



## BRIEFING PAPER

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# Coronavirus Bill: Emergency powers and national security

By Jennifer Brown,  
Joanna Dawson, Melanie  
Gower

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## Summary

The [Coronavirus Bill 2019-21](#) was presented to Parliament on 19 March 2020. This is a piece of emergency legislation; it completed all its Commons stages on 23 March 2020. The Bill is being considered by the Lords and is expected to return to the House of Commons on the 25 March 2020.

This briefing paper is one of a collection of Commons Library briefings on the [Coronavirus Bill](#) (the Bill). It deals with the emergency powers provisions in the Bill. The other briefing papers, dealing with other parts of the Bill and general background, are available on the Commons Library website ([Coronavirus Bill: Overview](#)).

This briefing paper has been updated to reflect changes made to the Bill in the House of Commons. References to clause numbers throughout the paper have been updated to reflect the Bill as introduced to the House of Lords.

### Restricting movement and quarantining

Clause 49 introduces Schedule 21 which would 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. It 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 introduces Schedule 22 which would provide each of the UK governments with the power to issue directions prohibiting any event or gathering. It 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.

### Port closures

Clause 50 would enable the Secretary of State to direct a port operator to temporarily close a port where it becomes impossible to ensure adequate border security, as a result of the impact of coronavirus on border force personnel. Failure to comply with an order would be a summary offence. Counter-terrorism legislation provides specific powers for designated officers at ports and airports to stop, search, question and detain people who may be engaged in or planning terrorist acts or hostile activity on behalf of another state.

### Investigatory powers

The *Investigatory Powers Act 2016* governs the process for issuing warrants to law enforcement and security and intelligence agencies to intercept communications; gain access to communications data; and engage in equipment interference (hacking into devices).

Warrants generally require the approval of an independent Judicial Commissioner before coming into force, except in urgent cases, where approval may be sought subsequently.

Clauses 22 and 23 of the Bill would allow for the appointment of temporary Commissioners, where necessary as a result of coronavirus, and to extend the timeframe for gaining approval for warrants issued in urgent cases.

### **Biometric data**

A new clause 24 was added to the Bill by a Government amendment in the Commons. It would enable the Secretary of State to make regulations extending the length of time that biometric samples – fingerprints and DNA – are able to be retained for national security purposes.

## **1. Background**

### **1.1 Police preparedness for coronavirus**

All police forces are required to plan for likely civil emergencies, including pandemics, with local partners. They do so through their membership of [Local Resilience Forums](#) (LFRs). The College of Policing (the body responsible for professional standards in policing) have issued Authorised Professional Practice (APP)<sup>1</sup> on [civil emergencies](#) which provide guidance to forces on how to plan and respond to them.

#### **Impact on policing**

Deputy Chief Constable Paul Netherton (the national lead for civil contingencies) said on 3 March that the police were “not anticipating a worst-case scenario” but are “preparing for it, as the public would want”. He said that if required police officers may be moved around the country or asked to work different shift patterns in order to cope with demand. He also raised the possibility of utilising volunteer police officers.<sup>2</sup>

In London, the Commissioner of the Metropolitan Police, Dame Cressida Dick, has appointed Assistant Commissioner Mark Simmons to oversee the response to coronavirus. Mr Simmons will assess how the Met can “stretch and flex” to prioritise demand, support officers and continue to focus high priority crimes.<sup>3</sup>

#### **Possibility of military assistance**

Provisions in the *Civil Contingencies Act 2004* allow civil authorities like the police to request assistance from the military in emergencies. The Library’s research briefing [Military aid to the Civil Authorities](#) provides further details about when military aid can be used and what military personnel can do to support.

On 19 March 2020 the Defence Secretary Ben Wallace announced that 20,000 military personnel have been made part of a ‘Covid Support Force’ who stand ready to respond in timely way to “any request” for support during the coronavirus pandemic.<sup>4</sup>

### **1.2 Existing relevant police powers**

The Library’s research briefing [Introduction to police powers](#) provides information on the powers of police officers. The police have several existing powers they may use in connection with their response to coronavirus. For example:

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<sup>1</sup> APP is official police guidance. Police officers are expected to have regard to APP when on duty. However, there may be circumstances in which it would be legitimate for them to deviate from it. Further information about APP can be found in section 1.2 of the Library’s Research Briefing [Introduction to police powers](#).

