p.23): SCC conclusion: The courts, including the High Court, are likely to be affected by closures during the coronavirus pandemic

Functioning of Courts (P.23): SCC recommendation: The Government and Her Majesty's Courts and Tribunal Service, in consultation with the Lords Chief Justice of England and Wales, Lord President in Scotland and Lord Chief Justice of Northern Ireland, should set out how they plan to ensure that all legal proceedings, including judicial review, will continue to be facilitated, even by video-link, during such disruption

6.1 Keeping services running has necessarily meant extensive changes to ways of working across the courts and tribunals system, including a significant increase in the take-up of remote technology. Around 90% of hearings had used audio and video equipment by the end of April. 159 priority courts and tribunals have remained open for physical hearings.

6.2 The powers in the Act are helping us to maintain the functioning of the courts and tribunals system during the pandemic by enabling wider use of video/audio technology, either in video/audio-enabled hearings in which one or more participants appear before the court using a live video or audio link, or by a wholly video/audio hearing where there is no physical courtroom and all participants take part in the hearing using telephone or video conferencing facilities.

6.3 This is helping to ensure that courts can continue to deal with urgent cases promptly and remotely including appeals against decisions to isolate or detain potentially infectious people with coronavirus in terms of public health. Such appeals are now permitted under the emergency legislation.

6.4 The use of live links is subject to judicial discretion and is only used where the court is satisfied that it is in the interests of justice having considered any representations from parties to the proceedings.

6.5 The Court of Appeal (civil and criminal) has continued at a reduced pace and the High Court has been operating at 80% capacity. The County Courts have continued with high priority cases to ensure access to justice is maintained.

6.6 In the civil jurisdiction, this includes Committals, Third Party Debt Orders, Injunctions, production of persons from custody, enforcement work not involving bailiffs, urgent Multi Track trials and urgent applications such as homelessness. In Public Family Law cases this includes Emergency Protection Orders, Interim Care Orders and Issue Resolution Hearings in care proceedings. In Private Family Law proceedings this includes first hearing and dispute resolution appointments, and financial remedy cases related to divorce proceedings.

6.7 Despite the challenge of social distancing requirements, magistrates' courts are continuing to deal with urgent overnight work. They are triaging cases and resolving large numbers through acceptable guilty pleas as well as progressing increasing numbers of effective trials. In the Crown Court, sentencing hearings and pre-trial hearings continue to take place using robust case management to ensure that cases are resolved through acceptable guilty pleas where appropriate.

6.8 A working group, established by the Lord Chief Justice, has been considering how to resume jury trials safely. This is chaired by Mr Justice Edis and has wide representation across the criminal justice system including representatives from the Law Society, Bar Council, Criminal Bar Association, Crown Prosecution Service and other interested parties. Representatives from the Senior Judiciary in Scotland and Northern Ireland have also attended these meetings.

6.9 Jury trials have resumed successfully in several courts. Further courts are being assessed so that the number of cases heard can be gradually increased, provided it is safe to do so. This will help us to understand how it might be possible to conduct trials more widely as the situation with coronavirus develops.

Scotland

6.10 The Scotland Courts and Tribunal Service (SCTS) has taken a range of steps to ensure that essential court and tribunal business is maintained during the period of disruption caused by Coronavirus. In view of the essential nature of maintaining critical court business colleagues whose role requires physical attendance at work and who do not need to self-isolate have been asked to attend work if needed. They have consolidated business into a smaller number of "hub" courts and have asked staff who are not required to support critical business in those locations to stay at home – in line with current guidance. Staff who are well but "sent home" are working on rotas, where safe travel is feasible – to ensure the burden of maintaining critical services does not all fall on one group.

6.10.1 The approach has been to maintain the most essential business, maximise social distancing and minimise contact. The Court of Session continues sitting in Parliament House dealing with civil business. In the Inner House a full programme of appeal business is being conducted via online video conference hearings or by written submissions as appropriate (this includes the facility for Judicial Review cases to be heard). In the Outer House procedural hearings are being conducted by teleconference or by written

submissions as appropriate. The High Court continues sitting in both Edinburgh and Glasgow. The court will continue to deal with preliminary hearings and adjourn trials.

6.10.2 Sheriff and Justice of the Peace court business was consolidated within Sheriffdoms, into 10 hub sheriff courts from 25 March (normally there are 39 sheriff court locations across Scotland's six sheriffdoms). All accused persons with symptoms of Coronavirus appearing from custody are having their case conducted via video link. Ten police custody centres with video link capabilities to courts are now operational. A protocol enabling legal representation for custody and remand cases to take place via telephone links has been introduced – removing the need for physical attendance by solicitors. SCTS are working with Police Scotland to extend this protocol to all custodies.

