

# Coronavirus: Bill Summary

23 March 2020



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23 March 2020

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# 1. Introduction

***The UK Government introduced the Coronavirus Bill*** on 19 March 2020. The Bill was introduced to the House of Commons by the Secretary of State for Health and Social Care, Matt Hancock MP to provide new and time limited powers for governments across the UK to deal with the coronavirus outbreak.

The Bill proposes to enhance the ability of public bodies across the UK to provide an effective response to tackle the coronavirus epidemic. The Bill covers five key areas: increasing the available health and social care workforce; easing the burden on frontline staff; containing and slowing the virus; managing the deceased with respect and dignity; and supporting people. The powers in the Bill are intended to be used temporarily in response to an emergency situation.

As the UK Government's Coronavirus Bill seeks to legislate on subject matter which has already been devolved to the National Assembly for Wales, it requires the consent of the Assembly before it may pass the legislation. A Legislative Consent Motion (LCM) is due to be laid in the Assembly on Monday 23 March 2020.

Given the unprecedented circumstances in which the UK Bill is being introduced; to enable governments across the UK to respond to an emergency situation and to manage the effects of a pandemic, the LCM will not be scrutinised by the Assembly's Committees in the usual way. Assembly Members will have the opportunity to undertake scrutiny in plenary on Tuesday 24 March 2020.

On 17 March 2020, the Minister for Health and Social Services issued a **written statement** declaring that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health, and laid the **Health Protection (Coronavirus) (Wales) Regulations 2020** to help delay or prevent further transmission of the virus. The Welsh Government further exercised its powers under the 1984 Public Health Act on 20 March 2020. The **Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020** were introduced in order to close restaurants, pubs, cafes and other facilities where people gather, and came into force immediately.

The Assembly's Health, Social Care and Sport Committee held an **oral evidence** session on the Bill with the Minister for Health and Social Services, Vaughan Gething AM on Wednesday 18 March 2020. The First Minister, Mark Drakeford AM focused on the Coronavirus Bill in his **oral update** on Thursday 19 March 2020.

The House of Commons Library has prepared **a series of Briefing papers** on the Bill. The Library has also published a briefing paper on '**Deploying the armed forces in the UK**'. The UK Government announced last week that up to 20,000 military personnel will be put on standby to support the public services as part of a new COVID Support Force.

The Welsh Government's webpage **Coronavirus (COVID-19)** provides a list of Welsh Government statements issued in relation to the virus and is updated regularly.

This Briefing paper provides a summary of the potential impact of the Coronavirus Bill on Wales. **At the time of publishing this briefing, the Welsh Government had not yet laid the Legislative Consent Motion.**

## 2. Background to the Bill

The House of Commons Library has published a [background briefing on Coronavirus](#), which covers what the virus is and relevant statistics, and the UK Government's response to it. Senedd Research also regularly updates its [online timeline](#), which tracks the actions and measures being taken by the UK and Welsh governments to deal with the Coronavirus outbreak.

The UK government's [Coronavirus action plan](#), published on 3 March 2020, set out measures to respond to the coronavirus outbreak. The joint action plan between the UK Government and devolved governments in Wales, Scotland and Northern Ireland set out a phased response to the virus.

The overall phases of the action plan are:

- **Contain:** detect early cases, follow up close contacts, and prevent the disease taking hold in the UK for as long as is reasonably possible.
- **Delay:** slow the spread in the UK, if it does take hold, lowering the peak impact and pushing it away from the winter season.
- **Research:** better understand the virus and the actions that will lessen its effect on the UK population; innovate responses including diagnostics, drugs and vaccines; use the evidence to inform the development of the most effective models of care.
- **Mitigate:** provide the best care possible for people who become ill, support hospitals to maintain essential services and ensure ongoing support for people ill in the community to minimise the overall impact of the disease on society, public services and on the economy.

The Bill is intended to give public bodies across the UK the powers they need to provide an effective response to the coronavirus epidemic as set out in the action plan. The governments of the UK have worked together to agree the legislation, to ensure that the UK's response is consistent and effective.

The Bill is intended to be time-limited – for two years – and not all of the measures will come into force immediately. The Bill allows the four UK governments to switch on the new powers when they are needed, and, crucially, to switch them off again once they are no longer necessary, based on the advice of Chief Medical Officers of the four nations. The measures in the Coronavirus Bill are temporary.

## 3. Main Elements of the Bill

The purpose of the **Coronavirus Bill** is to provide the powers needed to respond to a coronavirus pandemic. Part 1 sets out the main provisions of the Bill (Clauses 1-70). Part 2 covers the final provisions (Clauses 71-87). To accompany the Bill, the UK Government has published a summary on [Gov.uk](https://www.gov.uk) and there is also a summary in the **Explanatory Notes** on pages 5 to 20. The UK Government has published its **impact assessment**.

### 3.1. Part 1

#### Increasing the available health and social care workforce

The Bill makes provision to help increase the available health and social care workforce, and to reduce the number of administrative tasks they have to perform so that essential health and social care services can function during the height of the epidemic. The measures are intended to ease the pressures from the increased numbers of people becoming ill with COVID-19 who require medical treatment, alongside the pressures from increased staff absence, if staff are unwell or self-isolating with their households. The Bill includes the following provisions:

#### The regulation of healthcare professionals

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The Bill enables regulators to emergency register suitable people as regulated healthcare professionals, such as nurses, midwives or paramedics. This includes (but is not limited to) recently retired professionals and students who are near the end of their training.

Clause 2 and Schedule 1 of the Bill provide for the emergency registration of health and care professionals across the UK by the Nursing and Midwifery Council (NMC) and the Health and Care Professions Council (HCPC). There are existing powers for **the General Medical Council** (GMC) and the **General Pharmaceutical Council** (GPC) to register doctors and pharmacists in the UK in an emergency and the Bill intends to confer similar powers on the NMC and the HCPC. It is intended that this additional available clinical resource within the system will help to ease pressure on services. This change in regulatory requirements is a reserved matter, with the UK Government functioning on behalf of the four nations.

The Explanatory Notes set out that on notification from the Secretary of State of an emergency, registrars of the NMC and HCPC will be able to temporarily register



'fit, proper and suitably experienced persons' as regulated healthcare professionals. The NMC will also have powers to increase registrant's responsibilities in the event of an emergency involving illness or loss of human life – for example by enabling nurses (not already qualified to do so) to order drugs, medicines and appliances in a specified capacity with regards to the emergency.

Schedule 1, Section 1(2) of the Bill states that no registration fees will be charged for inclusion on these temporary registers.

In the Assembly's Health, Social Care and Sport Committee on **18 March 2020**, the Minister for Health and Social Services confirmed there would be no compulsion for retired individuals to return to practice, and that decisions should be made locally on how to most appropriately deploy new and returning staff who have been through emergency registration, noting:

Because a range of those people may be in higher risk categories, we're even thinking about non-contact work that they may still be able to do to help bolster front-line services.

An individual's temporary registration may cease if the circumstances that led to the emergency registration no longer exist, and for other reasons, including where the registrar suspects the individual's fitness to practice may be impaired.

The Bill's impact assessment states that it is unknown how many professionals registered under the powers in the Bill will be willing to provide services. Wales' Chief Medical Officer, Chief Nursing Officer and Director of Social Services **announced on 21 March 2020** that some 5,000 letters have been sent to people who have left or retired in the last three years, asking them to re-register with their relevant professional bodies. They will be asked what role they could play and how much time they can dedicate. This statement also reported that the Welsh Government is exploring ways to harness the skills of final-year medical students, student nurses and student social workers, who are being offered the opportunity to take on temporary, fully-paid roles to boost the frontline further.

These provisions come into force on the day on which the Act is passed. The relevant regulatory bodies, Royal Colleges and trade unions have indicated their support for the emergency registration proposals, and the NMC have **issued a statement** outlining actions intended to expedite expansion of the nurse workforce.

## The regulation of temporary social workers

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Clause 5 and Schedule 4 of the Bill would also enable regulators in England and Wales to temporarily add social workers to their registers who may have recently left the profession, to ensure continuity of care for vulnerable children and adults. Schedule 4, Section 2 relates specifically to Wales and modifies section 83 of the Regulation and Inspection of Social Care (Wales) Act 2016. The registrar of Social Care Wales (SCW) will be able to temporarily register 'fit, proper and suitably experienced persons' with regard to an emergency, as social workers. As noted above, contact in Wales is being made with those who have recently left social work, as well as final-year social work students.

The registration of a person under these regulations is subject to any conditions imposed by the SCW registrar, who may at any time revoke or vary those conditions.

The Bill's impact assessment states that there will be no obligation for individuals who are eligible to be emergency registered for them to do so; it would be on a voluntary basis. The Welsh Government and SCW will work with employers to establish how these additional social workers could best be deployed.