<sup>2</sup> NPCC, [Police in strong position to support UK’s response to Coronavirus](#), 3 March 2020

<sup>3</sup> Metropolitan Police, [Commissioner speaks about coronavirus](#), 17 March 2020

<sup>4</sup> MoD, [Military stands up COVID Support Force](#), March 2020

- Under [section 17](#) of the *Police and Criminal Evidence Act 1984* the police can enter a property without a warrant in order to save “life or limb” or “prevent serious damage”.
- They have common law powers to prevent a ‘breach of the peace’. For example, officers may make an arrest or enforce a cordon.
- Under subsection 89(2) of the *Police Act 1996* it is an offence to resist or wilfully obstruct a constable in the execution of his duty.<sup>5</sup> Therefore, officers may arrest those who fail to comply with their lawful instructions.<sup>6</sup>

## 2. Human rights

### 2.1 Restricting rights during emergencies

Human rights laws explicitly anticipate and provide for the restriction of certain rights in response to identified threats and in times of emergency. However, any increase in the coercive or intrusive powers of the state must be justified and subject to adequate scrutiny. As noted by the Bingham Centre for the Rule of Law, “the law is not irrelevant in a public emergency”, and “has a role to play in ensuring the legitimacy of the Government’s response”.<sup>7</sup>

The [European Convention on Human Rights](#) (ECHR), implemented domestically by the [Human Rights Act 1998](#) (HRA), permits interference with specific rights for the purpose of protecting public health. It also permits derogations from the obligation to protect certain rights in times of emergency “threatening the life of the nation” but only “to the extent strictly required by the exigencies of the situation”. Any country wanting to exercise the right to derogate must notify the Council of Europe of the measures it proposes to take. It is not possible to derogate from certain rights, such as the right to life.<sup>8</sup>

Provided restrictions on fundamental rights are justified as being both necessary and proportionate it should not be necessary to derogate from the Convention.

### 2.2 Which rights might be affected?

Article 5 protects the right to liberty and security. Measures to impose quarantine or isolation conditions on those who are, or are suspected to be, infected are likely to engage Article 5 but will be capable of being justified. Article 5(1)(e) allows for the “lawful detention of persons for the prevention of spreading of infectious disease”. Article 8, which protects the right to private and family life, could also be engaged by quarantine or other restrictions on people’s freedom to visit certain places or have contact with people.

The Joint Committee on Human Rights have suggested that measures to restrict the liberty of those suspected of being infected should be capable of justification, but

if unduly onerous measures are being imposed on people who are simultaneously being denied tests to establish if they are infected, there could be grounds to question proportionality.<sup>9</sup>

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<sup>5</sup> [s89\(2\)](#), Police Act 1998

<sup>6</sup> College of Policing, [Authorised Professional Practice: Civil emergencies: Response and recovery: Securing the scene: Cordons: legal issues](#) [last accessed 18 March 2020]

<sup>7</sup> Dr Ronan Cormacain, [Does law fall silent in the war against Covid-19?](#), 18 March 2020, Bingham Centre for the Rule of Law

<sup>8</sup> For further information on derogations see: [Guide on Article 15 of the European Convention on Human Rights: Derogation in time of emergency](#), 31 December 2019, Council of Europe

<sup>9</sup> Joint Committee on Human Rights, [Background paper: COVID-19](#), 19 March 2020

Restrictions on events and gatherings might also engage the right to freedom of religion or belief (Article 9) and the right to freedom of assembly and association (Article 11). Restriction of both may be justified on the basis of “public safety, the protection of public order, health and morals”.

The question of whether any measure taken is justified and proportionate requires consideration of whether any alternative, less restrictive measures were available, and of any disproportionate impact on certain groups.

The House of Lords Constitution Committee has suggested that the impact of the measures provided for in the Bill cannot be properly assessed until they are used, but that

It is essential that the Government exercises these significant powers in a proportionate and non-discriminatory way.<sup>10</sup>

The Government has published an [ECHR memorandum](#) to explain its assessment of the compatibility of the Bill’s provisions with Convention rights.

### 3. Directions on events, gatherings and premises

#### 3.1 What the Bill does

**Clause 50 introduces Schedule 22** which would allow each government of the UK’s countries to put their nation into a ‘public health response period’.<sup>11</sup> In a ‘public health response period’ the relevant government can issue directions which prohibit any event or gathering or close or restrict access to any premises.

Whilst such measures could have profound implications on where people can go, they would not prevent people from leaving their homes entirely. There are *no* powers in the Bill which would allow directions to be issued requiring individuals to have prior permission or good reason to be outside.

#### When can the powers be used?

Directions prohibiting events/ gatherings or placing restrictions on premises will only be able to be issued when the relevant government declares a “public health response period”.<sup>12</sup> A “public health response period” can be declared by any of the governments of the UK’s constituent countries when they believe that the spread of coronavirus constitutes a “serious and imminent threat to public health” in their nation and that it will:

- prevent, protect against, delay or otherwise control the incidence or transmission of coronavirus, or
- facilitate the most appropriate deployment of medical or emergency personnel

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<sup>10</sup> Coronavirus Bill, Select Committee on the Constitution, 4<sup>th</sup> Report of Session 2019-21, HL Paper 44, 24 March 2020

<sup>11</sup> Schedule 21, paragraphs 3-4 [England], paragraphs 13-14 [Scotland] paragraphs 25-26 [Wales] paragraphs 35-36 [Northern Ireland]

<sup>12</sup> Schedule 21, paragraphs 5(4) and 6(4) [England], paragraphs 15(4) and 16(4) [Scotland], paragraphs 27(4) and 28(4) [Wales], paragraphs 37(4) and 38(4) [Northern Ireland].