6.10.3 A range of activity is under way both to prepare for the easing of restrictions in Scotland and to develop new ways in which various business types can proceed remotely in the short to medium term – in view of the fact that physical capacity in court buildings is likely to be restricted for a period of time and that individual cases are likely to take up more physical space in order to observe social distancing guidelines. A judicially led working group has been established to explore the options for recommencing jury trials.

Northern Ireland

6.11 In Northern Ireland, the Lord Chief Justice has issued several directions since the 17th March on the handling of court business which has sought to limit the scope of any risks to health while maintaining the administration of justice. These directions can be found on: <https://judiciaryni.uk/coronavirus-covid-19>.

6.11.1 The most recent direction, issued on 5th June, provides that:

- The Court of Appeal has commenced hearing contested cases in the Royal Courts of Justice.
- Administrative reviews of Crown Court cases for arraignment, plea and sentence have commenced to enable listing dates to be fixed.
- Administrative reviews of Family Care Centre cases have commenced.
- Administrative reviews of Family Proceedings Courts cases are being piloted in Ards and Lisburn.
- The pilot for the hearing of undefended divorce cases is being rolled out to the High Court and all County Courts.
- Additional business in the Magistrates' Courts will be listed including custody and bail preliminary enquiries, pleas and sentencing where the parties agree the matter can proceed, and other preliminary issues.
- Arrangements are underway with the Public Prosecution Service for the issue of new summonses.
- Planning for the commencement of jury trials and contested cases is underway

6.11.2 The Northern Ireland Courts and Tribunals Service (NICTS) has been working closely with the Office of the Lord Chief Justice on practical arrangements to reduce the need for attendance at court, including the adjournment of cases administratively; dispensing with the requirement of parties to attend save for certain specified circumstances, and making greater use of technology to facilitate remote and virtual hearings in place of traditional face to face hearings.

6.11.3 In order to make best use of available resources and technology, NICTS has reduced the number of venues which it is operating from to five hubs in the first phase. While much of the initial focus has been on criminal cases the learning has been applied to civil and family proceedings in relation to increased use of technology to facilitate case reviews and hearings and looking at the benefits of the hub approach to delivery of tribunal business.

Civil Liberties (Paragraph 24): SCC conclusion: *The Bill has the potential to affect civil liberties in a number of important areas: the detention or quarantining of individuals, the registration of deaths and the disposal of human remains, the closing of ports, restrictions on free assembly and the conduct of criminal trials. We do not explore these issues in detail as they are largely provided for in the form of delegated powers and so their impact cannot readily be assessed until they are used.*

Civil Liberties (Paragraph 24): SCC recommendation: It is essential that the Government exercises these significant powers in a proportionate and non-discriminatory way.

7.1 The Government is committed to protecting and respecting human rights. We have a longstanding tradition of ensuring rights and liberties are protected domestically and of fulfilling our international human rights obligations. We have strong human rights protections within a comprehensive and well-established constitutional and legal system. Section 6 of the Human Rights Act will also continue to apply, requiring all public authorities to act compatibly with the Convention rights.

Detention and isolation of individuals

7.2 Schedule 21 provides key safeguards in relation to imposing restrictions such as detention and isolation of individuals. For example, the powers in Part 2 of Schedule 21 are only exercisable once the Secretary of State (in relation to England) has declared by publishing a notice on www.gov.uk followed, as soon as reasonably practicable, by a notice in the London Gazette, that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health and that the incidence or transmission of the Coronavirus is at such a point that the measures may reasonably be considered as an effective means of preventing the significant further transmission of coronavirus. The powers are only exercisable when the public health officer considers it is necessary and proportionate to do so in the interests of the person, for the protection of others or for the maintenance of public health. The provisions include the right to appeal to a magistrates' court against the imposition of any requirement, restriction or direction imposed on a person. There are further safeguards built into the Act, for example when deciding whether to impose a requirement in relation to isolation or detention under paragraph 14 of Schedule 21 of the Act the public health officer must have regard to a person's wellbeing and personal circumstances (similar provisions apply in relations to Part 3 (Scotland), Part 4 (Wales) and Part 5 (Northern Ireland) of Schedule 21). In addition, the initial time period for which a person may be required to remain in a particular place, and in self-isolation, cannot exceed 14 days, and such period can only be extended after a re-assessment by the public health officer. If the period is then extended, a public health officer must review such requirement every 24 hours, revoking the requirement where appropriate.

Disposal of human remains

7.3 In relation to the disposal of human remains, the Government is keeping under review the temporary amendments to the Public Health (Control of Disease) Act 1984 in relation to disposal of a deceased body or other remains, and intends to keep the amendments in place only so long as they are necessary.

7.3.1 There are a number of controls in place to help ensure that the powers in relation to disposal of human remains are used proportionately and in a non-discriminatory way.

