

Covid-19 Information Sheet – *The Coronavirus Act 2020*

This information sheet has been produced by students from BPP's Pro Bono Centre under the supervision of legally qualified staff members. The information contained in this document is accurate as of 13 April 2020.

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Introduction

What is The Coronavirus Act 2020?

The Coronavirus Act 2020 ('the Act') is emergency legislation which has been passed by Parliament to help the UK cope with the COVID-19 pandemic. It introduces wide ranging changes across all areas of public life. This note explains some of the most significant changes introduced by the Act and signposts organisations which can provide support and advice to individuals.

The Act expires two years after coming into force (i.e.: 25 March 2022), but Parliament will review its provisions every six months to decide if they are still needed and adequate. The changes introduced by the Act will only remain in place if necessary to address the COVID-19 pandemic.

The further information section below includes a link to where the Act can be read in full.

Extended Police Powers

What powers do the police have if individuals do not follow the 'Stay at Home Rules'?

The 'Stay at Home Rules' were implemented for an initial three week period on Monday 23 March 2020, the rules were extended for a further three weeks on Thursday 16th April 2020. The Government are required by the Act to review the measures every three weeks to assess

whether they can be relaxed. You should continue to check the Government website for further updates.

Under these rules, individuals can leave the house only for limited purposes:

- shopping for necessities, as infrequently as possible;
- one form of exercise a day alone or with members of their household;
- any medical need, to provide care or to help a vulnerable person;
- travelling to and from work, but only where they cannot work from home.

If individuals do not comply with such rules, the police have been given extended powers to:

- instruct them to go home, leave an area or disperse;
- ensure parents are taking necessary steps to stop their children breaking these rules;
- issue a fixed penalty notice of £60, which will be lowered to £30 if paid within 14 days;
- issue a fixed penalty notice of £120 for second time offenders, doubling on each further repeat offence.

If an individual refuses to comply, he may be arrested where necessary and proportionate in the circumstances.

Individuals who do not pay fines could be taken to court where magistrates have the power to impose unlimited fines.

I need to meet my colleague outside the house for work purposes. Will this be classed as a gathering and am I at risk of being fined or arrested by police?

Gatherings of two or more people are not permitted, unless individuals are members of the same household. We are allowed leave the house to travel to and from work, but only when we cannot work from home. If technological means (i.e.: video link and telephone calls) are available, these should be used over meetings in person. The police can exercise their extended powers (as stated above) against anyone who does not follow these rules. However, gatherings in public spaces will be permitted in very limited circumstances, such as essential work purposes (i.e.: where work cannot be performed at home).

BPP Pro Bono Centre has produced an Information sheet aimed at Employers and Employess to explain how COVID-19 affects working conditions. Both can be found on the Pro Bono website: <http://probono.bppuniversity.ac.uk/blog/bpp-students-demystify-covid19/>

What powers do the police have in relation to potentially infectious persons?

Under Schedule 21 of the Act the Secretary of State, or the relevant named official, can make a declaration commencing or ending a “transmission control period” if, having consulted the Chief Medical Officer, they are of the view that:

- a) the incidence or transmission of coronavirus is a serious and imminent threat to public health and
- b) the additional powers given in Schedule 21 will be an effective means of delaying or preventing significant further transmission of the virus.

This means that the andemic has become so serious that stricter measures are required to enable authorities to prevent the spread of the virus. If a ‘control period’ is declared, the police will have additional powers to assist in the detection of the virus and efforts to stop its spread. If the above decision is made, the Government must make this public using the media to inform the public of the decision.

What powers would the police have?

During a 'transmission control period', the police will have the following powers in relation to potentially infectious persons:

- To direct or remove persons to a place suitable for screening and assessment (i.e.: a hospital) where necessary and proportionate do so; and
- To detain a potentially infectious person for 24 hours (up to a maximum of 48 hours) at a place which is suitable for screening and assessment to allow a public health officer to test the person for the virus.

According to the Act, a person is 'potentially infectious' if:

- the person is, or may be, infected or contaminated with COVID-19, and there is a risk that the person might infect or contaminate others with the virus; or
- the person has been in an infected area within the 14 days preceding that time.

An 'infected area' is any country or territory outside the UK that has been declared as 'high risk' in terms of COVID-19 transmission. More guidance on this is available on the Government website.