Before declaring or revoking a “public health response period” the relevant Government must consult with the Chief Medical Officer or any of their deputies.<sup>13</sup>

The relevant government must then be satisfied that each direction given under the Bill is needed to prevent or delay the spread of coronavirus or facilitate the deployment of medical or emergency personnel. They must also have regard to any relevant advice given by the Chief Medical Officer or any of their Deputies when issuing a direction.<sup>14</sup>

### What events/ gatherings can be prohibited?

The Bill does not provide a definition of event or gathering. Instead it allows the relevant government to describe the event or gathering it is prohibiting by reference to the number of people attending, the need for medical or emergency services to attend or “in any other way”.<sup>15</sup> In effect this allows the government to prohibit any event or gathering no matter its size or location.

### What premises can have restrictions placed on them?

Directions relating to premises can be issued to any specific premises or any premises matching a specified description (i.e. pubs, theatres).<sup>16</sup>

### What restrictions can be placed on premises?

Directions issued under the Bill would be able to:<sup>17</sup>

- Close premises
- Restrict entry to premises
- Place requirements on where people can go inside premises
- Place requirements on the number of people that can be inside premises
- Place requirements/ restrictions on why people can be inside premises
- Place requirements on the facilities in the premises

### What happens if people do not comply?

The Bill would make it an offence to organise a prohibited gathering. It would also be an offence for an owner or manager to contravene directions relating to their premises. The offences would be punishable, on conviction, by fine.<sup>18</sup>

## 3.2 Commons amendments

**Amendment 55 and 56** introduced new paragraphs 11 and 34 to Schedule 22. These paragraphs would confer a power on the UK and Welsh governments to designate “a person, or description of person” to enforce prohibitions of gatherings and closures/ restrictions on premises.<sup>19</sup> The relevant paragraphs for Northern Ireland in the original Bill introduced to the Commons included a similar power for the Northern Ireland Executive.

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<sup>13</sup> Schedule 22, paragraphs 3-4 [England], paragraphs 13-14 [Scotland] paragraphs 26-27 [Wales] paragraphs 37-38 [Northern Ireland]

<sup>14</sup> Schedule 22, paragraphs 5(1), 6(1) and 8(1) [England], paragraph 15(1), 16(1) and 18(1) [Scotland], paragraphs 28(1), 29(1) and 31(1) [Wales], paragraph 39(1), 40(1) and 42(1) [Northern Ireland].

<sup>15</sup> Schedule 22, paragraph 5(6) [England], paragraph 15(6) [Scotland], paragraph 28(6) [Wales], paragraph 39(6) [Northern Ireland].

<sup>16</sup> Schedule 22, paragraph 6(2) [England], paragraph 16(2) [Scotland], paragraph 29(2) [Wales], paragraph 40(2) [Northern Ireland].

<sup>17</sup> Schedule 22, paragraph 6(5) and 6(6) [England], paragraph 16(5) and 16(6) [Scotland], paragraph 29(5) and 29(6) [Wales], paragraph 40(5) and 40(6) [Northern Ireland].

<sup>18</sup> Schedule 22, paragraphs 9 & 10

<sup>19</sup> HC Deb, [Coronavirus Bill](#), 23 March 2020, c167-169

The amendments appear to bring the powers for the UK and Welsh Governments in line with the powers to be conferred to the Northern Ireland Executive in the original Bill.

The relevant provisions for Scotland have not been amended. In Scotland the Chief Constable of Police Scotland can designate custody/ security officers “the powers conferred on a constable by this part of this Schedule”.<sup>20</sup>

### 3.3 Existing powers

The provisions in the Bill represent a significant divergence from existing powers to prevent gatherings or events and restrict access to premises. Under normal circumstances there are only limited powers to prohibit some gatherings associated with very disruptive protests and restrict access to properties associated with anti-social behaviour. There are also limited powers under licensing law.

The UK Government has used powers in the [Public Health \(Control of Disease\) Act 1984](#) to close entertainment and hospitality businesses during the coronavirus pandemic.

#### Emergency regulations closing entertainment venues

On the 20 March the Government announced that all entertainment and hospitality businesses should close as part of efforts to stop the spread of coronavirus. Secondary legislation made under the [Public Health \(Control of Disease\) Act 1984](#) provides for the closures in England. [The Health Protection \(Coronavirus, Business Closure\) \(England\) Regulations 2020](#) requires businesses listed in [Part 1](#) of its Schedule (i.e. restaurants, cafes, pubs) to move their business to takeaway only.<sup>21</sup> It requires businesses listed in [Part 2](#) of its Schedule (cinemas, theatres, night clubs etc) to close completely.<sup>22</sup> Under [regulation 2](#) paragraph 6 the Secretary of State must review the need for the closures every 28 days.<sup>23</sup> Under [regulation 3](#) it is an offence to contravene the closure.<sup>24</sup> On the 22 March 2020 the Government issued [guidance on the regulations](#) and announced that [local government will be responsible for enforcing them](#).

#### Licensing law and public events

In England and Wales, under the *Licensing Act 2003*, businesses or individuals wanting to provide “[regulated entertainment](#)” need a licence from the local authority i.e. a [premises licence](#), [temporary event notice](#), or [club premises certificate](#). A large music event, for example, would require a premises licence.