Schedule 4, Section 2(11) confirms that no registration fees will be charged for inclusion on these temporary registers. Sections 2(10) and (11) state that a temporary registration will cease within 14 days if the circumstances leading to the emergency registration no longer exist, or immediately for other reasons, including where the registrar suspects the individual's fitness to practice may be impaired.

These provisions come into force on the day on which the Act is passed.

## Volunteering

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Clause 7 and Schedule 6 enables employees and workers to take Emergency Volunteer Leave, and Clause 8 establishes a UK-wide compensation fund to compensate for loss of earnings and expenses. The purpose of this provision is to ensure volunteers do not suffer financial disadvantage as a result of volunteering to undertake a health or social care role.

The Bill creates a right to 'emergency volunteering leave' (EVL). A worker is entitled to take a period of EVL if they have obtained an 'emergency volunteering certificate', issued by an appropriate authority which states that the person has been approved as a volunteer in health or social care. The appropriate authorities in

Wales are Welsh Ministers, and county council or county borough councils.

The certificate must specify the dates for which the worker will be a volunteer, which must be two, three or four consecutive weeks. The worker must give their employer at least three days' notice before taking EVL. The Bill does not prescribe the sort of work for which a certificate might be issued, although it must relate to health and social care. The Bill sets out certain exceptions to EVL entitlement, including workers in businesses with less than ten staff, and staff in the House of Commons and the devolved administrations.

A worker can take EVL once only in each 'volunteering period', the first of which is 16 weeks from the date Schedule 6 comes into force. The Secretary of State can make regulations to create subsequent 16-week volunteering periods.

The Bill also create powers to establish a scheme to compensate for some loss of earnings and expenses incurred by volunteers. As set out in the Bill, the sums required for the payment of compensation are 'to be provided by the Secretary of State out of money provided by Parliament'. The Secretary of State must publish and lay before Parliament details of the compensation arrangements 'as soon as reasonably practicable after they are made'.

Schedule 6 also provides a range of employment law protections to workers who take EVL, including protection of pension rights, terms and conditions of employment and seniority. Part 3 of Schedule 6 also modifies the Employment Rights Act 1996, including a new section 104H, which protects an employee from dismissal for taking or seeking to take EVL.

As the Explanatory Notes state, these measures will enable relevant appropriate authorities to maximise the pool of volunteers that they can draw on to fill capacity gaps by addressing two primary deterrents to participation: risk to employment and employment rights, and loss of income.

## Indemnity

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Clause 10 provides indemnity for clinical negligence liabilities arising from NHS activities carried out for the purposes of dealing with, or because of, the coronavirus outbreak, where there are not existing indemnity arrangements in place. This will ensure that those providing healthcare service activity across the UK are legally protected for the work they are required to undertake as part of the COVID-19 response. This is in line with and will complement existing arrangements. The Explanatory Notes outline that:

This indemnity is intended to act as a 'safety net' where clinical negligence arising from the provision of such services is not already covered under a pre-existing indemnity arrangement, for example under state indemnity schemes, private medical defence organisation or commercial insurance policies or through membership of a professional body (p.8).

Existing indemnity arrangements in Wales include state indemnity for clinical negligence, indemnity provided by the **Welsh Risk Pool** and the **General Medical Practice Indemnity Scheme**, which provides a state-backed scheme to provide clinical negligence indemnity for providers of GP services in Wales.

In the Assembly's Health, Social Care and Sport Committee on 18 March 2020, the Minister for Health and Social Services stated that this Clause was linked to the emergency registration processes and the smooth re-integration of staff:

... to make sure that indemnity provision is available, so they don't have to take on personal risk.

The Bill's impact assessment notes the significant impact on demand on healthcare services a COVID-19 outbreak would bring, and although existing indemnity provision would be sufficient 'in the majority of cases', NHS staff:

will be required to assist in dealing with the response to the coronavirus outbreak and may, in some instances, be asked to undertake NHS activities that are not part of their normal day-to-day work...

... We expect that this might include the temporary alteration of some practices to enable effective healthcare to continue to be administered across the wider sector.

On 3 March 2020, the Chief Executives of the NMC, HCPC and the other statutory regulators of health and care professionals issued **a joint statement**, recognising that in dealing with the outbreak professionals must use their professional judgement to assess risk to deliver safe care, informed by relevant guidance but:

We recognise that in highly challenging circumstances, professionals may need to depart from established procedures in order to care for patients and people using health and social care services.

## NHS Pensions

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Clause 43 (for England and Wales) suspends the NHS Pension Scheme rule that currently prevents some NHS staff who return to work after retirement from working more than 16 hours per week, along with rules on abatements and draw-down of NHS pensions that apply to certain retirees who return to work. This purpose is to allow skilled and experienced staff who have recently retired from the

NHS to return to work, and will also allow retired staff who have already returned to work to increase their commitments if required, without having their pension benefits suspended. (Clauses 44 and 45 relate to the pension arrangements in Scotland and Northern Ireland respectively).

The Explanatory Notes state:

It is important that restrictions on returning to work whilst in receipt of a pension do not act as a disincentive for healthcare professionals who wish to re-enter the workforce in order to assist the healthcare response to covid-19. The Bill will therefore suspend certain rules that apply in the NHS Pension Scheme in England and Wales so that healthcare professionals who have recently retired can return to work and those who have already returned can increase their hours without there being a negative impact on their pension entitlements.

It has recently been highlighted that the current pension rules can have a **negative financial impact** on senior NHS clinicians taking on additional work to cover shifts.

## Disclosure and Barring Service

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Regulations governing both social care service and healthcare providers in Wales include vetting requirements via Disclosure Barring Service (DBS) procedures for staff before they are permitted to start work. Clause 31 of the Bill would allow Welsh Ministers to issue a notice disapplying or varying these requirements, to provide increased flexibility for providers to address workforce issues.

Notices issued in this way must contain a statement by the Welsh Ministers, explaining why the step is appropriate and proportionate. Notices will have effect for one month though Welsh Ministers may issue further notices as well as cancelling them (Clause 31(6)).

In the Assembly's Health, Social Care and Sport Committee on 18 March 2020, Welsh Government officials stated:

We've asked for specific DBS checks to be relaxed in order to facilitate these new workforce people coming into the system. The reason we've asked for that is we're in a slightly different position to England. They already had arrangements with the DBS to have a system where they could allow people to start working while they were waiting for their full application to come through. So, the certificates will still be obtained, but it's about being able to let people start helping straight away while the certificate process is being looked at.

Clause 31(10) requires that Welsh Ministers publish a notice relating to this section

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and 'take steps to' bring it to the attention of those likely to be affected.

The House of Commons Library has published a [briefing on the health and social care measures](#) in the Bill, which sets out the provisions in the Bill as they apply to the four nations.

### 3.2. Easing the burden on frontline staff, both within the NHS and beyond

The Bill makes provisions in other areas of the NHS and in other sectors where activities are vital to keeping the country running safely and securely. This includes caring for children in education, protecting our borders, detaining and treating people under the Mental Health Act, supporting local authorities and ensuring national security. The Bill introduces measures to reduce the number of administrative tasks they have to perform, allowing key workers to perform more tasks remotely and with less paperwork, and to enable these services to continue to operate effectively during periods of reduced staffing. The Bill includes the following provisions:

#### Mental health

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Clause 9 and Schedule 7 include provisions to make temporary, emergency changes to the Mental Health Act 1983 which applies to England and Wales. Part 2 of the Schedule sets out the modifications that will be switched on if the mental health sector is experiencing unprecedented resource constraints, which are resulting in patients' safety being put at significant risk.

Schedule 7, Part 2 (section 3) sets out these modifications including provisions to enable existing mental health legislation powers to detain and treat patients who need urgent treatment for a mental health disorder, and are a risk to themselves or others, to be implemented using just one doctor's opinion (rather than the current two). The purpose is to ensure that those who are a risk to themselves or others still get the treatment they need when there are fewer doctors available to undertake this function.

Sections 4 and 5 allow for the temporary extension or removal of time limits in the mental health legislation to allow for greater flexibility where services are less able to respond. It means patients could be detained for longer than they otherwise would have been under normal circumstances – under section 5 (emergency detention for people already in hospital, which would extend from 72 hours to 120 hours, and nurses' holding powers would extend from 6 to 12 hours); and under

sections 135 and 136 (police powers to detain a person found in need of immediate care at a “place of safety” would extend from 24 hours to 36 hours). The UK Government’s summary document states that these temporary changes would be brought in only in the instance that staff numbers were severely adversely affected during the pandemic period.

The Bill also makes provision (Part 2, section 9) to allow for the clinician in charge of a patient’s treatment to certify that it is appropriate for medication to be given to the patient without consent (usually this must be certified by a separate doctor).