7.3.2 Firstly, the powers of direction in Part 2 of Schedule 28 (including directions regarding disposal of human remains) can only be exercised once a local authority area has been designated. The appropriate national authority can only designate a local authority if the threshold for designation (in paragraph 4(1) of Schedule 28) has been met: that (as a result of Coronavirus) there is, or is likely to be, insufficient capacity to transport, store or dispose of deceased bodies or other human remains, and the powers in Part 2 are likely to be an effective means of addressing those concerns. If these requirements are no longer met, then the designation must be revoked.

7.3.3 Secondly, under paragraph 13(2) of Schedule 28, designated local authorities must have regard to the wishes of the deceased or their religion or beliefs (if known) when carrying out functions under the Public Health (Control of Disease) Act 1984 in relation to disposal of deceased bodies or other human remains. The Government has issued statutory guidance for local authorities on exercising the powers in Section 58 and Schedule 28, including specific guidance on discharging functions under paragraph 13 of Schedule 28. Local authorities must have regard to this guidance (see paragraphs 9(2) and 13(6) of Schedule 28).

7.3.4 The statutory guidance confirms that local authorities must have due regard to the Public Sector Equality Duty in section 149 of the Equality Act 2010, including consideration of whether any certain groups will be disproportionately affected, when exercising their functions. This includes local authorities exercising the powers of direction in relation to disposal of deceased bodies and other human remains.

7.3.5 The powers of direction cannot be used to direct public bodies. Therefore they cannot be used to direct the coronial system, and the coronial duty to investigate certain deaths is unaffected by these provisions.

Restrictions to free assembly

7.4 In relation to restrictions to free assembly, the measures will only be deployed if the public health

situation dictates and will follow a declaration by the Secretary of State of a “public health response period”. A declaration starting such a period can only be made after consultation with the Chief Medical Officer (CMO) or one of the Deputy Chief Medical Officers (DCMOs). Such declarations are temporary and will only be in place for as long as required by the situation. Before issuing a direction the Secretary of State must have regard to any relevant advice given to the Secretary of State by the CMO or any of the DCMOs.

7.4.1 Under section 6 of the Human Rights Act 1998, the Secretary of State will be required to exercise the power in a manner compatible with the Convention rights.

7.4.2 The Committee may wish to note that the current lockdown restrictions in England have not been enforced under Section 52, Schedule 22 (Part 2 - England) of the Coronavirus Act 2020. They have been enforced under Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

Conduct of criminal trials

7.5 In relation to restrictions to the conduct of criminal trials, the Government is keeping under review the temporary extension in the use of video and audio hearings and intends to keep them in place only so long as they are necessary. We are clear that audio and video links provide an additional channel for conducting a hearing and should be as accessible as possible but they may not be suitable for everyone.

7.5.1 The court can only make an order that a matter is dealt with via a video or audio hearing if it is satisfied that it is in the interests of justice to do so, after considering any representations from the parties, including the level of digital skills of parties and their access to technology. In making such an order, the court will have to act in accordance with the overriding objective of the Criminal Procedure Rules to deal with cases justly.

7.5.2 We are reviewing these new measures to ensure that they are as effective as possible in providing access to justice and that equality impacts are considered and mitigated for individuals and minority or disadvantaged communities.

7.5.3 Open justice remains a fundamental principle of the operation of courts and tribunals, so that what happens during proceedings can be done transparently. In considering the use of telephony and video technology, the judiciary will have regard to the principles of open justice. In all jurisdictions where there is an open hearing, the media and interested parties (observers) can contact the court, in advance, to make arrangements to observe these hearings. This is either by remote access or by the public gallery where it is available.

Death registration

7.6 In relation to death registration, the modifications to death certification and registration in England, Wales, and Northern Ireland have helped to ensure that medical practitioners with appropriate skills are available to treat patients and issue medical certificates of cause of death (MCCD) in a timely manner for all deaths. It has also provided some mitigation against medical practitioners themselves becoming infected with Coronavirus, needing to self-isolate and MCCD consequently not being able to be issued. Without the modifications there would have been a negative impact on certification and registration with the resulting inability for funerals to take place. Telephone registration and electronic transfer of death related documents from known addresses within both hospitals and GP practices have provided safeguards over the authenticity of paperwork and without delay to the process; without risk to staff and members of the public spreading the infection. Without these changes, registrations would not have taken place and consequently funerals would have been delayed as necessary paperwork for burials and cremations would not have been issued. Underpinning this, registrars have continued to refer deaths for coronial consideration where the reported cause of death is not acceptable to them and where the deceased has not been seen as prescribed. The swift submission of the paperwork has also allowed the Northern Ireland Statistics and Research Agency (NISRA) to publish timely statistics on deaths due to Coronavirus as part of their weekly death statistics.