During a transmission control period, if a person:

- has been confirmed as being infected or contaminated with COVID-19;
- has been tested for the virus but results were inconclusive; or
- has been assessed by a public health officer and they have reasonable grounds to suspect that the person is potentially infectious,

the Police may provide information to a public health officer (such as contact details of the person), direct the person to go to a specified place for further screening, instruct the person to remain in isolation in a certain place for a specified period or to remain in a certain place for further screening. Any such restrictions cannot last longer than 14 days and will be imposed if considered reasonable and necessary by a public health officer. The same restrictions may be imposed on a child (i.e.: an individual who is less than 18 years old), but only in the presence of an accompanying adult. Adults are responsible for ensuring that children comply with restrictions imposed on them.

Failure to comply with any restrictions or power exercised by the police would be an offence and individuals will be liable to a fine. In case of non-compliance, constables may also take persons into custody and later return them to a specified place as directed by a public health officer.

What are the changes to the rules governing retention of fingerprints and DNA profiles by the police?

Under the Police and Criminal Evidence Act 1984, the police normally retain fingerprint and DNA profile records of individuals arrested or charged for a period of three years beginning with the date on which such samples are taken. The Act gives the Secretary of State the power to extend this period of retention for up to six months if:

- COVID-19 is having, or is likely to have, an adverse effect on the capacity of persons responsible for making national security determinations to consider whether to make, or renew, national security determinations; and
- it is in the interests of national security to retain the fingerprints or DNA profiles.

The Secretary of State may exercise this power more than once, but the period of retention of records must not be extended by more than 12 months. Therefore, the police may be allowed to retain fingerprints and DNA profiles for up to four years with the permission of the Secretary of State.

The Justice System

BPP has produced an Information sheet exploring the impact of COVID-19 on Courts and Prisons. Further information about how COVID-19 has affected the Justice System can be found there: <http://probono.bppuniversity.ac.uk/blog/bpp-students-demystify-covid19/>.

Will jury trials still go ahead?

Both Crown and Magistrates courts are sitting for urgent hearings only. As of 23rd March, any jury trials due to start after that date are postponed until further notice. Any in-progress jury trials may be adjourned for a short-period until safety measures to ensure social distancing can be put in place. Hearings are to take place remotely (if possible).

The Act makes provision for temporary expansions for public access to hearings which are to take place remotely. Those provisions, in Schedules 23 – 27 of the Act, give the Court the ability to direct that its hearings be made available for members of the public to access by audio or audio-visually.

Will civil and tribunal hearings still go ahead?

As above, the aim with civil hearings is for the vast majority of hearings to be conducted remotely. For urgent matters, some courts may still hold a face-to-face hearing but these will be rare.

If you have a hearing scheduled, contact the Court that was due to hear your case to find out what arrangements have been made for your hearing.

Am I able to bring court proceedings to enforce a judgment?

Possession proceedings are stayed for a period of 90 days from Friday 27 March. It is not possible to bring such proceedings until the end of this period and the suspension may be extended.

Applications can be made to courts which remain open, see above, but delays are expected.

Registration of deaths, stillbirths and powers relating to bodies

Can I still arrange a funeral?

Yes, although it is recommended that funerals should be kept to close family members only, in order to minimise the risk of spreading the virus. Due to the social-distancing guidelines in place (as mentioned above), wakes and celebrations of life should take place after the threat of Covid-19 has passed.

How has death and stillbirth registration changed?

More flexibility has been introduced into the current death registration system, with a view to speeding up the registration process and protecting public health. With this new legislation, a death may be registered by funeral directors acting on behalf of the deceased's family and the documentation may be submitted electronically, instead of having to be physically presented. Furthermore, when doctors certify that the cause of death is Covid-19, there is now no need for a second confirmatory medical certificate in order for a cremation to take place.

Under normal circumstances a coroner is required to issue a Coroner's Certificate before a death certificate can be issued. Now, a coroner will only be notified where a doctor believes that there is no medical practitioner who may sign the death certificate, or if that medical practitioner is not available to sign within a reasonable time of the death.

Finally, usually a jury inquest will be required under section 7(2)(c) of the Coroners and Justice Act 2009, if the senior coroner has reason to suspect that the death was caused by a notifiable accident, poisoning or disease. In cases of confirmed or suspected Covid-19, this requirement has been removed.

What powers will local authorities have under this Act?