In the cases of defendants and prisoners with a mental health condition (Part 2, sections 6 and 7), the Bill allows more time for a person to be kept on remand in hospital, and more time to transfer a prisoner from prison to hospital, allowing more time before a direction to transfer would expire. These changes would also allow for one doctor rather than two to advise courts, prisons and the Secretary of State on the need for a person to receive psychiatric care.

Concerns have been expressed by mental health charities in response to the relaxing of legal safeguards in the Mental Health Act 1983 in order to free up medical staff, but both the UK and Welsh governments insists these powers are temporary, and will only be turned on in an emergency situation. However, concerns have been raised that this could lead to vulnerable individuals being unnecessarily detained beyond their section because of workforce pressures, or equally, that individuals could be released early without the appropriate medical treatment or support because of pressures on the workforce or the mental health estate.

In response to a question from Angela Burns AM, in the Assembly’s Health, Social Care and Sport Committee’s meeting on 18 March 2020, the Minister for Health and Social Services confirmed that the provisions in the Bill to amend the Mental Health Act 1983 would be in place for the two-year period of the Bill but he emphasised the measures would only be turned on at specific points in time, with the powers being exercised on advice from the Chief Medical Officer (or nominated other). Providing further detail, Neil Surman, Deputy Director of Public Health at Welsh Government explained:

In relation to the clauses in the Bill that can be switched on and off depending upon the circumstances and the need that arises, the changes to mental health legislation, for instance, is one of those. Of course, we’ve already done an analysis on our understanding of the current Bill—we’re yet to see the final version—of both what provisions are devolved and non-devolved, which provisions involve the exercise



of concurrent functions and powers and which amongst all of these clauses could be turned on or off. There is a sharp distinction in the Bill and we have sought with, again, UK and other devolved Government colleagues, to present it in such a way that it's a Bill of two halves, almost. There are those provisions that will have a life for the two-year period of the Bill until it sunsets, and those are the provisions that are enabling and supportive of the types of interventions that the committee expressed an interest in a little earlier.

So, where we're seeking to be helpful, to remove restrictions, to provide compensation and other types of support, those provisions will be in play for the life of the Bill—hopefully the Act. There are many more, though, such as those you've just described, that involve potentially quite significant infringements on individual liberty and freedom, and those provisions we very deliberately want only to be exercised on the basis of a turn off, turn on, when they're needed under the advice in Wales of the chief medical officer or other qualified professionals so that Ministers are properly advised on the appropriate circumstances when such drastic action might be needed. But it is not the intention that these things should apply throughout the course of the next two years.

### NHS Continuing Healthcare assessments

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Clause 13 of the Bill changes the procedure for discharge from an acute hospital setting for those with a social care need, by allowing NHS providers to delay undertaking an NHS Continuing Health Care assessment during the emergency period. This applies to England only.

In the Assembly's Health, Social Care and Sport Committee meeting on 18 March 2020, the Minister for Health and Social Services explained that provisions relating to NHS Continuing Healthcare applied to England, and the Minister agreed to provide the Committee with a note to set out the differences in the way that continuing healthcare works in England and Wales and about people being discharged from hospital. That note has not yet been received or published.

### Local authority care and support

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Clause 14 and Schedule 11 reduce the duties on local authorities to carry out needs assessments and to meet care and support needs under the Social Services and Well-being (Wales) Act 2014 and the Care Act (2014) in England. Part 2 of Schedule 11 covers the powers and duties of local authorities in Wales (Part 1 covers England).

The duties on local authorities in Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014 to assess adults needs for care and support (and adult carers needs for support), and to meet eligible needs would no longer apply. Local authorities would only have a duty to meet needs for care and support where an



adult or adult carer may be experiencing or at risk of abuse or neglect.

Local authorities would still have the power to meet other needs and the Explanatory Notes state that they will still be expected to do so 'if they are able to and to prioritise provision as necessary'.

The Welsh Government (and the Department of Health and Social Care for England) will have the power to issue guidance to local authorities on how they exercise their functions under the legislation, and to direct local authorities to comply with the guidance.

The UK Government has also published '**Responding to COVID-19: the ethical framework for adult social care**'. The framework is intended to serve as a guide for making decisions and 'ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults'.

### *Assessments*

Currently there is a duty on local authorities to carry out a needs assessment where it appears that an individual may be in need of care and support or a carer may be in need of support (Part 3 of the Social Services and Wellbeing (Wales) Act 2014).

The provisions in the Bill remove these duties so there would be no requirement to carry out any needs assessments for adults (including adult carers). There would also be no duty to carry out financial assessments (a means test is currently applied and individuals usually contribute to the costs of care), and without a financial assessment, charges cannot be imposed for services.

However, where a local authority has not charged a person for their care during the pandemic, the Bill provides for the power to apply charges retrospectively, subject to a financial assessment.

### *Meeting care and support needs*

The current duties on local authorities to determine eligibility for statutory services, and to meet the eligible care and support needs of adults, (and the support needs of adult carers) would be removed. The only duty on local authorities in Wales to meet needs will be where an adult or adult carer may be experiencing or is at risk of abuse or neglect.

Local authorities will still have a discretionary power to meet other needs.

Additionally, a local authority would not have to comply with any current duties regarding attempting to accommodate a person's preference for particular accommodation, such as a particular residential care home.

The UK Government's impact assessment states that local authorities, working with providers, will be expected to do everything possible to maintain services over the coming period. However, during the peak of the pandemic, adult social care services will face surging demand and reduced capacity arising from higher rates of staff absence. It says this may make it impossible for local authorities to continue to deliver at current service levels, or undertake the detailed assessments they would usually provide.

In such circumstances it is crucial that LAs should be able to prioritise care in order to protect life and reach rapid decisions over the provision of care.[...]

These provisions, which would only be brought into operation for the shortest possible time at the peak of the coronavirus outbreak, would allow LAs to do this by temporarily releasing them from some of their duties. [...]

Even during the operation of these changes, LAs would still be expected to continue meeting all of their duties under the Act if they are able to do so. It would though allow them to prioritise the provision of services if needed [...]

The UK Government notes that the timing for triggering the clauses is key and will be based on clinical and medical advice regarding the progress of the coronavirus outbreak.

Members of the Assembly's Health, Social Care and Sport Committee questioned the Minister for Health and Social Services at their meeting on 18 March 2020 about the impact of these provisions, particular on unpaid carers. Members raised concerns for unpaid carers, who could have additional demands and caring duties placed on them, as well as having any support services such as respite care removed. The Minister was urged not to forget the needs of unpaid carers, 'who will have a tremendous burden put upon them as a consequence' of these measures.

The Minister said he recognises this concern and:

It's been a large part of our discussions about what to do and things to consider. If you think about both ends of the age range as well, there are lots of people who are in a risk category because of a healthcare condition who are unpaid carers; there are quite a lot of people over the age of 70 who are unpaid carers, either for partners or indeed for parents as well, and we also then have lots of young carers as well.

**Carers UK** say ‘it is essential that councils continue to assess the risks and vulnerabilities affecting carers and the people they support, particularly when reprioritising services’.

The UK Government’s impact assessment acknowledges that the provisions could mean that people may not have some care needs met, and that this could have secondary impacts on the family members or carers, or the local community, ‘to whom local authorities might have to look to provide temporary support’. However it reasons that in these extreme circumstances these impacts would transpire regardless of the new legislation and its intention is to allow local authorities to mitigate the negative impacts of necessary prioritisation as far as possible.

## Education and childcare

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The Coronavirus action plan set out that measures to close schools and other educational settings would be taken in the delay phase, at the right time, in order to reduce the spread of the virus. On Wednesday 18 March, the Minister for Education, Kirsty Williams AM **announced** that schools in Wales would close by Friday 20 March 2020.

The Children, Young People and Education Committee held an **oral evidence session** with the Minister for Education on Thursday 19 March 2020 about the Welsh Government’s response to the coronavirus outbreak as it relates to childcare and early year providers, schools, and further and higher education providers. Further and Higher Education institutions in Wales had already moved to online provision and away from face to face teaching and lecturing at this point, although the Coronavirus Bill does give the Welsh Ministers the power to direct them to close should they feel this is necessary.

The Welsh Government has said that childcare settings are not required to close and should remain open for the time being but only for children whose parents whose role is critical to dealing with coronavirus. However, it has also **announced** that providers will still receive funding under the Childcare Offer even if they have to close on public health grounds, if children do not attend due to coronavirus or if they have to close due to insufficient numbers. The Bill gives the Welsh Ministers the power to direct the closure of registered childcare providers.

