Department of Health & Social Care

Coronavirus Bill

Summary of Impacts

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Introduction

This document provides a summary of impacts relating to clauses within the Coronavirus Bill 2020. As this is temporary, emergency legislation, a formal impact assessment is not required for Better Regulation purposes. However, this document provides an overview of the impacts considered for each clause. An equalities assessment has been carried out separately, as part of the Public Sector Equalities Duty.

Aims of the Bill

The purpose of the Bill is to provide powers needed to respond to the current coronavirus epidemic. Powers are for use only if needed, judged on the basis of the clinical and scientific advice. Safeguards have been built in to ensure that powers are only used as necessary, for example during the peak of a coronavirus outbreak. The aim is to balance the need for speed, as appropriate to the risk posed by the virus, with safeguards to ensure proper oversight and accountability.

The Bill has four primary categories of effect: enhancing capacity and the flexible deployment of staff; easing of legislative and regulatory requirements; containing and slowing the virus; and managing the deceased.

Risk

The policies in the Bill are designed for use temporarily in an emergency. They are strong in nature, and risks have been considered and discussed throughout this assessment, but it is recognised that in a pandemic situation, with potentially very high counterfactual costs, firm actions may be the most desirable to protect individuals.

Approach to summary of impacts

For the purposes of this summary of impacts, the approach taken has largely been to treat monetised costs and benefits as zero because the Bill is temporary, enabling legislation. This is to say that decisions on whether and how to use elements of the Bill would be taken at some future point, which would require judgement on the specific impacts at that time. For many of the clauses, it is difficult to predict how a power would be used in a specific context, and therefore what the monetised costs would be. Thus, discussion of impacts is largely focussed on unmonetised considerations.

Section 1 – Enhanced capacity and flexible deployment of staff

Emergency registration of health professionals

1. The power provided in this clause will allow Registrars the ability to carry out emergency registration of healthcare professionals. This will allow for the registration of any professional regulated by the Nursing and Midwifery Council or the Health and Care Professions Council. It is hoped that this will help to ease the pressure on services to enable to delivery of essential healthcare services in this emergency period.

Other policy options considered?

2. The NHS and wider health are care system has been developing and implementing a number of plans to deal with the additional demand. The National Pandemic Influenza Service will be initiated, and non-urgent operations and services will be cancelled or delayed. Both of these actions should release staff who can be deployed to other critical services. These form a core part of the UK Influenza Pandemic Strategy 2011. Similarly, the NMC already has the power to increase registrant's responsibilities in the event of emergency involving loss of human life or human illness – for example by enabling nurses (not already qualified to do so) to order drugs, medicines and appliances in a specified capacity with regards the emergency.

3. There would be an option of "do nothing" beyond what is already set out in this plan and using the powers already available. However, the route of emergency registration is favoured as a way of additionally adding resource into the system, alongside the options set out above.

Key considerations

4. The potential economic impacts of this provision include the increased cost to the NHS of paying for the wages of any additional staff brought in through this route and a linked cost to the provision of indemnity arrangements set out in Clause 7. However, this additional cost may be off-set by the increased potential to lessen the wider economic impact of having members of the public seriously ill and therefore not at work, because of the increased capacity of the health care system.

5. For individuals who are registered using these powers – based on the discretion of the professional regulators' registrar at the time – there will be no obligation for them to provide services, it would be on a voluntary basis. DHSC plans to engage with the professional regulators to ensure that sufficient infrastructure is in place in order to implement the policy. The impact of this volunteering could be to have a galvanising effect on the community, potentially alongside public concerns about the quality of the health and care services being delivered. It is currently unknown how many professionals registered under these powers will be willing to provide services.

6. The General Medical Council has indicated that re-registering doctors who have left the register in the last three years would provide a potential pool of 15,500 additional doctors. The GMC already has the necessary powers to re-register doctors, so this power is not in the Bill. The Nursing and Midwifery Council have indicated a potential additional 60,000 workers by re-

registering Nurses, Midwives and Nursing Associates, who have left the register in the last three years.

7. Based on these figures we have calculated some estimates, provided below, of re-registering recent retirees and final year students.