In situations where the number of dead significantly exceeds the capacity to manage the deceased, public authorities will have the power to deploy death management processes in their area. These powers would only be implemented where there is a risk to public health and scientific evidence and operational advice suggests that it is necessary.

The powers are likely to include: directing an increase in the operating times of crematoriums; directing companies to use their vehicles to move bodies; or directing others not directly involved in the funeral sector, to provide necessary support. This may include using commercial premises as temporary morgues.

Can my loved one be forced to have a cremation, even if it is against their religious beliefs?

No, this Act is aimed to ensure that the deceased are treated with the upmost respect and dignity. Accordingly, even where local authorities are implementing death management processes, personal choice will still be respected as far as possible. This element of personal choice protects those whose religious beliefs do not allow them to be cremated.

My loved one died from, or had symptoms of Covid-19, how will their body be handled?

There is a risk that the virus can still be transmitted after a person has died. Professionals working in the funeral sector have been advised to wear personal protective equipment ("PPE"), such as disposable eye protection, gloves, apron and mask, when dealing with the deceased. This means that viewing, hygienic preparations, post-mortem and embalming are all still permitted when undertaken by trained funeral staff wearing PPE.

The Government has strongly advised that mourners should not take part in any rituals or practices which will bring them into contact with the deceased's body. This includes washing, preparing or dressing the body. It also includes having a sealed casket.

Mental Health and Mental Capacity

How will these changes affect me?

You will only be affected by these changes if your local authority has decided that there is a need to activate their emergency powers. They will be able to do this where there are extreme staff shortages and/or a decision has been made by the local authority to prioritise services to protect vulnerable people. These emergency powers will be reviewed every 6 months.

What are the changes to Mental Health and Mental Capacity law?

The key changes regarding Mental Health are twofold. Only one doctor will be needed to decide whether a person should be sectioned (detained for assessment or treatment) under the Mental Health Act 1983 ("the 1983 Act"). The doctor will make this recommendation in accordance with the usual criteria, under sections 2(2) or 3(2) of the 1983 Act. The only change will be that a second doctor will no longer be required to agree with that recommendation, in circumstances where finding that second opinion would be impractical or would cause undesirable delay to obtaining treatment for that vulnerable person.

You will also be affected by this change if you are currently in hospital and are being treated without your consent. Usually, after 3 months a doctor would have to get a second opinion from another approved doctor in order to continue your treatment. Where the changes come into effect, that second opinion will not be required to avoid delays in individuals receiving the treatment that they need.

Furthermore, the court may order that someone accused or convicted of a crime, should be detained in hospital on the basis of one doctor's evidence, if they are satisfied that it is necessary in the circumstances and that securing a second opinion would be impractical. Prisoners may also be transferred to hospital with the approval of the Secretary of State and one doctor's report, instead of two.

Secondly, with Covid-19 putting a strain on the NHS, healthcare professionals now have more flexibility with the emergency detention time limits found in the 1983 Act.

Where you are a voluntary patient in hospital, or if you are already an in-patient and being treated for your mental health and you become an immediate risk to yourself or others, a doctor or a nurse may wish to stop you from leaving the hospital. They would normally make a report under section 5(2) or 5(4) of the 1983 Act recommending that you be admitted into hospital. From that report, you would then be detained for 72 hours (under section 5(2)) or 6 hours (under section 5(4)) in order to have a full mental health assessment. Now, those hours have been increased to 120 hours (under 5(2)) and 12 hours (under 5(4)). These time limits have been extended as professionals can take longer to conduct full assessments due to the demands of Covid-19.

Another time limit which has been extended is that found in sections 135 and 136 of the 1983 Act, which concerns police holding powers. These holding powers will affect you if you have

a mental health disorder and the police are concerned about your welfare. Police have the power to take you from anywhere to a place of safety, which can be a police station, a hospital, a care home or any other suitable place. Usually, you will be kept there for a period of 24 hours (which can be extended for another 12 hours with authorisation). This timeframe has now been extended to 36 hours (which can still be extended for another 12 hours).

How will these changes affect the Deprivation of Liberty safeguards?

At the moment, there has been no change to the Deprivation of Liberty safeguards (“DOLs”) available under the Mental Capacity Act 2005. DOLs will continue to apply to people living in care homes or to those who are admitted into hospital. Applications may still be made to the Court of Protection, in the event where an order is needed to deprive a person of their liberty in accordance with their best interest, and where they are living in a setting not mentioned above.

