

Coronavirus - Health Legislation Overview

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Please note: the information contained in this legal update is correct as of the original date of publication

As a leading law firm advising public authorities and government, we are regularly being asked about the legal powers which exist to enable our clients to navigate their organisation and their delivery of services through these difficult times. Below, from the perspective of our health clients we have set out those powers which are intended to enable the treatment of those who become infected with COVID-19.

1. **Public Health (Control of Disease) Act 1984**
This Act essentially provides the basis on which the 2020 Regulations have been issued by the government. Therefore, it is the piece of legislation that is considered should there be an issue over the Regulations, or the powers set out within them and other secondary legislation based on this Act.
2. **The Health Protection (Coronavirus) Regulations 2020**
Issued shortly after the seriousness of the coronavirus outbreak become apparent and intended to implement some containment measures:
3. Secretary of State or a Registered Public Health Consultant given power to detain a person they suspect of having coronavirus for a period of 48 hours or until an assessment has been completed, whichever is the later.
4. Police have powers to detain a person they have reasonable grounds to suspect is, or may be, infected or contaminated with coronavirus, might infect or contaminate others and where they believe it is necessary to direct, remove or detain the person in their interests, for the protection of others or the maintenance of public safety. Power lasts initially for up to 24 hours and police can take the person to hospital or keep them at a hospital they are already at.
5. **Coronavirus Bill**
The purpose of the Bill is to enable action to be taken in five specific areas, which are considered below. It is intended to have a limited period of application, currently it is proposed that it will expire at the end of 2 years beginning on the date

it is passed. The Bill covers a lot of issues and this note does not seek to address them all, but focuses on the make points for the health and care sector:

6. **a.) Increase capacity in the health and social**

care workforce – Clearly, it is essential to enable the health and social care work force to fight the crisis caused by the coronavirus pandemic. In that regard the barriers which may have prevented those who have recently left public service in those sectors are being lifted during this period. Specifically:

7. Professional health regulators are enabled to undertake emergency registration of recently retired professionals or students close to finishing their training. In fact the Regulators are taking the lead in contacting those people. So allowing a much easier mechanism to increase capacity in the sectors and links to the point below.
8. Social care regulators can temporarily add social workers who have recently left the profession to their registers.
9. Employees and Workers are enabled to take emergency volunteer leave in various weekly blocks to support the health and social care sectors, particularly with regard to care of the elderly and those with long term health, physical and mental, conditions. Once again aimed at allowing focus on treating those infected but, at the same time, supporting the more vulnerable in society.
10. The government run indemnity for clinical negligence liabilities arising from NHS activities carried out for the purpose of dealing with the coronavirus outbreak will provide cover where there is no existing indemnity arrangement in place. Which will help in smoothing the introduction of capacity as set out above.
11. Suspend the rules which currently prevent some NHS staff who return to work after retirement from working for more than 16 hours per week, along with those on abatements and drawn-down NHS pensions. As above removing restrictions on getting experienced health workers back in to support the current need.

12. **b.) Easing the burden on frontline staff –**

Whilst it is apparent that the health and social care workforce needs to direct energy into addressing the pandemic, that does not mean its other essential providing care will just stop. These measures are aimed at enabling the system to focus and still provide essential day-to-day care:

13. The use of the powers in the Mental Health Act, including those under sections 2 and 3, and associated legislation to detain and treat patients will now only require one doctor's opinion, rather than two. Accepting how all frontline staff will be stretched over the coming months.
14. The power is provided to increase time limits under some parts of mental health legislation to enable flexibility where the service cannot respond as quickly as it has done previously.
15. NHS Providers can delay the need to undertake an NHS Continuing Care Assessment for those being discharged from hospitals until after the emergency period is over. Clearly aimed at allowing the system to create capacity as quickly as possible.
16. Enabling local authorities to make decisions on prioritising services to meet the most urgent and serious care needs.

17. **c.) Delaying and slowing the virus –** A lot has been said by the government and their experts about flattening the peak which will, hopefully, enable capacity to treat and care for individuals to be maintained and avoid very high peaks of demand. The measures which are being introduced are:

18. Giving the government powers to restrict or prohibit events and gatherings during the pandemic in any place, vehicle, train, vessel or aircraft, any moveable structure and any offshore installation, as well as the power to close premises. A wide-ranging power which would be used if the current advice is not being followed properly by people.
19. Temporary power to close educational establishments and nurseries, which has now been used. Although, exemptions do

apply for keyworkers children so that they can support the fight against the pandemic.

20. Power to postpone various types of elections, which will again reduce groups of people meeting.

21. **d.) Managing the deceased with dignity and respect** – As has been seen across the world, sadly coronavirus will cause deaths and these measures are aimed at ensuring those who succumb are properly treated:

22. A coroner is only notified where a doctor believes there is no medical practitioner who may sign a death certificate.

23. Increase the categories of people who can register a death, to include funeral directors.

24. Enable electronic transmission of documents that currently need to be physically presented.

25. Remove the need for a second medical certificate for cremations.

26. Remove need for coroners to hold jury inquests into a COVID-19 death.

27. **e.) Protecting and supporting people** – The government is anxious for people to follow its guidance to control, as far as possible, the spread of coronavirus but it appreciates there are practical issues which need to be addressed to enable such an approach and not the more draconian methods seen elsewhere in the world. Therefore, these measures are aimed at supporting people during these difficult times and include:

28. Giving the government the power to suspend the rule which means SSP is not paid for first 3 days of work missed due to sickness.

29. Allowing employers with less than 250 employees to reclaim SSP for sicknesses relating to coronavirus.

30. Give the government the power to require the industry to provide information about food supplies.

31.

NHS Act 2006 (as amended)

Generally, this is the Act which governs how the NHS works overall in providing a comprehensive health service across England, with the devolved administrations governing their own health services. Therefore, this legislation provides the statutory framework for what may be viewed, at least currently, as normal health service provision. However, it does also give the Secretary of State emergency

powers and that enables them to issue directions to those who are NHS bodies and those who provide clinical services to the NHS. The effect of these powers is that it can enable the Secretary of State to ensure continuity of services during periods of emergency and direct how resources may be used.

32.

Civil Contingencies Act 2004

The Act establishes a clear set of roles and responsibilities for those involved in emergency preparation and response, which includes the health system. Like the Public Health (Control of Disease) Act 1984 it allows the government to act during periods of emergency, such as that which is currently being faced. Given that the government has now introduced new primary legislation to support its ability to address the current issues created by coronavirus then the powers under the Civil Contingency Act may not be used, but obviously remain available to the government.

Browne Jacobson will be publishing more in-depth articles on the above so as to assist both our public and private sector clients to understand how the law will apply during this emergency period. If you would like to discuss any of the above please contact Gerard Hanratty, a Public Law lawyer who leads our Health Sector.

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