The Bill includes three powers relating to education:

- **a power to require or direct the temporary closure of an educational institution or registered childcare provider.** Clause 35 and Schedule 15 (Part

1) gives the Welsh Ministers powers to direct the temporary closure of all (or any particular type of) education institutions. As well as schools, this includes further and higher education institutions as defined by the Further and Higher Education Act 1992, and training providers within the meaning of the Learning and Skills Act 2000. ;

- The Welsh Ministers may also direct the closure of registered childcare providers. In this context, childcare is defined as anything which amounts to child minding or day care for children for the purposes of Part 2 of the Children and Families (Wales) Measure 2010.
- Before directing the closure of settings, the Welsh Ministers: (a) must have regard to any advice from the Chief Medical Officer for Wales or one of the Deputy Chief Medical Officers for Wales relating to the incidence or transmission of coronavirus; and (b) must be satisfied that giving the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus.
- **a power to make specified types of directions in connection with the running of the education and registered childcare systems.** Clause 36 and Schedule 16 (Part 1) gives the Welsh Ministers powers direct to schools, FEIs and HEIs, training providers and registered childcare providers to continue to stay open and make certain types of provision. This provision may include: education, training or childcare, services relating to education, training or childcare, or ancillary services or facilities. Such a direction is referred to in the Bill as a 'temporary continuity direction'. Examples of different ways in which settings may be directed to operate, cited in Schedule 16, include: requiring a relevant institution to open, to stay open, to re-open, or to open at times when it would not usually be open; requiring the alteration of term dates and arrange for transport to people accessing their provision; etc. The Bill enables the Welsh Ministers to authorise local authorities to issue these directions in relation to schools and childcare providers and the Higher Education Funding Council for Wales (HEFCW) to issue such directions to HEIs.
- **a power to dis-apply or modify specified existing legislative requirements contained in or arising out of education and childcare.** The Bill would give the Welsh Ministers power to disapply or modify certain rules and requirements, for example the requirement to provide the curriculum, on settings which are set out in Schedule 16(7)(6). These are intended to enable schools and other institutions to operate effectively and without undue burden in an emergency period when efforts are focused on dealing with coronavirus.

In summary, the Bill aims to provide the Secretary of State and devolved Ministers

with powers to require educational institutions or childcare providers to stay open or relax some requirements around educational legislation in order to help these institutions run effectively during the event of an emergency. This could include reducing teacher ratios, adapting school meal standards and relaxing provisions for those with special educational needs.

The responsibility for early years and education is devolved to the National Assembly for Wales. The House of Commons Library has published a briefing paper on **childcare and education settings**, which covers some of the provisions as they relate to all four UK nations.

### Closure of ports

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Clause 48 and Schedule 19 gives the Secretary of State the power to suspend specified port operations by a written direction to a port operator where:

- there is a “real and significant risk” that there will be insufficient Border Force officers to maintain adequate border security as a result of the incidence or transmission of the virus; and
- the Secretary of State has taken “such other measures as are reasonably practicable” to mitigate that risk.

This applies to *any* UK airport, seaport, and hoverport as well as UK international rail terminals. The suspension cannot be longer than 6 hours initially. This can be extended for a further 6 hours by notice in writing, and for subsequent periods of 12 hours each.

The Secretary of State may also direct “any person” to take appropriate consequential actions - for example securing the safe arrival of a vessel, train or aircraft at an alternative port. The Schedule introduces a summary offence of failing to comply with a direction without reasonable excuse.

The Secretary of State “must notify” the devolved administrations of any direction issued.

The UK Government impact assessment states that if Border Force resources are depleted:

... a power is needed to ensure that we can direct arrivals to ports of arrival in the UK where there will be sufficient Border Force officers to carry out the necessary border security checks.

It stresses that the power is only available where the Secretary of State has

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“exhausted all relevant alternative mitigations” and that its use would be “governed by strict safeguards to ensure that ... it is used fairly, responsibly and proportionately and with the appropriate level of authority”. The Explanatory Notes say “there is a high threshold for the use of the power”.

The Assembly has legislative competence in relation to ports and harbours wholly in Wales with the exception of “reserved trust ports” (i.e. Milford Haven) and other reserved matters such as navigational rights and freedoms and shipping. The Welsh Ministers also have a number of executive powers. However, the UK Border Force and the operation of the UK Border are reserved matters.

On 18 March the Assembly’s Health and Social Care Committee discussed this provision prior to the Bill’s introduction on 19 March. In the context of the devolution settlement, Carwyn Jones AM asked which ports are affected and whether it applied only to ports with Border Force personnel.

The Minister for Health and Social Services replied:

... the starting point is that powers of Welsh Ministers remain the powers of Welsh Ministers. So, we’re not looking to surrender powers during the course of passing this legislation. We are talking about how we make use of concurrent powers. So, if there was a choice made, for example, at once to close all ports, then there is an ability to make a UK-wide decision that would require the consent of devolved Ministers.

The Welsh Government’s Deputy Director for Public Health said:

... that this is one of the provisions in the Bill where there has been some discussion about the extent of devolved competence, and there’s not necessarily yet a meeting of minds between us and UK colleagues as to where that line falls. So, I think it would be helpful to committee if we can follow up with a note once we see the final provisions of the Bill later today on this specific point, but also on the wider provisions of the Bill as they relate to Wales.

As is clear from the summary above the power applies to all UK ports and rests with the Secretary of State alone, who must notify the Devolved Administrations.

The House of Commons Library has published a [Briefing paper](#) covering emergency powers and national security. Section 5 covers the closure of ports.

## Investigatory Powers

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The Bill will introduce new, temporary powers for law enforcement and for the security and intelligence agencies. These are reserved matters and are dealt with in the House of Commons Library [Briefing paper](#) covering emergency powers and national security.

Clause 21 of the Bill requires the Investigatory Powers Commissioner to notify the Secretary of State if there is a shortage of Judicial Commissioners (JC) to operate the system under the Investigatory Powers Act 2016, due to the effects of the coronavirus. The Secretary of State would then be able to make regulations providing the Investigatory Powers Commissioner with the power to appoint temporary Commissioners. The Bill also gives powers to the Home Secretary - Clause 22, at the request of the Investigatory Powers Commissioner, to vary the time allowed for urgent warrants to be reviewed by a JC and how long they can last before they need to be reviewed.

The UK Government's summary document states that:

The Investigatory Powers Act 2016 is one of the critical pieces of domestic legislation for national security. It creates the statutory basis for the use of the investigatory powers by the intelligence and law enforcement agencies, using warrants issued under the act. These warrants provide the agencies with the capability they need to protect national security and investigate and prevent serious crime.

## Court proceedings

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The Explanatory Notes state that “the efficiency and timeliness of court and tribunal hearings will suffer” during the COVID-19 outbreak. Clauses 51 to 54 and Schedules 22 to 25 provide for the use of live audio links or live video links in a number of different proceedings and hearings. The summary document states that these measures will enable a wider range of proceedings to be carried out by video, so that courts can continue to function and remain open to the public, without the need for participants to attend in person. It states that this will “give Judges more options for avoiding adjournments and keeping business moving through the courts to help reduce delays in the administration of justice and alleviate the impact on families, victims, witnesses and defendants”.

With regard to enabling the public to see and hear the court proceedings, the Bill provides that if the proceedings are going to be conducted wholly through live video links or live audio links then the court may also direct that the proceedings are broadcast for members of the public. In addition, the court can direct that the proceedings may be recorded so the court can keep an audio-visual record.



### 3.3. Delaying and slowing the virus

The Coronavirus action plan sets out the measures the UK Government and devolved administrations will take to help delay and flatten the peak of the coronavirus epidemic. These include steps to slow the virus by advising people to reduce unnecessary social contacts.

On 17 March 2020, the ***Health Protection (Coronavirus) (Wales) Regulations 2020*** were made to provide for “the imposition of proportionate restrictions” on individuals where it’s suspected that they may have coronavirus. On 20 March 2020, the Welsh Government exercised its powers under the 1984 Public Health Act to introduce the ***Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020*** to prevent gatherings of people by enforcing closures of restaurants, pubs, cafes and other facilities where people gather. Welsh schools were also advised to close by Friday 20 March 2020.

The Bill includes provisions to allow the UK Government and the devolved administrations to restrict movement further, and give directions on events, gathering and premises. These powers would only used in an emergency but their implications in terms of restricting human rights are significant.

The Police have several existing powers they may already use in connection with their response to coronavirus as set in the House of Commons Library **Briefing paper** covering emergency powers and national security. The Bill would introduce additional, temporary powers, including the following provisions:

#### Restricting movement and quarantining

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Clause 49 and Schedule 20 provide public health officers with the power to quarantine those who have tested positive (or inconclusive) for coronavirus or those they reasonably suspect have the disease. They would also provide police officers and immigration officials with powers to take people they suspect have coronavirus to be tested or assessed by public health officers.