The Act has four “licensing objectives”:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

An application for a premises licence must be accompanied by an operating schedule that sets out what steps the applicant will take to promote the licensing objectives.

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<sup>20</sup> Schedule 22, paragraph 19

<sup>21</sup> [r2\(1\)\(a\)](#), *The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020*

<sup>22</sup> [r2\(1\)\(b\)](#), *The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020*

<sup>23</sup> [r2\(6\)](#), *The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020*

<sup>24</sup> [r3](#), *The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020*

Objections can be raised against an application for a new licence or a variation of an existing licence. It is also possible to trigger a review of an existing licence.<sup>25</sup>

A premises licence, once granted, remains in power until it is surrendered or revoked.

### Closure powers

Under [section 160](#) of the Act, all licensed premises within a specified geographical area can be closed for up to 24 hours where disorder is occurring or anticipated.<sup>26</sup>

### Prohibition of protests

The police have extremely limited powers to request the Home Office prohibit protest marches they feel unable to police safely. These powers were last used in 2011 to prohibit an English Defence League march in Tower Hamlets.<sup>27</sup>

### Anti-social behaviour closure powers

The police and local authorities have limited powers under [Part 4, Chapter 3](#) of the *Anti-social Behaviour, Crime and Policing Act 2014* to close premises associated with anti-social behaviour (ASB). They can issue a Closure Notice to a building which restricts access to anyone who does not own or habitually live in properties associated with “nuisance” or likely to be associated with future disorder for up to 48 hours.

The police and local authorities require permission from the courts to restrict access to buildings associated with ASB for longer than 48 hours. The courts can issue a Closure Order restricting access for up to six months, including to those who live in the property.

## 4. Isolation powers

### 4.1 What the Bill does

**Clause 49 introduces Schedule 21** which would allow each Government of the UK’s constituent countries to put their nation into a “transmission control period”.<sup>28</sup> In a ‘transmission control period’ public health officers can require people who have tested positive (or inconclusive) for the coronavirus, or who they believe are “potentially infectious” with the disease to isolate.<sup>29</sup> Immigration officials and the police would have more limited powers to take those they suspect have the coronavirus disease to a suitable place for testing/ assessment.<sup>30</sup> The Bill does *not* give the police or immigration officials the power to enforce an elongated quarantine of those who have not been assessed by a public health officer.

Clause 49 and Schedule 20 provide similar powers to the [Health Protection \(Coronavirus\) Regulations 2020](#) which came into force on 10 February 2020. The Bill would revoke these regulations.<sup>31</sup> The regulations were designed to support the isolation of potentially infectious persons at an earlier stage of the spread of coronavirus (see discussion below).

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<sup>25</sup> See Library Paper, [Alcohol: objecting to a licence](#). CBP 3788, 6 July 2018

<sup>26</sup> [Section 160](#) of the 2003 Act

<sup>27</sup> Home Office, [FOI release: Applications for a banning order under section 12 of the Public Order Act 1986](#), 6 June 2014

<sup>28</sup> Schedule 20, paragraph 4- 5 [England], paragraph 25-26 [Scotland], paragraphs 48-49 [Wales], paragraphs 69-70 [Northern Ireland]

<sup>29</sup> Schedule 20, paragraph 14 [England], paragraph 35 [Scotland], paragraph 58 [Wales], paragraph 79 [Northern Ireland]

<sup>30</sup> Schedule 20, paragraph 13 [England], paragraph 34 [Scotland], paragraph 57 [Wales], paragraph 78 [Northern Ireland]

<sup>31</sup> Schedule 20, paragraph 24

The powers in the Bill would allow public health, police and immigration officials to more easily control the spread of the disease now it is more advanced.

There are four key differences between the regulations and the relevant provisions in the Bill:

- Under the regulations it is presumed that the Secretary of State is consulted before potentially infectious persons are isolated.<sup>32</sup> In the Bill public health officers have powers to enforce the isolation of potentially infectious persons without consultation with the Secretary of State once a “transmission control period” has been declared.<sup>33</sup>
- Under the regulations it is presumed that police officers will consult public health officers before they take potentially infectious persons to a suitable place for testing.<sup>34</sup> Under the Bill police and immigration officers only need consult public health officers when it is “practicable to do so” before requiring someone to go to a suitable place for testing.<sup>35</sup>
- Immigration officials have no powers to take people for testing under the regulations but do have limited powers under the Bill. Immigration officials can only hold people at a testing facility for a maximum of 12 hours (beyond three hours with the authorisation of a chief immigration official). Police officers may hold people at a suitable place for testing for up to 48 hours (beyond 24 hours with authorisation of a superintendent).<sup>36</sup>
- The regulations only applied in England. The Bill provides powers that are applicable in all four of the UK nations.

