

The Coronavirus Bill

Member briefing

This short briefing details the measures included in the Coronavirus Bill, presented before parliament on 19 March 2020, which will have an impact on health and social care. The Bill follows the government's four-stage strategy to tackle the outbreak released on 3 March 2020 and seeks to enable public bodies to effectively respond to the COVID-19. The Bill can be found on the [UK Parliament website](#).

Key points

The Bill aims to enable the following:

- Increase workforce capacity by enabling regulators to emergency register recently retired professionals, without repercussion on their pensions, and students at the end of their training.
- Provide indemnity for clinical negligence liabilities arising from NHS activities carried out for the purposes of dealing with the coronavirus outbreak.
- Enable existing mental health legislation powers to alter requirements for detaining and treating patients, and allow expansion or removal of time limits to provide greater flexibility.
- Make changes to the Care Act 2014 in England and the Social Services and Wellbeing (Wales) Act 2014 to enable local authorities to prioritise the services they offer, in order to ensure the most urgent and serious care needs are met.
- Lift administrative requirements for early and quick discharge of patients, allowing greater focus on patients in most need.
- Introduce equivalent legal measures across the UK to delay and prevent the further transmission of the virus.
- Allow volunteers in the NHS to pause their main job to care for patients, without employment ramifications.



Introduction

Further to the government's coronavirus action plan on 3 March, which set out a four-stage strategy to contain, delay, research and mitigate the COVID-19 outbreak, the government introduced legislation on 19 March to provide emergency powers to public bodies to enable an effective response. The Bill includes a 'sunset clause', meaning that it will expire after the two-year period commencing from the moment it is passed and the measures will not all come into force immediately. The Bill allows the four governments of the UK to 'switch on' the new powers when they are needed, and, importantly, the Bill will enable the governments to switch them off once they are no longer necessary, based on the advice of Chief Medical Officers of the four nations.

In light of the exceptional circumstances as a result of the COVID-19 outbreak, the Bill will likely proceed through parliament unopposed, with MPs 'nodding' through the legislation rather than voting through lobbies. This fast-tracked Bill is therefore expected to complete all legislative hurdles on 23 March and to become law before the end of the month, with most provisions taking effect from this point. Provisions relating specifically to statutory sick pay are intended to have retrospective effect to 13 March.

The Bill has a number of key aims, covered from page three of this briefing, and two key themes:

- recognition that the peak of the epidemic needs to be flattened in order to save lives
- recognition that the duration of the pressure faced by health and social care in particular requires measures to address increased staff absence, patient volumes and vulnerability.

In light of this pressure, the Bill enables regulators to emergency register suitable people as regulated healthcare professionals; employees to take emergency volunteer leave; provision of indemnity for clinical negligence liabilities; suspension of the 16-hour retirement restrictions for NHS staff returning to work; and temporary changes to existing legislative powers to extend or remove time limits in mental health legislation and the Care Act. In addition, the Bill also seeks to ensure equivalent legal measures across the UK to delay or prevent further transmission of the virus.

What the Coronavirus Bill means for the NHS

The Bill sets out action in five key areas:

- Increasing the available health and social care workforce – for example, by removing barriers to allow recently retired NHS staff and social workers to return to work (and in Scotland, in addition to retired people, allowing those who are on a career break or are social worker students to become temporary social workers).
- Easing the burden on frontline staff – by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork, and taking the power to suspend individual port operations.
- Containing and slowing the virus – by reducing unnecessary social contacts, for example through powers over events and gatherings, and strengthening the quarantine powers of police and immigration officers.
- Managing the deceased with respect and dignity – by enabling the death management system to deal with increased demand for its services.
- Supporting people – by allowing them to claim statutory sick pay from day one, and by supporting the food industry to maintain supplies.

This briefing will focus on the areas and measures contained within the Bill which have implications for health and social care. What follows below are details of key measures which meet these criteria.

Increasing the available health and social care workforce

- Enable regulators to emergency register suitable people as regulated healthcare professionals, such as nurses, midwives or paramedics.
 - This might include (but will not be limited to) recently retired professionals and students who are near the end of their training.

- Registered staff can then be used appropriately, with decisions made on a local basis, to increase the available health and social care workforce and enable essential health and care services to function during the height of the epidemic.
- Enable regulators to temporarily add social workers who may have recently left the profession to their registers.
 - To allow continuity of care for vulnerable children and adults.
 - Enable employees and workers to take emergency volunteer leave in blocks of two, three or four weeks' statutory unpaid leave.
 - Establish a UK-wide compensation fund to compensate for loss of earnings and expenses incurred at a flat rate for those who volunteer through an appropriate authority.
- Provide 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 is no existing indemnity arrangement in place. The Bill states this is in line with, and will complement, existing arrangements.
- Suspend the rule that 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 is also designed to allow retired staff who have already returned to work to increase their commitments if required, without having their pension benefits suspended.

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

- 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).
- Temporarily allow extension or removal of time limits in mental health legislation to allow for greater flexibility where services are less able to respond. This relates to increasing the amount of time an individual can be held under section 5 (emergency detention for people already in hospital) from 72 hours to 120 hours, and nurses' holding powers would extend from six to 12 hours. 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. When a patient is in prison, the time in which they must be transferred to hospital will increase from 14 to 28 days.