Clause 50 and Schedule 21 provide each of the UK governments with the power to issue directions prohibiting any event or gathering. They would also provide UK governments with the power to close or restrict access to any premises.

Taken together, Clauses 49 and 50 would provide each of the UK governments with wide-ranging powers to restrict the freedom of movement of citizens in order to prevent the spread of the virus. However, there are no powers in the Bill which



would allow directions to be issued requiring individuals to have prior permission or good reason to leave their homes. Neither would the Bill give the police or immigration officials powers to enforce elongated quarantines of people who have not been assessed for the virus by public health officers.

### Powers relating to events, gatherings and premises

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As stated above, Clause 50 and Schedule 21 enable the Secretary of State, Scottish Ministers, Welsh Ministers and Executive Office in Northern Ireland to restrict or prohibit gatherings or events, and to close and restrict access to premises during a public health response period (which is determined by Ministers based on criteria defined in the Schedule).

The power to restrict or prohibit gatherings or events may be directed towards the owner or occupier of the premises or anyone involved in holding such an event or gathering. Similarly, the power to close or restrict access to premises may be directed towards the owner or occupier of the premises, or anyone involved in managing access to and within the premises.

As defined in the Bill, 'premises' includes any place and, in particular, includes: any vehicle, train, vessel or aircraft; any tent or movable structure, and; any offshore installation. References to premises also include a part of premises.

The Secretary of State, Scottish Ministers, Welsh Ministers and the Executive Office in Northern Ireland should each have regard to the advice of their Chief Medical Officers before issuing a direction under this power.

In the Assembly's Health, Social Care and Sport Committee on 18 March 2020, the Minister for Health and Social Services was asked about the extent to which a joint approach would be taken across the UK to closing all premises such as pubs, restaurants and cafes for example. The Minister replied:

Well, those are conversations that we have between the Governments about what to do, when and where and the basis upon which to do that. So, if we really are going to enforce the closure of all of those premises, then that is going to be a conversation that the Welsh and Scottish Governments are involved in, and not just a matter to come out from a department within the UK Government.

### Police and immigration officer powers to detain infectious persons

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On 17 March 2020, the **Health Protection (Coronavirus) (Wales) Regulations 2020** were made to provide for “the imposition of proportionate restrictions” on individuals where it’s suspected that they may have coronavirus. The Regulations, which came into effect on 18 March 2020, were subject to the ‘affirmative’ procedure in the Assembly (used when changes to the law are required urgently). Similar **regulations** were made in England on 10 February 2020.

The Bill revokes these Regulations; the Minister for Health and Social Services and his officials explained to the Assembly’s Health, Social Care and Sport Committee on 18 March 2020 that the content of the Regulations would be subsumed within the Bill.

The relevant provisions are set out in Clause 49 and Schedule 20 of the Bill.

These confer certain powers on public health officers, constables and immigration officers to detain a person, for a limited period, who is, or may be, infectious and to take them to a suitable place to enable screening and assessment. These provisions come into force on the day on which the Act is passed.

### Postponement of elections

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On 13 March 2020, the Prime Minister **announced** that local government elections scheduled in England for 7 May 2020, and Police and Crime Commissioner elections held in England and Wales on the same date would be postponed by a year to 6 May 2021.

Clauses 57-66 of the Bill make provision to postpone elections and referendums, and for supplementary provisions to be made to handle the consequences of any election postponements (such regulations would be subject to the negative procedure).

The Electoral Commission had **called** for the 7 May elections to be postponed until the Autumn.

Specific Welsh provisions are included in the Bill in relation to elections. Clause 62 makes provision for the postponement of National Assembly for Wales elections for constituency vacancies. The clause provides that where before 6 May 2021, an election under section 10 of the Government of Wales Act 2006 to fill a vacant constituency seat would otherwise be required to be held, the Presiding Officer/ Llywydd of the National Assembly for Wales may fix a later date for that poll. Clause 63 gives powers to Welsh Ministers to postpone, by regulations, local

authority by-elections in Wales that would fall between commencement of the Act and 5 May 2021.

The House of Commons Library has provided a briefing paper on [elections](#).

### 3.4. Managing the deceased with respect and dignity

The UK Government states in its summary document that it wants to ensure the deceased are treated with the utmost respect and dignity and that the current procedures in relation to death and still-birth registration and management are modified to enable this and to protect public health. The Bill also takes account of the fact that families who have lost a loved one may be self-isolating, and that there may be reduced capacity to register and manage deaths as a result of pandemic-related sickness absence.

The House of Commons Library has published a [briefing paper](#) which covers the provisions in the Bill concerned with managing the deceased. This Bill includes the following provisions:

#### Registration of deaths and still-births

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Clause 17 and Schedule 12 of the Bill relate to the registration of deaths and still-births (Part 1 of the Schedule relates to England and Wales).

The provisions aim to ensure that the administrative processes relating to the registration of births, deaths and still-births can operate effectively during the COVID-19 outbreak, recognising that systems may be put under additional pressure and people may not be able to attend Registrars' offices in person.

The present system of death certification requires certification of the cause of death by a registered medical practitioner who attended the deceased during their last illness; alternatively, the death must have been reported to the coroner (in England, Wales and Northern Ireland) and the appropriate certificate provided by the coroner. The Bill will provide more flexibility in an emergency situation by enabling a doctor who may not have seen the deceased to certify the cause of death without the death being referred to the coroner.

Current legislation also requires a person, normally a family member, to attend the register office to register a death. The Bill will allow a person to register without attending the register office and will also extend the list of those people who can give the relevant information to the registrar to register the death to funeral

directors.

The Bill will make similar changes to the relevant legislation relating to England and Wales, Scotland and Northern Ireland to streamline processes.

Clause 18 of the Bill modifies *the Cremation (England and Wales) Regulations 2008* so that the medical referee (a registered medical practitioner engaged by the cremation authority who authorises cremations) will be able to authorise a cremation on the basis of the medical certificate from a single registered medical practitioner, without the confirmatory medical certificate from a second registered medical practitioner. Removing this additional medical practitioner oversight is aimed at simplifying the process in order to address the expected increased volume of deaths and the need to focus available medical practitioners on dealing with more priority cases. It also aims to reduce the likelihood of delays to allowing families to be able to make cremation arrangements for the deceased.

#### Powers relating to the transportation, storage and disposal of dead bodies

Clause 56 and Schedule 27 set out the powers relating to the transportation, storage and disposal of dead bodies.

Part 1 of Schedule 27 ensures that local authorities and national authorities (in Wales, the Welsh Ministers) have the powers to require persons (and in the case of national authorities, to require local authorities) to provide information to enable local and national authorities to ascertain capacity in areas to effectively manage the transportation, storage and disposal of dead bodies and other human remains. This may include information from private companies (such as private funeral homes or crematoria) on their capacity and operational status. According to the Explanatory Notes, this information sharing provision is needed to give visibility of the death management system and prevent the system from being overwhelmed, and will inform decisions about directions to be given.

National authorities can designate a local authority area where, as a result of coronavirus disease, there is likely to be insufficient capacity within that area to transport, store or dispose of dead bodies or other human remains. Once an area is designated, a local authority can give directions to companies or corporations. A national authority can give the same directions where a regional or national response is more appropriate. The trigger point of this will be a ministerial decision in the relevant nation. The Explanatory Notes state that “the flexibility to direct locally, regionally or nationally provides that powers are only used where necessary, but also used most effectively and in a proportionate way”.

The Explanatory Notes also set out that the directions that can be given are broadly defined, “as flexibility as to what may be required to deal with the situation is necessary”. However it is expected the following directions may be required: direction to a private company to, for example, extend crematoria operating hours or use their vehicle to transport deceased bodies. The power to direct also includes a power to make directions in relation to a body within an area to be moved to another area.

As described in the Explanatory Notes, personal choice for body disposal will be respected as far as possible, however, where there is no suitable alternative (for example if safe storage limits were likely to be breached and out of area alternatives were not available), the power to direct may be used to direct whether a body is buried or cremated. The impact assessment states that the wishes of the deceased and their next of kin “is a very important consideration” and that these wishes will be respected as far as possible, adding that “increasing the capacity of the death management system is critical for extending the length of time these wishes can be complied with”.

The information sharing provisions in Part 1 of the Schedule come into effect on Royal Assent. The Direction making powers in Part 2 are exercisable on designation by a national authority. A devolved minister can activate the powers in their country without needing the approval of the other nations.