### When can the powers be used?

The powers can only be used during a “transmission control period”. This can be declared by any of the governments of the UK’s constituent countries when they believe, after consultation with the Chief Medical Officer or any of the Deputy Medical Officers, that the spread of coronavirus constitutes a “serious and imminent threat to public health” in their nation. The transmission control period can be revoked and reintroduced at any time but must be done in consultation with the Chief Medical Officer/ Deputy Medical Officers.<sup>37</sup>

The powers can only be exercised when those exercising them consider it “necessary and proportionate” to do so:

- in the interests of the person,
- for the protection of other people, or
- for the maintenance of public health.<sup>38</sup>

### What is a public health officer?

Registered [public health consultants](#) would be considered public health officers under the Bill. The Bill would also allow any of the relevant UK governments to designate persons to

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<sup>32</sup> [r5](#), *The Health Protection (Coronavirus) Regulations 2020*

<sup>33</sup> Schedule 20, paragraph 14, ], paragraph 35 [Scotland], paragraph 58 [Wales], paragraph 79 [Northern Ireland]

<sup>34</sup> [r15](#), *The Health Protection (Coronavirus) Regulations 2020*

<sup>35</sup> Schedule 20, paragraph 13(8), paragraph 34(8) [Scotland], paragraph 57(8) [Wales], paragraph 78(8) [Northern Ireland]

<sup>36</sup> Schedule 21, paragraph 13 [England], paragraph 34 [Scotland], paragraph 57 [Wales], paragraph 78 [Northern Ireland]

<sup>37</sup> Schedule 21, paragraph 4- 5 [England], paragraph 25-26 [Scotland], paragraphs 48-49 [Wales], paragraphs 69-70 [Northern Ireland]

<sup>38</sup> See for example Schedule 21, paragraph 6(3) [England]

be public health officers. It does not provide any criteria for designating someone as a public health officer.<sup>39</sup>

### Who can be required to be tested/ isolate?

People can be required to follow the directions of public health officers, police officers or immigration officials if they infected with coronavirus or considered “potentially infectious”. Potentially infectious persons are those who are reasonably believed to be infected with coronavirus and those who have been in an infected country or territory outside the UK within the preceding 14 days.<sup>40</sup>

### Appeals

Those required to isolate by a public health officer would have the right to appeal. Appeals would be heard at a magistrates’ court and, by virtue of **clause 54 and Schedule 25**, would be conducted via video link. The court would have the power to confirm the requirement to isolate or quash it.

The Library’s Insight ‘Coronavirus Bill: implications for the courts’ discusses the provisions in the Bill concerning the use of video links to conduct court proceedings. It can be found the Commons Library website ([Coronavirus Bill: Overview](#)).

## 4.2 Commons amendments

Schedule 20 was amended at the Commons Report Stage to correct the rank of immigration officer who can authorise the continued detention of a potentially infectious person at a suitable place for testing. **Amendments 9 through to 11** change references to ‘senior immigration officer’ to ‘chief immigration officer’. These amendments appear to tidy up drafting of the Bill to make it clear what rank of immigration officer has the authorisation powers.

## 4.3 Existing powers

The powers in the Bill cannot be equated to existing detention powers. Under normal circumstances the police, immigration officials and magistrates have limited powers to detain people. Normally individuals can only be detained in connection with criminal investigations, to prevent a breach of the peace, in connection with immigration control or for their own safety under mental health legislation.

As discussed, the powers resemble those in the existing regulations, made to support the response to coronavirus. There are similar powers in immigration legislation which allow immigration officials to conduct medical examinations of people entering the UK from abroad.

### ***The Health Protection (Coronavirus) Regulations 2020***

[The Health Protection \(Coronavirus\) Regulations 2020](#) allow registered public health consultants to isolate people they suspect may be infected with coronavirus for 14 days with the permission of the Department of Health and Social Care.<sup>41</sup> The regulations are designed to “reduce the risk of further human-to-human transmission” of coronavirus by ensuring those arriving in the UK from infected countries are screened and held in

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<sup>39</sup> Schedule 21, paragraph 3(2)

<sup>40</sup> Schedule 21, paragraph 2

<sup>41</sup> [r5](#), *The Health Protection (Coronavirus) Regulations 2020*

supported isolation for 14 days if necessary.<sup>42</sup> As noted above, the Bill would revoke these regulations.

### Medical inspections of arriving passengers

#### ***Immigration Act 1971***

The [Immigration Act 1971](#) sets out the role of port Medical Inspectors – who must be fully qualified medical practitioners – and contains related provisions.

Anyone seeking entry to the UK may be examined by a Medical Inspector, or by any qualified person carrying out a test or examination required by a Medical Inspector, and may be required to submit to further examination. Medical Inspectors have powers to board any ship or aircraft in the exercise of their functions under the Act. People granted permission to enter the UK can also be given notice of a requirement to report to a medical officer for further medical examination or tests after-entry to the UK.

These powers are set out in Schedule 2, Part 1, paras 2, 2A and 7 of the 1971 Act.

