

## Written evidence from JUSTICE (COV0008)

### **Introduction**

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. It is the UK section of the International Commission of Jurists.
2. This briefing is pursuant to the call from the Joint Committee on Human Rights (“JCHR”) for written submissions on the human rights implications of Government’s response to the COVID-19 crisis.

### **Sunset and Parliamentary review provisions in Coronavirus Bill 2019-21 (“The Bill”)**

3. Clause 89 of the Bill provides that the legislation (other than the provisions listed under subsection 2) expires at the end of a period of **two years**. Clause 90 allows for a “relevant national authority” to shorten or lengthen (up to six months, on a repeatable basis) the expiry date of any provision.
4. Following Government amendment at Commons Committee stage, Clause 98 provides for six-monthly Parliamentary review of the legislation. Clause 99 requires a debate to be held in both Houses about the status of a report on the use of the powers in the Bill (produced by the Secretary of State in accordance with clause 83) one year after Royal Assent.
5. The proportionality of any emergency legislation must be viewed in relation to its intended duration. It is imperative that emergency powers do not remain in place for longer than the emergency itself. Government recognises that limiting the duration of the Bill is of great importance: “this Bill has been introduced to support public bodies, and wider society, in responding to the covid-19 outbreak and so is time limited”.<sup>1</sup>
6. However, the two-year period provided for in Clause 89 is out of step with previous emergency legislation. The operative powers under Anti-terrorism, Crime and Security Act 2001, Prevention of Terrorism Act 2005 and Terrorism Act 2006 were subject to a 12-month sunset clause.

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<sup>1</sup> Coronavirus Bill 2019-20 Explanatory Notes, para 522.

7. Further, the period stretches far beyond current estimates for the length of the coronavirus crisis. The widely cited Imperial College report upon which Government relied in formulating its isolation guidance notes that “when examining mitigation strategies, we assume policies are in force for 3 months ... suppression strategies are assumed to be in place for 5 months or longer”.<sup>2</sup>
8. JUSTICE would suggest that the sunset clause should be shortened to **six months**. We appreciate that Government needs to retain an “extension mechanism since the health and welfare implications of letting the provisions expire when covid-19 is still spreading could be serious and at this time the duration of the covid-19 pandemic is not known”.<sup>3</sup> We therefore do not suggest amendment of Clause 90. However, given the significant infringements of civil liberty permitted under the Bill, we would argue that any extension should be subject to the **affirmative resolution procedure**.
9. Further, in light of the changing nature of the pandemic and in order that Parliament has proper opportunity to scrutinise the Bill, JUSTICE would suggest that: the Secretary of State prepares their report on the use of the powers in this Bill on a **monthly basis**, and both Houses have the opportunity to debate the use and necessity of the powers after **three months**.
10. While the Government amendment and new Clause 98 are welcome, JUSTICE is not convinced that the introduction of six-monthly Parliamentary review is sufficient. As raised at Commons Committee Stage by several MPs, it is not clear from the drafting whether it would be possible for Parliament to strike out or amend individual provisions at the six-month review stage. There is a risk that this form of review would lead to rubber stamping of the legislation in its entirety, if it is thought that there is continuing necessity for any amongst the emergency powers.

#### **Bill Clause 52 and Schedule 22 – Powers relating to events, gatherings and premises**

11. Clause 52 together with Schedule 22 of the Bill create powers to prohibit or restrict events and gatherings, and to close premises. These powers engage the right to freedom of assembly and association, pursuant to Article 11 of the European Convention

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<sup>2</sup> <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>

<sup>3</sup> Explanatory Notes, n. 1 above, para 114.

on Human Rights. Such measures could have a significant effect on many people's lives, restricting their liberty and impacting upon livelihoods.

12. The powers must therefore be exercised only when it is necessary and proportionate to do so. Indeed, the Schedule 21 powers of a public health officer, constable and immigration officer to direct or remove persons to a place suitable for screening and assessment can only be exercised when it is *necessary and proportionate to do so* (a) in the interests of the person, (b) for the protection of other people, or (c) for the maintenance of public health.<sup>4</sup>
13. JUSTICE suggests that the same safeguard is placed on the power of the Secretary of State to issue a direction under Schedule 22 as is required for the power to issue a direction under Schedule 21: where it is **necessary and proportionate to do so**.