- These temporary changes would be brought in only in the instance that staff numbers were severely adversely affected during the pandemic period and provide some flexibility to help support the continued safe running of services under the Mental Health Act.
- Make changes to the Care Act 2014 in England and the Social Services and Wellbeing (Wales) Act 2014 to enable local authorities to prioritise the services they offer, in order to ensure the most urgent and serious care needs are met, even if this means not meeting everyone's assessed needs in full or delaying some assessments.
 - Local authorities will still be expected to do as much as they can to comply with their duties to meet needs during this period.
 - These amendments would not remove the duty of care they have towards an individual's risk of serious neglect or harm.
 - These powers would only be used if demand pressures and workforce illness during the pandemic meant that local authorities were at imminent risk of failing to fulfil their duties and only last the duration of the emergency.
- Temporarily relax local authorities' duties in relation to their duties to conduct a needs assessment and prepare an adult carer support plan/ young care statement under the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Social Care (Self-directed Support) (Scotland) Act 2013 and the Carers (Scotland) Act 2016 to enable them to prioritise people with the greatest needs.

Delaying and slowing the virus

The Bill seeks to introduce equivalent legal measures across the UK to delay and prevent the further transmission of the virus by:

- enabling the departments of health in Northern Ireland and Scotland to make regulations for additional measures to be introduced to help them delay or prevent further transmission of COVID-19 – equivalent powers already exist in England and Wales.
- removing a restriction in how Scottish territorial health boards can deliver vaccination programmes so a wider range of healthcare professionals in Scotland would be able to administer a vaccine.

Managing the deceased with respect and dignity

- A coroner is only to be notified where a doctor believes there is no medical practitioner who may sign the death certificate, or that they are not available within a reasonable time of the death.
- Remove the need for a second confirmatory medical certificate, in order for a cremation to take place.

NHS Confederation viewpoint

It is critical that health and care services can focus on care for patients throughout the duration of the COVID-19 outbreak. Steps to decrease the regulatory burden, when measured, are welcome. The Care Quality Commission's positive response to our call for a suspension of planned inspections across health and care services during the COVID-19 outbreak, for example, is one such step. Removing some of the barriers for former colleagues to return to the service, is another. NHS England and NHS Improvement is also seeking to free-up the maximum possible inpatient and critical care capacity, with an operational aim to free up 30,000 or more beds for this purpose through the cancelling of elective operations, among other measures. These are the right actions and the sector will need more measures in this vein to assist with what will be the greatest challenge faced by the NHS in its history.

The NHS will most likely be faced with significant demands on capacity in the short and medium term and this will have a knock-on impact on services such as mental health and elective services. Some of the measures contained within the Bill will therefore be necessary to reflect the realities of the burden health and social care will face in the coming months. But these measures on their own will not be sufficient. It is also vital that we see an expansion of adult critical care beds, ventilators, personal protective equipment (PPE) and strict implementation of social distancing measures if we are to meet this challenge.

This is a serious and global threat and we acknowledge changes to the Mental Health Act will help alleviate staff shortages and keep people safe during a time of unprecedented challenge. However, we must ensure that these changes are balanced with the rights of patients. It is important that we monitor the situation closely, that clear guidance is given to clinicians on how to implement the changes and that we return to the current level of safeguards as soon as possible.

Last week's Budget pledged an emergency £5 billion COVID-19 fund to support public services, including the NHS, to manage coronavirus and an extra £6 billion investment on top of the multi-year funding settlement. We said then that while those announcements are welcome, the devil will be in the detail. We now have some detail. The Department of Health and Social Care has confirmed that £1.3 billion of the £5 billion COVID-19 fund has been assigned to the NHS discharge process. To relieve patients who no longer need urgent treatment in the hope of making 15,000 hospital beds available and freeing more staff for capacity where it is required. Furthermore, £1.6 billion will go

to local authorities to help them respond to pressures across their services as a result of COVID-19, including the adult social care workforce. The funding will cover the follow-on care costs for adults in social care, or people who need additional support, when they are out of hospital and back in their homes, community settings, or care settings. Further funding from the £5 billion fund will be reviewed as the government monitors the pressures in the NHS and local government.

This outbreak has shown how quickly it can spread without adequate containment measures. In addition to the measures set out in this Bill, it is vital that the sector is able to stay on top of supply demands and the need for ventilators and PPE, so that the workforce can be protected and to ensure the NHS will succeed in meeting this challenge, not just enabled to do so. Finally, when reporting regimes and measures are reintroduced, consideration needs to be given to the time the NHS will require to recover from what will be an unprecedented period. In short, it is how the measures in this Bill are used rather than the measures themselves which will help us meet the greatest challenge the NHS has faced.

About the NHS Confederation

The NHS Confederation is the membership body brings together and speaks on behalf of organisations that plan, commission and provide NHS services in England, Northern Ireland and Wales. We represent hospitals, community and mental health providers, ambulance trusts, primary care networks, clinical commissioning groups, integrated care systems, as well as independent sector organisations providing NHS care.

To find out more, visit www.nhsconfed.org or email ExternalAffairs@nhsconfed.org



18 Smith Square, Westminster, London SW1P 3HZ

Tel 020 7799 6666

Email enquiries@nhsconfed.org

www.nhsconfed.org

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