Failure to comply, without reasonable excuse, with a requirement to report to a medical officer, and failure to attend or submit to a medical test/examination are criminal offences. The maximum penalties are six months' imprisonment, an unlimited fine, or both.<sup>43</sup>

#### **Immigration Rules**

The Immigration Rules contain overlapping provisions.<sup>44</sup> [Paragraphs 36 – 39](#) set out the circumstances in which an Immigration Officer or Entry Clearance Officer may require a person to undergo an examination by a Medical Inspector (whether before a visa is granted overseas, or upon arrival in the UK). Very briefly, these include where a person appears not to be in good mental or physical health, or where a person mentions health or medical treatment as a reason for their visit. But Immigration Officers have discretion, which the Rules state should be used sparingly, to refer any case for examination.

As per [paragraph 320\(17\)](#) of the Immigration Rules, a refusal to undergo a medical examination is one of the general grounds on which entry to the UK should normally be refused.

If a Medical Inspector advises that a person seeking entry to the UK is suffering from a specified disease or condition which may interfere with their ability to support themselves, Immigration Officers should take this into account when assessing whether leave to enter the UK should be granted, alongside other relevant factors.<sup>45</sup> A person may be refused admission to the UK if the Medical Inspector has confirmed that, for medical reasons, it is undesirable for them to be admitted to the UK.<sup>46</sup> However, there is discretion to grant admission to the UK against a Medical Inspector's advice (where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission).

'Returning residents' (i.e. people who have indefinite leave to remain) cannot be refused entry to the UK or have their immigration permission cancelled on medical grounds.<sup>47</sup> Like other categories of entrant, they can be required to undergo a medical examination upon arrival in the UK with a view to further examination or treatment.

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<sup>42</sup> Department of Health and Social Care, [Health Secretary announces strengthened legal powers to bolster public health protections against coronavirus](#), 10 February 2020

<sup>43</sup> [Immigration Act 1971](#) (as amended), s24(1)(d); s26(1)(a)

<sup>44</sup> [HC 395 of 1993-4](#) (as amended)

<sup>45</sup> Immigration Rules, para 37

<sup>46</sup> Immigration Rules, [para 320\(7\)](#),

<sup>47</sup> Immigration Rules, para 38

People who are exempt from immigration control, including British citizens and other people with the right of abode, may not be referred to the Medical Inspector. Immigration Officers also have the discretion to waive a requirement for a medical examination even where the Immigration Rules allow for an examination to be performed.

## 5. Port closures

### 5.1 Background: recent scrutiny of Border Force operations

Border Force staff are responsible for immigration and customs controls at UK ports of entry. A [recent fact sheet](#) on the Home Office in the Media blog gives an overview of its operations.<sup>48</sup>

Border Force has staff working at 140 ports and airports across the UK and overseas, including at the 'juxtaposed controls' in France and Belgium. But there are gaps in its coverage of ports, particularly at smaller ports and in relation to general (i.e. private/recreational) aviation and maritime. There have been criticisms in recent years that Border Force is under-staffed and under-resourced, and that certain ports are particularly vulnerable to undetected clandestine/illegal activity as a result of insufficient Border Force presence. The Independent Chief Inspector of Borders and Immigration has highlighted such concerns in recent inspection reports.

For example, in his [2018 inspection report](#) of Border Force operations at south-coast seaports, he observed that "The volumes and variety of passengers and goods arriving at seaports, harbours, marinas and along the south coast present Border Force with serious challenges, not least in terms of where and how best to deploy its officers and other resources." He continued:

At Dover, Border Force concentrates on customs controls (immigration checks for passengers arriving at Dover are completed at the juxtaposed controls in France). Elsewhere, officers are "multi-functional". At all the ports visited, Dover included despite its significantly higher numbers and specialist teams, frontline officers believed they were understaffed, raising questions about whether the rationale for Border Force's staffing model was clear and made sense.

(...)

The south coast inspection again showed the scale of Border Force's task. It was clear that it had put considerable effort into improving its coverage, and with some success. But, this was a "work in progress", with much more to be done, particularly in freeing up officers to attend GM arrivals, and in effectively harnessing the "eyes and ears" of harbour masters, marina managers, the maritime and pleasure boating communities, and the general public to report unusual and suspicious activities along the south coast.

The [Home Office's response to the inspection report](#) accepted or partially accepted all of the recommendations.

A [2019 inspection report](#) of Border Force operations at Glasgow and Edinburgh airports also highlighted staff concerns about staffing levels, reliance on Seasonal Workforce staff, and rostering arrangements. It also considered the issue of queuing times for immigration controls, which is a key issue for port operators and carriers, as well as travellers.

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<sup>48</sup> [Media factsheet: Border Force, Home office in the media blog](#), Gov.uk, 4 November 2019 [accessed 19 March 2020]

## 5.2 National security powers at ports

The [Terrorism Act 2000](#) (TA) and the [Counter-Terrorism and Border Security Act 2019](#) (CTBSA) provided specific powers to deal with national security threats at ports and borders, from terrorism and from hostile state activity, respectively.