#### **Bill Clauses 53-57 and Schedules 23 to 27 – Courts and tribunals: use of video and audio technology**

14. These clauses would expand the use of live links in courts, in anticipation of the need to ensure court and tribunal cases can take place. We applaud this intention. The uncertainty over the outcome of any case can cause anxiety and hardship across all kinds of dispute. This is particularly acute in criminal cases. Further, should a defendant be remanded in custody, it is important that their guilt is determined as soon as possible. Remaining indefinitely within prison before a verdict is given during the pandemic could have severe mental health, employment, housing and family ramifications.
15. JUSTICE considers that modernisation through video links, if done correctly, can offer potential practical benefits to the court and parties alike. However, careful consideration must be given to ensure that digitally excluded individuals and people who are vulnerable by circumstance or disability are not disadvantaged in its application. Likewise, technology must be of sufficient quality to ensure a fair trial.<sup>5</sup>
16. As such, we consider that these measures are *only appropriate* for this emergency situation. Their effectiveness in achieving the aims of justice must be carefully evaluated, with their structure and procedure carefully thought through. Many of the current difficulties are due to the majority of the case participants being in a courtroom with one

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<sup>4</sup> See Schedule 20 paragraphs 6(3), 7(3), 8(2) and 13(6).

<sup>5</sup> We considered these issues in our working party reports [Preventing Digital Exclusion from Online Justice](#) (2018) and [Understanding Courts](#) (2019).

participant joining via a live video link. This can make that participant and their evidence seem less engaging, or difficult to follow if the technology is not working properly. For this reason, we think that the use of live link hearings during the pandemic should be considered in the following way:

- a. The presumption should be that hearings will be conducted in person. This is likely to be difficult during the coronavirus outbreak, but it should always be considered first.
  - b. Should that not be possible, due to reasons relating to the pandemic, there should be a presumption that *all* parties appear via video link in a virtual courtroom (wherever the judge is located).
  - c. If the technology is not available for this to happen, the participants that are able should attend court, with the participants who are unable to attending via video link. This should only be contemplated if it is in the interests of justice that the hearing should go ahead and if there would be no significant injustice to the party who appears via video link.
  - d. If it is not in the interests of justice to proceed, the hearing should be adjourned until it is possible for all parties to attend in person or all parties to attend via video link. Remand in custody would need to be reviewed in this situation.<sup>6</sup>
17. In a court environment, vulnerable individuals have many opportunities to seek advice and support from friends, their representatives or other professionals. These formal and informal mechanisms must continue to be accessible when parties appear via video link. Moreover, defendants also require a direct and confidential line of communication with their representatives if they are to appear via video link. JUSTICE considers that with creativity and exploration of appropriate technology, fully video hearings can facilitate all of these needs.

### **Police powers enforcing 23 March restrictions on movement**

18. Methods of proving reasons for being outside of the home must be **practicable**. We have seen examples in France, Italy and Spain of people having to print a form and self-certify their reasons for going outside. However, many people do not have a printer at home – an oral explanation must be sufficient.

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<sup>6</sup> There is provision in the Bill for live audio link to be used. This is the least suitable mechanism for the participation of lay people, but may be necessary where the person has no other means of participating can be useful for case progression between legal professionals. We consider that the Bill provides adequate safeguards for its use.

19. The powers ought, in the first instance, to be to direct to return home, or to escort a person to their home. The issuance of fines will have to be a last resort and then only when necessary and proportionate in the circumstances. We have seen examples of fines being issued in France on a wide scale.
20. Any proposal for **detention powers would be wholly inappropriate**: a strain on resources and a disproportionate interference with the right to liberty of the person
21. Grounds: there will need to be a requirement of **reasonable grounds to suspect** that the person is not outside for one of the exempted reasons.
22. New police powers must afford **exceptions** for rough sleepers; victims of domestic abuse; and other vulnerable people such as victims of modern slavery, trafficking or asylum seekers – all who may be permanently or temporarily homeless and will not be able to respond to an order to return to their home. Likewise, homes may be hostile or unsafe for vulnerable children at risk. If children live in hostile or unsafe homes and are forced to stay there constantly, there is a real risk of an increase in youth homelessness. Even children who are not vulnerable will need to be given different consideration to adults – for example, children cannot be fined.
23. There must be significant increase in assistance to people who will not have a home to return to – making suitable shelters available and police assistance to enable people to get to these shelters. A holistic approach towards keeping children safe has to be taken, linking to Local Authority and other support services.
24. The Prime Minister announced that the powers will be reviewed after three weeks. JUSTICE would suggest that this should be a **weekly review** at most. These powers represent an extraordinary interference with free movement, never previously imposed. Three weeks in JUSTICE's view is therefore too long.

*24 March 2020*