7.6.1 The General Register Office Northern Ireland (GRONI) is regularly reviewing the easement provisions in conjunction with other parts of the Department of Finance, Department of Health and the Department of Justice to ensure that they are being used effectively, in a proportionate way and remain necessary.

7.6.2 The General Register Office for England and Wales (GRO) is regularly reviewing the easement provisions in conjunction with the Department for Health and Social Care (DHSC), the Ministry of Justice

(MoJ) and the National Panel for Registration to ensure that they are being used effectively, in a proportionate way and remain necessary.

Suspending port operations

7.7 In relation to suspending port operations, these powers are subject to significant safeguards and only available in specific proportionate circumstances. That is, before making a direction, the Secretary of State must: i) consider that there is a real and significant risk that, as a direct or indirect result of coronavirus, there are or will be insufficient Border Force officers to maintain adequate border security; and ii) have taken such other reasonably practicable measures to mitigate that risk. There will also be a consultation process with relevant government departments and Devolved Administrations, prior to a direction being made, to the extent possible. The power will only be used where the Secretary of State believes that it is necessary and proportionate to do so; and once all relevant alternative mitigations have been deployed.

7.7.1 The committee may wish to note that there have been no circumstances, to date, where the Secretary of State has needed to use these powers.

Impact of the Act in relation to equalities

7.8 The Public sector equality duty means that public authorities including Government ministers are required, in carrying out their functions, to have due regard to the need to achieve the objectives set out under section 149 of the Equality Act 2010. The potential equality impacts of the underlying policy of the provisions in the Act have been considered. In particular, during the equality analysis initially it was considered the provisions in the Act will have a positive impact on those with the protected characteristics of age or disability, compared with not introducing the provisions in the Act. This is because the fatality rate of Coronavirus is believed to be higher in the elderly and in those with pre-existing medical conditions, which could include some forms of disability. In a variety of different ways, the measures provided for under these provisions are aimed at protecting the general public from a Coronavirus pandemic and ensuring that public authorities have the flexibility they need to respond to a public health emergency as effectively as possible. This positive impact is a consistent theme for the individual measures in the Act and the measures taken as a whole.

7.8.1 Most impacts will be temporary, spanning the duration of Coronavirus pandemic and emergency situation, and many of the provisions where possible contain safeguards and mitigation measures to lessen the extent of any negative actual or perceived impacts.

7.8.2 PSED is a continuing duty and so will continue to be reviewed and will be considered as appropriate as and when powers are exercised under the Act.

Civil Liberties (Paragraph 25): SCC conclusion: The constitutional propriety of these measures depends on the continued effective operation of standard processes of administrative and judicial oversight.

Civil Liberties (Paragraph 25): SCC recommendation: Parliament must ensure that such review procedures continue to function properly and should make this a central consideration in its periodic reviews of the powers

8.1 We are reviewing these new measures to ensure that they are as effective as possible in providing access to justice and that equality impacts are considered and mitigated for individuals and minority or disadvantaged communities.

8.2 The safeguards outlined above in section 1 provide the necessary balance between Parliamentary oversight and an effective and agile response to the continued pandemic.

Civil Liberties (Paragraph 26): SCC conclusion: We have a specific concern regarding the power in paragraph 5 of schedule 8. This power effectively licenses unlimited periods of detention for those within the hospital system

Civil Liberties (Paragraph 26): SCC recommendation: The Government should explain how it intends to use this power, how it will do so proportionately and publish guidance as to how lengthy and potentially unjustified instances of detention can be challenged.

9.1 The emergency powers contained in Schedule 8 have not been commenced in England or Wales and will only be commenced at the point that they are deemed absolutely necessary and proportionate in order to alleviate pressure on the healthcare system.

9.2 The provision contained in paragraph 5, Schedule 8 of the Coronavirus Act 2020 removes the 12-week maximum time limit in which an accused person can be kept on remand in hospital under the Mental Health Act 1983 (MHA). The intention of this provision is to ensure that, should it not be possible to fulfil the timelines set out in the MHA because of increased pressures on the system due to Coronavirus, individuals are able to continue to access the care and treatment they require in a hospital setting.

9.3 Should the emergency provisions be commenced, the Government will publish guidance on how the powers should be operated, including that any period of remand to hospital should continue to be kept to a minimum. The guidance will also specify that the report on the remanded person's mental health condition, or the treatment for which they are being remanded, should aim to be completed as soon as is practicable. It remains the case that the person cannot be remanded in hospital for more than 28 days at a time, after which the remand period must be renewed by a Court. During the emergency period the MHA Code of Practice will continue to apply and patients will be able to continue to access the safeguards contained in the MHA as usual. The Government is satisfied that the measures, with such safeguards in place, are compliant with Article 5 of the European Convention on Human Rights as set out in the Human Rights Act 1998.