Schedule 7 of the TA 2000 empowers police, immigration officers and designated customs officers to stop and question travellers at ports and airports. According to the Government, Schedule 7 forms a key part of the United Kingdom's border security arrangements and examining people at ports and airports is necessary to protect public safety.<sup>49</sup>

No prior authorisation is required for the use of Schedule 7 and the power to stop and question may be exercised without suspicion of involvement in terrorism. Questioning must be for the purpose of determining whether the person appears to be concerned or to have been concerned in the commission, preparation or instigation of acts of terrorism. Any person questioned is obliged, on request, to hand over ID and any information in their possession. Luggage and vehicles may also be searched.

Schedule 3 of the CTBSA provides a similar power with respect to hostile activity at ports and borders. It was introduced in response to the poisoning in Salisbury of Sergei and Yulia Skripal and allows designated police, immigration and customs officers to stop, question, search and detain people at ports for the purpose of determining whether they are or have been engaged in 'hostile activity'.<sup>50</sup>

## 5.3 What the Bill does

**Clause 50 introduces Schedule 20,**<sup>51</sup> which would give the Home Secretary powers to direct a port operator to suspend specified port operations.

The pre-conditions for making such a direction would be that:

- She considers that, as a direct or indirect result of the incidence or transmission of coronavirus, there is a real and significant risk that there will be insufficient border force officers to maintain adequate border security; AND
- She has taken such other measures as are reasonably practicable to mitigate the risk.

The initial suspension cannot be for longer than 6 hours. Subject to an ongoing need, it can be extended (prior to expiry) by another 6 hours, and subsequently for periods of up to 12 hours.

The Home Secretary must notify Ministers in devolved administrations of directions given under these powers.

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<sup>49</sup> Home Office [Review of the Operation of Schedule 7: A Public Consultation](#) (2012)

<sup>50</sup> A person is or has been engaged in hostile activity for the purposes of the Schedule if the person is or has been concerned in the commission, preparation or instigation of a hostile act that is or may be (a) carried out for, or on behalf of, a State other than the United Kingdom, or (b) otherwise in the interests of a State other than the United Kingdom. An act is a "hostile act" if it (a) threatens national security (b) threatens the economic well-being of the United Kingdom in a way that is relevant to the interests of national security, or (c) is an act of serious crime. It is immaterial whether a person is aware that activity in which they are or have been engaged is hostile activity, or whether a State for or on behalf of which, or in the interests of which, a hostile act is carried out has instigated, sanctioned, or is otherwise aware of, the carrying out of the act.

<sup>51</sup> Clause 48 and Schedule 19 in the Bill as introduced in the House of Commons

Failure to comply with a direction, without reasonable excuse, would be a summary offence. Paragraph 6 of Schedule 20 specifies the maximum penalties across the different jurisdictions of the UK.

Schedule 20 includes further details about the making and revoking of such directions, as summarised in the Bill's [Explanatory Notes](#).<sup>52</sup> Paragraphs 7 and 8 of Schedule 20 define terms used in the Schedule, and confirm that the Schedule binds the Crown.

The House of Lords Constitution Committee have suggested that the exercise of this power is subject to judicial review, given that there is no automatic parliamentary scrutiny in the exercise of this power, nor any provision for appeal to the courts.<sup>53</sup>

## 6. Investigatory Powers

### 6.1 Investigatory Powers Act 2016

The [Investigatory Powers Act 2016](#) (IPA) governs the power of law enforcement and the security and intelligence agencies (and other relevant public bodies) to acquire the content of communications and 'communications data' through various means.<sup>54</sup>

It established a system whereby the relevant agencies could apply for a warrant to obtain communications or communication data, through interception; the acquisition of communications data from telecommunications operators; equipment interference (hacking of systems or devices); and the retention and examination of bulk personal datasets. Interception, acquisition of communications data, and equipment interference powers are provided for both on a targeted basis and in bulk.

The Act also reformed the oversight regime for the use of these powers, replacing the three existing Commissioners with a single body of Judicial Commissioners led by the Investigatory Powers Commissioner (IPC). For the first time, these Commissioners brought an element of judicial oversight to the process of issuing warrants to the intelligence services through the so-called "double lock". Under this process, the Secretary of State's (or in some cases a law enforcement chief) decision to issue a warrant is subject to the approval of a Judicial Commissioner before it can come into force. This was intended to introduce a degree of independent oversight into the procedure for approving the use of intrusive powers. However, the Act provides that in certain urgent cases, the approval of a Judicial Commissioner may be obtained a short period after the warrant has come into force.

### 6.2 What the Bill does

#### Appointment of Judicial Commissioners

Currently, under section 227 of the IPA, the Prime Minister appoints Judicial Commissioners. This follows a recommendation by the IPC and senior judiciary, and consultation with Scottish Ministers. A Judicial Commissioner must hold or have held high judicial office.<sup>55</sup> These arrangements were approved by Parliament in order to achieve a reasonable balance between the involvement of the Executive and the judiciary in

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<sup>52</sup> Paras 388-396

<sup>53</sup> Coronavirus Bill, Select Committee on the Constitution, 4<sup>th</sup> Report of Session 2019-21, HL Paper 44, 24 March 2020, para 13

<sup>54</sup> 'Communications data' is the "who, where, when and how" of a communication but not its content (i.e. not what was said or written).