Local Authority Duties

I receive care, or care for someone who does, under the Care Act 2014 from the local authority. What does the Coronavirus Act mean for me?

The Coronavirus Act makes sweeping changes to local authority duties of care and support. The motivation behind the changes is to relieve pressure on services in the event of a surge in demand during the pandemic.

Under normal circumstances, local authorities have a duty to assess any adult that may need care and support (under the Care Act 2014). If such an assessment shows that an adult has “eligible” needs – these are specific care needs set out in regulations (Care and Support (Eligibility Criteria) Regulations 2015/313) – local authorities must meet those needs. This includes creating a specific care and support plan and may include supporting carers to assist vulnerable adults.

The Act removes the duties on the local authority to:

- Assess any adult who may need care and support
- Meet eligible care and support needs
- Keep care and support plans under review
- Provide care and support for children turning eighteen whose adult social care provision is not yet ready

Under the Act the local authority retains the power to make such assessments and meet needs, but it will not have to do any of those things unless failure to do so would breach the vulnerable adult’s human rights. This will apply to those who already have care packages, as well as those whose care needs arise/are assessed after the Act comes into force.

These changes only come into force when a local authority takes the decision to begin exercising ‘Care Act easements’ in accordance with government guidance. The government says that the local authority should only take this decision when “the workforce is significantly depleted or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties.”

The guidance also clarifies that:

- Until they are unable to do so, local authorities are still expected to take all reasonable steps to continue to meet care and support needs.
- Although local authorities will no longer be required to carry out detailed Care Act assessments, they are expected to respond to requests for support as soon as possible and make an assessment of what support is required. In doing so, local authorities are expected to consider the needs and wishes of the adult who needs support, and their family and carers.
- Local authorities will have the power to retrospectively charge people for care and support during the easement period.

I am a child with an Educational, Health and Care ('EHC') plan or the parent of a child with an EHC plan. What does the bill mean for me?

Children with an EHC plan are among those identified as “vulnerable” by the government. The guidance issued by the government sets out that children with an EHC plan should be risk-assessed by their school, in consultation with the local authority and parents, to decide whether they need to continue to go to school to meet their needs, or whether such needs can safely be met at home.

When conducting this risk assessment, the local authority and school need to consider four things:

- The potential health risks to the child from COVID, bearing in mind any underlying health conditions they may have;
- The risk to the child if some or all elements of their EHC plan cannot be delivered at all, and the risk if they cannot be delivered in the normal manner or usual setting;
- The ability of the child’s parents or home to ensure their health and care needs can be met safely
- The potential impact to the child’s wellbeing of changes to routine or the way in which provision is delivered

Under normal circumstances, the local authority “must secure” the specified educational provision set out in an EHC plan (as set out in s42 of the Children and Families Act 2014). The Coronavirus Act allows the Secretary of State to issue a temporary notice lifting this duty where appropriate. During this temporary period, the local authority only has to make “reasonable endeavours” to secure the provision in a child’s EHC plan. Any changes made to a child’s provision will only be temporary and would be reinstated once the notice from the Secretary of State is lifted.

The government has also said it plans to amend regulations to provide local authorities with more flexibility as to the EHC plan needs assessment process, though these have not yet been issued.

Further Information

BPP Pro Bono Centre has produced a series of Factsheets looking at how COVID-19 impacts on a range of different people. All of our factsheets can be viewed on the Pro Bono Centre Blog here: <http://probono.bppuniversity.ac.uk/blog/bpp-students-demystify-covid19/>

Help and Advice

Equality Advisory and Support Service (EASS)

Telephone: 0808 800 0082

Website: www.equalityadvisoryservice.com

Disability Law Service

Telephone: 0207 791 9800

Website: www.dls.org.uk/contact-us

Information and Updates

The UK Government publishes a number of documents and updates as part of the ongoing response to Covid-19. These can be found on the UK Government website here: <https://www.gov.uk/coronavirus>

Full text of The Coronavirus Act:

<http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>.

Full guidance from UK Government on Social Distancing and staying at home:

<https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>.

<https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

Wellbeing

This is an extremely difficult time for everyone. There is much uncertainty and a lot of anxiety. Along with your physical health, it is important to look after your emotional wellbeing during this period. There are a number of organisations that can help you during this difficult time.

Mind - 0300 123 3393 (Monday to Friday, 9am to 6pm) www.mind.org.uk