Responding to a question about funeral poverty, the Health and Social Services Minister told the Assembly’s Health, Social Care and Sport Committee on 18 March 2020:

If we really are seeing a level of mortality that means that the normal process can’t cope then we’d have to make changes. And the initial part could be about increasing storage of the deceased and powers for local authorities to acquire places to store bodies, and then we have to consider what that means, in terms of whether it’s burial or disposal and whether it’s possible that single disposal may not be possible at the top end of the reasonable worst-case scenario. And, if that’s the requirement, because of the public health crisis that we’d be facing at that point, then, of course, we need to be able to direct parts of the system and the finance for that so that you don’t end up having an inability to deal with a practical challenge of large numbers of excess deaths because of the financial means of some of those people.

## Inquests

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Under current legislation, the status of COVID-19 as a notifiable disease means that any inquest into a death where the coroner has reason to suspect that the death

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was caused by COVID-19 must take place with a jury.

As described in the Explanatory Notes, this could have very significant resource implications for coroner workload and Local Authority coroner services, “resulting in a possible 25,000 additional jury inquests even at the lower end of covid-19 mortality modelling in England and Wales”.

Adjourning inquests until the pandemic has passed would deprive bereaved families of swift closure (and would, in any event, simply delay resource pressure for the future).

Clause 28 of the Bill will modify the current legislation to disapply the requirement that coroners must conduct any inquest with a jury where they have reason to suspect the death was caused by COVID-19.

### 3.5. Protecting and supporting people

#### Statutory Sick Pay and National Insurance Contributions

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The Bill makes provision in relation to Statutory Sick Pay (SSP). The Bill gives the UK Government the power to temporarily suspend the rule that means SSP is not paid for the first three days of work missed because of sickness or self-isolation, meaning that people can receive it from day one. It will enable employers with fewer than 250 employees to reclaim SSP paid for sickness absences relating to coronavirus during the period of the outbreak. Welfare benefits are largely non-devolved, with some exceptions such as the Discretionary Assistance Fund and Council Tax Reduction.

The House of Commons Library has prepared a [\*\*briefing paper on Statutory Sick Pay and National Insurance Contributions\*\*](#).

#### Food Supply

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The UK Government has said that it is collaborating with the food sector to manage the risk of disruption to food supply chains. The Bill creates a power for the appropriate authorities to require the food industry to provide information about food supplies in the event that an industry partner does not co-operate with the current voluntary information-sharing arrangements in place during a period of potential disruption.

Clauses 23-26 make provision in relation to food supply, and Clause 27 sets out the

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meaning of “food supply chain”. The Bill makes provision for information relating to the food supply chain to be shared and sets out which authorities may require information.

The Welsh Ministers are identified as an “appropriate authority” which may require information. Both the Secretary of State and the Welsh Ministers will have this power in relation to devolved areas in Wales. The Secretary of State can only exercise the power, in relation to devolved areas in Wales, with the Welsh Ministers’ consent. If this happens, the Secretary of State must disclose to the Welsh Ministers the information received that relates to Wales (see Clause 24(7)).

While food supply is a UK Government responsibility, the food supply chain is integrated. In the Assembly’s Health, Social Care and Sport Committee meeting on 18 March 2020, Rhun ap Iorwerth AM asked what role the Welsh Government had in relation to food supplies. The Minister for Health and Social Services explained:

There have been practical conversations with our emergency co-ordination group about how to make sure that food supply is not just coming into the UK, but that it is then equitably provided around the country, and what that means in terms of our own interactions, as citizens, when we’re going out and looking to buy, hopefully, in a normal way, although I understand why lots of people are behaving differently, because people are worried. But, we still continue to have the message from the food retail sector that there is enough food for everyone if people do try to behave as normally as possible, and that food is still coming in and suppliers are still being restocked.

Neil Surman, Deputy Director of Public Health at Welsh Government provided further assurances to food supply “is pretty secure at the moment”.

The House of Commons Library has prepared a [\*\*briefing paper on food supply\*\*](#).

## Signatures of Treasury Commissioners

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Section 69 of the Bill includes provisions to amend Section 1 of the Treasury Instruments (Signature) Act 1849. The Treasury’s functions are carried out by Commissioners of Her Majesty’s Treasury. The Prime Minister is the First Lord of the Treasury and the Chancellor of the Exchequer is the Second Lord of the Treasury. There are also six other Commissioners. The Treasury Instruments (Signature) Act 1849 requires that two or more Commissioner must sign some instruments or Acts in order for them to come into force. Section 69 of the Coronavirus Bill will amend this requirement so that only one or more Commissioners are required to sign it. The Explanatory Notes state that this will ensure that:

... the work of the Treasury can continue unimpeded during any covid-19 outbreak and instruments are not delayed in a situation where Commissioners are not available because they are impacted by the covid-19 outbreak.

### 3.6. Part 2: Final Provisions: Extent of powers and Parliamentary oversight

The Coronavirus Bill is broad and provides extensive powers to UK Ministers, devolved Ministers and some other bodies including local authorities. A large number of the powers provided to Ministers in the Bill are subordinate or secondary legislation making powers. Ministers and some other bodies are also provided with direction making powers and the Bill contains some Henry VIII powers. These are powers to amend primary legislation using secondary legislation powers.

The Bill includes a number of provisions to make the powers in the Bill flexible and Ministers can in many cases use powers in different ways, in different areas at different times.

The majority of powers contained in the Bill are temporary and will expire after a two year period unless Ministers seek to extend them via regulations. Some of the **Bills provisions** will not expire after two years. These are mainly the provisions in relation to indemnity, transitional provisions and some technical provisions.

For the two year lifetime of the Act both UK Ministers and devolved Ministers will have **powers** to “turn on and off” the provisions contained in the Act subject to some exceptions. This means they will be able to introduce regulations when they think they are needed, suspend these regulations if the situation changes and revive the regulations again at a later date should they be required again.

Given the breadth and extent of both new and temporary powers in the Bill to tackle COVID-19, the Bill also contains a number of provisions aimed at placing some control or limits on the powers being provided.

Provisions are also included for the parliamentary oversight of UK Ministers on the use of powers in non-devolved areas but no such provisions have been included for the devolved Ministers. **This means that, as drafted, there are no requirements in the Bill for Welsh Ministers to report on the use of their powers to the Assembly.**

A number of amendments have been tabled by MPs to seek to increase the control and limits on the powers contained in the Bill.



Further information on the specific clauses and proposed amendments is set out below:

### Commencement

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Some of the Bills provisions will come into force on the day the Act is passed. Others will come into force when either UK Ministers or devolved Ministers pass regulations bringing them into force.

Those sections that will be brought into force by regulations are set out in Clause 73(2) of the Bill. These include regulations in relation to emergency volunteering leave, mental health and mental capacity legislation and the registration of deaths and still births.

UK Ministers and Welsh Ministers are provided with what are known as ‘concurrent’ regulation making powers. This means that both the UK Ministers and Welsh Ministers have the same regulation making powers in relation to Wales. If the UK Ministers are making powers listed in Clause 73(2) of the Bill in relation to Wales then they must have the consent of the Welsh Ministers before doing so.

Both UK Ministers and Welsh Ministers will have the powers to introduce regulations for different purposes, in different areas and for different days to respond to the situation within the country.

### Powers to suspend and revive provisions in the Act

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Clause 74 of the Bill contains powers to enable UK Ministers and devolved Ministers, in areas of devolved competence, to switch provisions in the Bill “on and off” i.e. to suspend and revive them.

They can suspend and revive them more than once during the two years the Act will be in force. They will be able to suspend and revise provisions in different ways in different areas and at different times. The Bill’s **Delegated Powers Memorandum** states:

This 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 parliamentary procedure.

This means that there will be no formal role for parliamentary or devolved legislature scrutiny of any regulations made by UK or devolved Ministers to switch the provisions in the Bill ‘on and off’.

There are some provisions which are excepted from this general 'on and off' power. These are set out in subsection 6 of the Clause.

### Expiry of the Act and the power to alter the expiry

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Given that the Bill is intended to enable a time-limited response to an emergency situation, the majority of the provisions in the Bill will expire after two years with two exceptions.

Some provisions listed in Clause 75 (2) of the Bill will not be subject to expiry. As set out above this mainly includes the indemnity, transitional and some technical provisions.

In addition, Clause 76 provides both the UK Ministers and devolved Ministers, with the power to alter this two year expiry date.

Clause 76(1) of the Bill provides UK Ministers and devolved Ministers with powers to bring forward regulations so that provisions in the Bill expire sooner than the end of the two year period if they are not needed. These regulations would be subject to the affirmative procedure and would be subject to a vote either in the Houses of Parliament or in the Assembly if made by Welsh Ministers.

Clause 76(2) of the Bill provides UK Ministers and devolved Ministers with powers to bring forward regulations to extend provisions in the Bill beyond the two period for a further six months, on a rolling basis. Meaning that if the UK Parliament or a devolved legislature approve, then the regulations could be in force for much longer than the initial two year period.