<sup>55</sup> This is defined, by reference to the [Constitutional Reform Act 2005](#), as someone who has held a position at least as senior as a high court judge.

appointing Judicial Commissioners, to ensure independence and commensurate judicial experience.

**Clause 22**<sup>56</sup> would enable the Investigatory Powers Commissioner to notify the Secretary of State that there is a shortage of Judicial Commissioners to carry out their functions under the IPA and other related legislation, as a result of coronavirus. This would trigger a power for the Secretary of State to pass regulations enabling the IPC to appoint temporary Commissioners. Temporary Commissioners could be appointed for up to six months, renewable up to a maximum of 12 months.

The IPC must inform the Prime Minister; the Secretary of State; the Lord Chancellor; the Lord Chief Justice; the Lord President of the Court of Session; and the Lord Chief Justice of Northern Ireland of any appointments made.

The Explanatory Notes state that having sufficient Judicial Commissioners is critical for national security, given their role in issuing warrants.<sup>57</sup>

### Urgent warrants

Currently, the IPA provides that warrants must be approved by a Judicial Commissioner. In deciding whether or not to approve a warrant the Judicial Commissioner must consider whether the warrant is necessary and proportionate to what is sought to be achieved. Certain warrants can be issued in urgent cases without the prior approval of a Judicial Commissioner. In these cases the Judicial Commissioner must be informed that the warrant has been issued and has three working days within which to approve the warrant. If the warrant is not approved it ceases to have effect. The IPA also specifies the duration of an urgent warrant; the timeframe within which it can be renewed; and the process for notifying Judicial Commissioners of major modifications to warrants for approval.

**Clause 23**<sup>58</sup> of the Bill applies to the following categories of warrant:

- Targeted and bulk interception warrants
- Targeted and bulk equipment interference warrants
- Bulk warrants for the acquisition of communications data
- Bulk personal dataset warrants

It would create a power for the Secretary of State to make regulations to change the timeframe for these processes with respect to urgent warrants to a maximum of 12 working days. The regulations can last up to 12 months. The power is triggered by a notification from the IPC that it is required because of the effects that coronavirus is having, or is likely to have, on the capacity of Judicial Commissioners.

According to the Explanatory Notes, this power is required to mitigate impact on the warrantry process and ensure that the safeguard of judicial approval within the lowest possible timeframe is retained. This will enable the agencies to “maintain their ability to protect national security and prevent serious crime during a period of potential widespread upheaval”.<sup>59</sup>

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<sup>56</sup> Clause 21 in the Bill as introduced in the House of Commons

<sup>57</sup> Para 50

<sup>58</sup> Clause 22 in the Bill as introduced in the House of Commons

<sup>59</sup> Explanatory Notes, para 53

## 7. Retention of biometric data

New **clause 24** was added to the Bill as a Government amendment in the Commons.

It would enable the Secretary of State to make regulations extending the length of time that biometric samples – fingerprints and DNA – are able to be retained by the police and for national security purposes.

The explanatory notes state that coronavirus is expected to impact on police resources to the extent that it will not be possible to assess whether samples need to be retained for national security purposes and without this extension to the timeframe they could be deleted automatically.<sup>60</sup>

### 7.1 Current framework

Currently, biometric samples must be destroyed after a set period of time unless a chief officer of police makes a national security determination (NSD), which permits retention for a further period of up to two years.

The framework for the retention of biometric samples was introduced by the [Protection of Freedom Act 2012](#). This followed a decision of the European Court of Human Rights that the provisions of PACE concerning the retention of DNA from non-convicted individuals violated Article 8 of the ECHR.

The general position is that the indefinite retention of biometric material is not permitted if the person from whom it was taken has not been convicted of an offence. Retained material can be held for a specified period and then destroyed, unless an exemption applies. The extended retention of biometric material on national security grounds through the making of NSDs is allowed, subject to the oversight of the Biometrics Commissioner, who can order the destruction of samples where retention is no longer necessary.

An individual's Article 8 right to privacy should be taken into account when determining whether to make a NSD, and the retention must be both necessary and proportionate.<sup>61</sup>

### 7.2 What the Bill does

Clause 24 would enable the Secretary of State to make regulations extending the period for which biometric samples can be retained by up to six months, subject to consultation with the Biometrics Commissioner. This would be exercisable if she considers that coronavirus was having an adverse effect on the ability to make or renew NSDs, and that it is in the interests of national security. This can be done more than once, but only up to a maximum extension of 12 months.

The clause would cease to have effect if it is not used within three months.

The Biometrics Commissioner, Professor Paul Wiles, made a statement in response to the new clause, indicating his full support, and his assessment that it is necessary and proportionate in the circumstances.

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<sup>60</sup> Para 58

<sup>61</sup> [Protection of Freedoms Act 2012: Guidance on the making or renewing of national security determinations allowing the retention of biometric data](#), 2013

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He further stated that he or his successor would in the future examine the use and consequences of the extension period and produce a report for Parliament.<sup>62</sup>

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<sup>62</sup> [Commissioner's response to Coronavirus Bill amendment](#), Office of the Biometrics Commissioner, 23 March 2020

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