Regulations made under this section will be made either under the affirmative or made affirmative procedure. If regulations are brought into force using the made affirmative procedure then they immediately come into force but the UK Parliament or a devolved legislature would have to vote to approve them within 40 sitting days or the powers will expire.

UK Ministers and Welsh Ministers are provided with 'concurrent' regulation making powers under this clause. If the UK Ministers are making regulations under this clause of the Bill in relation to Wales, then they must have the consent of the Welsh Ministers before doing so.

As with other regulation making powers given to Ministers under this Bill, Ministers will be able to make different provisions for different areas. For example to provide

that a relevant provision in the Bill is extended in one area but not others.

Ministers will also be able to make transitional, transitory and savings provisions to enable them to address any issues that might arise due to the provisions in the Bill ending earlier than expected or being extended longer than originally intended.

### Power to amend the Act in consequence of amendments to subordinate legislation

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In relation to this Clause 77, the **Explanatory Notes** to the Bill state:

Many of the provisions in this Bill operate by modifying the effect of pieces of secondary legislation. If underlying secondary legislation that the Bill modifies changes during the life of the Bill the modifications would no longer work properly. This clause therefore allows for the update of the modifications contained in the Bill in the event that the underlying legislation is changed. This ensure the measures in the Bill will still have the intended effect.

This power is a concurrent power and both UK Ministers and Welsh Ministers will have the same powers in relation to Wales. If the UK Government is passing regulations under this clause in relation to Wales then it must ask the Welsh Government for consent before doing so.

### Power to make consequential amendments

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Clause 78 provides a power to UK Ministers and devolved Ministers to make consequential changes to any other piece of legislation so that it aligns with this Bill. This is a very broad power. Both UK Ministers and devolved Ministers can also revoke any consequential changes made under this power to other pieces of legislation when any provision of the Bill is suspended using Ministers 'on and off' powers or when the lifetime of the Bill expires.

If Ministers amended a piece of secondary legislation using this power then the negative procedure can be used. If Ministers are amending a piece of primary legislation then the affirmative procedure or made affirmative procedure described in the sections of this paper on clause 75-76 apply.

This power is a concurrent power and both UK Ministers and Welsh Ministers will have the same powers in relation to Wales. If the UK Government is passing regulations under this clause in relation to Wales then it must ask the Welsh Government for consent before doing so.

## Procedure for certain regulations

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Clauses 79-82 set out the procedures that the UK Ministers and devolved Ministers must follow when they are making certain regulations under this Bill. Some of these have been set out above. Of greatest relevance to the Assembly will be Clause 79 which sets out the procedures for UK Ministers and Clause 80 which sets out the procedures for Welsh Ministers. For the most part either an affirmative or draft affirmative procedure will apply to regulations covered by these clauses. Further information on the regulation making powers provided to Ministers under the Bill and the procedure attached to them can be found in the **Delegated Powers Memorandum** that accompanies the Bill. .

## UK Parliamentary Oversight

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Clause 83 and 84 relate to parliamentary oversight of the Bill. Clause 83 of the Bill requires the Secretary of State in respect of all non-devolved provisions in the Bill to report to the UK Parliament every two months on the 'status' of the provisions in Part 1 of the Bill. The report must include details of what provisions are in force at the end of the reporting period, any provisions that have been in force but are currently suspended or when the expiry date for any provisions are altered. If the Secretary of State does not issue a report within seven sitting dates of the reporting period concluding (i.e. at the end of 2 months) then, the Secretary of State is required to make a statement to explain why a report hasn't been issued.

**As drafted the Bill does not include a duty for Welsh Ministers to report to the Assembly every two months on the 'status' of the devolved provisions contained in the Bill.**

If the Bill is still in operation a year after it has been brought into force, then a UK Minister must table a motion in Parliament, to allow for a parliamentary debate on a 'one year' report on the status of the provisions of the Bill. The motion will be a 'motion in neutral terms' which means that it will ask Parliament to consider the report but not to take a view on it. A 'motion in neutral terms' is not usually amended.

**As drafted the Bill does not require Welsh Ministers to table a motion in the Assembly to enable a debate on a 'one year' report on the status of the**

**provisions of the Bill.**

## 4. Response to the Bill

## 4.1. Human Rights implications

The powers in the Bill have wide ranging implications for the human rights of the people of Wales.

The Human Rights Act 1998 (HRA) enshrines the rights contained in the European Convention on Human Rights (ECHR) in UK law. This means that it is unlawful for any public authority to act incompatibly with human rights.

The Secretary of State for Health and Social Care made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the European Convention on Human Rights.

The UK Government published a **separate human rights memorandum** on 20 March 2020. This provides its own assessment of the compatibility of the Bill's provision with Convention rights.

### **Derogation in public emergencies**

It is possible under the HRA (Section 14) and ECHR (Article 15) for states to 'derogate' (which means opt out) from specific human rights obligations "in time of war or other public emergency threatening the life of the nation".

A **number of states** have already derogated from the Convention as a result of the coronavirus crisis, including Latvia, Armenia, Estonia, Moldova, and Romania. The UK Government has not said it would derogate from any part of the Convention.

### **Balancing the right to life against other rights**

The right to life is protected by Article 2 of the ECHR. This places a proactive obligation on the government to take action to protect people from coronavirus, especially those most vulnerable to it.

To protect people's right to life, the Bill provides the power to place restrictions on the rights to liberty, privacy and to protest, among others.

While governments are allowed to interfere with some rights in order to protect public health, others cannot be interfered with at all (they are 'absolute') – such as the right to life and the prohibition of torture, and inhuman or degrading treatment.

Other rights and freedoms (like the right to privacy and freedom of association) are

'qualified', which means that governments can interfere with them for a specific reason (a 'legitimate aim').

Examples of legitimate aims include the protection of health, the protection of other peoples' rights, and public safety.

Any interference must be no more than what is absolutely necessary to achieve one of the aims (i.e. it must be proportionate). The HRA says the interference must be necessary in a democratic society.

## **Detention**

The right to liberty is a 'limited' right. This means that there are certain defined circumstances when people can legitimately be deprived of their right to liberty, including if they are capable of spreading infectious diseases.

The Bill gives police and immigration officers powers to detain a 'potentially infectious' person for a limited period, and to take them to a suitable place for screening and assessment. A 'potentially infectious' person is defined as someone who "is, or may be, infected with coronavirus" or who has been in "an infected area within 14 days".

The European Court of Human Rights **has said** that a person can lawfully be detained to prevent the spread of disease when it is clear there is a danger to public health or safety, and where detention is a last resort after less severe measures have proved insufficient.

The Council of Europe issued a **Statement of Principles relating to the treatment of persons deprived of their liberty during the coronavirus pandemic on 20 March.**

These principles emphasise that all possible action must be taken to protect the health and safety of all persons deprived of their liberty, and that any action to deprive someone of their liberty must have a legal basis, and be necessary, proportionate and respectful of human dignity and restricted in time. It also notes that deprived persons should be provided with meaningful human contact every day.

## **Social care**

The Bill reduces the duties on local authorities to carry out needs assessments and to meet care and support needs under the Social Services and Well-being (Wales) Act 2014. The Bill instead states that local authorities must meet an adult's needs for care and support if "it is necessary ... for the purpose of avoiding a breach of the adult's Convention rights".

The British Institute of Human Rights (BIHR) **notes** that this provision is relevant to the right to not be subjected to inhuman and degrading treatment (Article 3), the rights to respect physical and mental wellbeing, autonomy, relationships, community participation and home (Article 8), and the right to not be discriminated against (Article 14).

The BIHR questions the Bill's approach on the basis that:

There are legal thresholds and tests which must be met when determining if a decision breaches (or may breach) Articles 3 or 8; and

- a) It is unrealistic to expect local authority staff to be able to make this decision. There is no mandatory human rights training for such staff, and very little integrated and consistent guidance.

The BIHR also notes the **proposals** put forward by the law firm 39 Essex Chambers for amendments to this section.

The Social Services and Well-being (Wales) Act 2014 requires that authorities must have due regard to the UN Principles for Older Persons. These principles include a requirement to ensure older people have access to :

- adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help;
- family and community care and protection, and
- health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

In terms of NHS Continuing Healthcare Assessments, the provisions to allow NHS providers to delay the assessment process for NHS continuing healthcare for individuals being discharged from hospital until after the emergency period has ended only apply in England, not Wales.

The BIHR has raised serious concerns about the discharge of vulnerable people without a continuing healthcare assessment. It suggested that the process should



be streamlined rather than suspended.

The Equality and Human Rights Commission (EHRC) also raised concerns that the redeployment of care professionals could risk leaving already vulnerable older people and people with mental health conditions exposed.

### **Protecting health professionals**

The Bill will make it possible for retired health workers to be brought back into the workforce to help the NHS cope with the pressures of the coronavirus response. These workers are likely to be older and so more vulnerable to the virus should they be deployed to the frontline.

It is argued that the right to life obliges the government to plan effectively to protect the lives of its NHS personnel. This is especially significant amid reports of medical staff lacking adequate personal protective equipment.

This issue could engage the right to life, and the prohibition of inhuman or degrading treatment.

### **Mental health**

The Bill relaxes safeguards to detain people under the Mental Health Act. This includes a reduction in the number of doctors required to sign off whether a person is sectioned from two to one, and the extension and removal of time limits where services are less able to respond.

The EHRC recommends that the relaxation of safeguards on detention must only extend as far as absolutely required, both in time and scope, and should be regularly monitored and adjusted.

The BIHR says that “this means that people may be released into the community early (without the right support) or find themselves detained for longer than necessary”. This could have implications for the person’s rights to life and liberty. The BIHR suggests that safeguards to protect people’s right to liberty should be maintained, but with streamlined processes.

### **Education**

Temporary closure and continuity directions could mean that children, students and pupils are unable to access - or prevented from accessing - education for a temporary period.

The right to education in Article 2 of Protocol 1 to the European Convention on Human Rights can be limited for a legitimate aim. The UK Government's analysis states that reducing the transmission of coronavirus between parents, children, students and education workers, and for the protection of public health and safety are legitimate aims.

Another issue highlighted by the EHRC and the UK Government's analysis is the disproportionate impact of school closures on pupils with disabilities. This issue could engage the right to education taken together with the right to non-discrimination.

### **Domestic abuse**

Women's Aid and the EHRC both highlight the increased risk of domestic abuse during confinement, which disproportionately affects women and girls. The health and educational settings that offer a way of identifying this issue will also be under increased pressure.

This issue could engage the right to life, and prohibition of inhuman or degrading treatment.

### **Surveillance powers**

The right to privacy protects against intrusion into people's personal life, including unnecessary state surveillance. This is a qualified right, so the government can interfere with it to protect national security.

The Bill makes provisions for the government to appoint "temporary judicial commissioners," who oversee the surveillance activity of intelligence agencies. The UK Government said that this is 'critical' for 'national security' – with some suggesting that this indicates the UK Government is anticipating public unrest as a result of prolonged isolation.

### **Public events and gatherings**

The Bill also permits the government to prohibit public events and gatherings to curb the spread of the disease. This could have significant implications for political protest, protected by the rights to freedom of expression and freedom of assembly. But these rights are qualified, which means that governments can take proportionate steps to curtail them to protect public health.

### **Deaths**

The Bill abandons the need to hold a jury inquest where a person's cause of death is listed as COVID-19. **Caselaw** of the European Court of Human Rights shows that governments are under an obligation to carry out a full investigation into any death in detention or custody, or where the state may be involved. A coroner could still exercise discretion to hold a jury inquest where they consider that there is sufficient reason to do so.

### **Criminal proceedings**

The Bill expands the availability of video and audio hearings in criminal proceedings, which may have an impact on the right to a fair trial. The UK Government's **analysis** considers there are sufficient safeguards against any violation of this right

But the EHRC **highlighted** that people with a learning disability or who are experiencing mental ill health find it hard to fully participate in judicial proceedings using video and audio links, and recommend that appropriate adjustments must be made for them during this time.

### **Elections**

The Bill allows for the postponement of elections, due to be held between the date the clause comes into effect and 5 May 2021. The next scheduled ordinary general elections to the National Assembly for Wales is 6 May 2021, which falls outside of the timescale in the Bill.

Article 3 of Protocol 1 (right to free elections) to the ECHR requires the equality of treatment of all citizens in the exercise of their right to vote. The UK Government's **analysis** states that (in relation to any elections postponed under this provision) "interferences with A3P1 can be justified and, in current circumstances, there is a clear and compelling justification for delaying the canvass process".

### **Impact on equality and non-discrimination**

The **EHRC** notes that while the virus does not discriminate, it will affect people in different ways. The priority should be those who are directly most seriously affected, more likely to be older people and those with underlying health conditions, and the people who care for them.

It also says measures to mitigate financial hardship will be essential for gig economy workers – who still have very few protections in employment law, and are more likely to be younger, from an ethnic

minority, or have caring commitments.

The EHRC also highlights that women still bear the majority of caring responsibilities for both children and older relatives. With schools and nurseries now closing for the majority of children, the need for this unpaid work will only increase in the weeks to come.

### **Oversight and monitoring**

The Welsh Government often cites equality and human rights as its core values. In relation to human rights, the use of the powers in this Bill by Welsh Ministers will require oversight and monitoring to ensure that they are used in a proportionate way in pursuit of a 'legitimate aim'.

**It is not yet clear what role the Assembly will play in monitoring the use of these powers by Welsh Ministers during the pandemic to ensure that the human rights of the people of Wales are not unnecessarily restricted.**

MPs and human rights organisations have raised concerns about the two-year sunset clause. The [British Institute of Human Rights](#) compares the two year term to the 30-day renewal term provided for by the Civil Contingencies Act 2004.

The UK and devolved governments will be able to 'switch on' the new powers in the legislation when they are needed (and to switch them off again once they are no longer necessary).

The UK Parliament [Joint Committee on Human Rights](#) announced on 19 March that it will scrutinise the UK Government's COVID-19 response, including the Coronavirus Bill. The Joint Committee has published a [briefing paper](#), which sets out the human rights implications of the outbreak.

## 5. Financial Implications of the Bill

The Coronavirus Bill is temporary, enabling legislation and so the UK Government has said that the monetary costings will be zero. The Explanatory Notes state that definitive financial implications of the measures put forward in the Bill are dependent on the severity and timing of the pandemic as well the geography of its developments. They go on to explain that it is not possible to provide exact estimates of expenditure at this stage. The Notes state:

Government is committed to ensuring that the provisions in this Bill are sufficiently funded to ensure our public services, people and business are equipped to manage the effects of the pandemic.

The Bill includes a section on Parliamentary approval for financial costs or for charges imposed stating that “the Bill requires a money resolution because Ministers of the Crown, government departments and other public authorities will incur significant expenditure as a result of the Bill”. Clause 72 of the Bill relates to financial provision.

On the 16 March 2020, the **Chancellor of the Exchequer announced** that the UK Government would provide “at least” £1.5 billion for the devolved administrations for their COVID-19 response. This includes £475 million for the Welsh Government and has been worked out through the Barnett Formula. This funding is part of the £12 billion UK Government response plan..

The Secretary of State for Wales said “we will continue to work closely with the Welsh Government to ensure the money reaches those who need it.”

On 19 March, the **Welsh Government announced** a £1.4 billion business support package for businesses intending to support small businesses as well as those in retail, leisure and hospitality sectors in Wales .

As consequential from business rates measures in England are based on the Barnett Formula, calculated using Wales’ population share the amount the Welsh Government receives will not necessarily reflect the cost of delivering the same policies in Wales.

## 6. Next Steps

The Bill is part of a concerted effort across the whole of the UK to tackle the COVID-19 outbreak and is being taken through Parliament at considerable speed. Assembly Members will have the opportunity to scrutinise the Bill in plenary on Tuesday 24 March 2020.

Clause 73(1) sets out that the provisions of the Bill – other than those listed in Clause 73 (2) – will commence on Royal Assent. In its summary of the Bill, the UK Government sets out its expectation that this will happen, and that the provisions will begin to take effect from the end of this month.

The Bill will receive its second reading in the House of Commons on Monday 23 March 2020. A number of amendments have been tabled:

### **Amendments to Part 2**

A number of amendments have been tabled by MPs which seek to limit further the powers provided to UK and devolved Ministers by the Bill. They have received cross-party support and will be considered in Parliament on 23 March.

Amendments tabled include:

- An amendment that would seek to ensure the provisions of the Bill expire within six months unless regulations seeking their extension for a further six month period are passed by both Houses of Parliament.
- An amendment which requires the UK Ministers to re-seek Parliament's approval for the continuation of the Act at 6, 12 and 18 months via a motion in Parliament.
- An amendment which will require a debate to take place promptly on the 'status' reports to be published by the Secretary of State every 2 months and for some of the Bill's provision to cease to have effect if the House of Commons votes against a relevant motion on a status report.

A further general amendment has been tabled which calls on the UK Government to ensure that everyone in the UK 'has access to the basic means of living including food, water, fuel, clothing, income and housing' during the coronavirus crisis.

The Bill is expected to finish its passage through both Houses of Parliament by 26 March.

The majority of the provisions in the Bill will last for two years but they could be ended sooner or extended for further periods of six months if the UK or devolved

Ministers believed it to be necessary.