Cost estimates for re-registering nurses, midwives, paramedics and social workers

8. Of the nurses and midwives that left the NMC register in the last 3 years, 50% are assumed to have retired (NMC leavers survey), and a further 20% are assumed to be willing to re-join the register.

9. Of the paramedics and social workers that left the HCPC register in the last 3 years, we have assumed that 20% would be willing to re-register (there is no information on the proportion that retire).

10. This results in a total of 10,600 professionals being in scope to re-register.

11. Using the GMC's estimate of the admin costs of temporary registration (£53 in today's prices) results in a cost of **£556,179.**

12. Using GMC's higher estimate (£123 in today's prices) results in a cost of **£1,302,223.**

Cost estimates for allowing early registration for final year students studying to become nurses, midwives, paramedics and social workers

13. There are 28,100 students estimated to be in their final year of education studying these professions in England - UCAS acceptances in 2017 have been used as a proxy for those who would be in their final year in 2020 – this is likely to be an overestimate due to people not accepting their place, dropping out or taking longer courses.

14. We have assumed that all 28,100 would be willing to join the register early.

15. Using the GMC's estimate of the admin costs of temporary registration (£53 in today's prices) results in a cost of **£1,480,999.**

16. Using GMC's higher estimate (£123 in today's prices) results in a cost of **£3,467,571.**

17. The full costs and benefits for this option are difficult to quantify as there is currently no good estimate of how many professionals who are registered using these powers will carry through to deliver services and for how long. The impact will also depend on the roles those emergency registered professionals, who wish to deliver services, would then go on to fill – for example some local areas plan to utilise retired doctors to fill in medical certificates of cause of death (MCCD) whereas other might be used in accident and emergency wards. The NHS will be responsible for overseeing the deployment of any professionals who volunteer to come forward to provide services during the coronavirus outbreak.

18. There will be potential set up costs for the regulators to run the registration scheme and the additional wages costs. There will also be costs to indemnify the individuals, where applicable, which is described in Clause 7. The potential benefits include additional capacity within the health system, leading to the ability to treat more patients, keep services running longer or run administrative processes more smoothly. This could potentially lead to a reduction in fatalities and serious illnesses during the outbreak period.

Emergency registration of and extension of prescribing powers for pharmaceutical chemists: Northern Ireland

19. This clause permits the registrar of the Pharmaceutical Society of Northern Ireland to temporarily register a person or a group of persons or temporarily annotate a registered person or group of registered persons in an emergency situation. These measures will enhance the available pharmacy workforce in Northern Ireland.

Rationale for intervention

20. It is anticipated that these temporary registration measures will ease the pressure on services which we expect to be under particular strain during a coronavirus outbreak.

Other policy options considered

21. In addition to emergency registration relating to the pharmacy workforce in Northern Ireland, there are other key healthcare professions where an emergency register will also be mobilised.

Timing of when the clause will be needed in coronavirus outbreak (weeks from peak)

22. Peak minus 4 weeks (estimated).

How would clause be operationalised and time taken?

23. The clauses will be operationalised when the Department of Health writes to the registrar of the Pharmaceutical Society of Northern Ireland to advise that an emergency has occurred, is occurring or is about to occur and there is the need to consider temporary annotations or registrations to the register.

Anticipated public reaction/controversy

24. There will be no obligation on individuals who meet the criteria for temporary registration or annotation to be registered under these clauses; it would be on a voluntary basis. Members of the public and patients will want to be assured that those who are temporarily registered or annotated possess the required skills and competencies to carry out their duties safely.

Special considerations for DAs

25. This is devolved to Northern Ireland.

Spending implications

26. The full costs are difficult to quantify however any additional costs will be dependent on the numbers of temporary pharmacy staff required. However the additional costs may be off-set by the increased potential to lessen the wider economic impact of having members of the public seriously ill and therefore not at work, because of the increased capacity of the health service.

Emergency registration of social workers

Rationale for intervention

27. The addition of emergency registrants to the register held by the Registrar of Social Work England (SWE) and Social Care Wales (SCW) will help to deal with any shortage of social workers in the children's and adult social care sectors as a result of increased staff absenteeism, or increased demand, for example, for care planning.

Other policy options considered?

28. A "do nothing" option would reduce the ability of both adult and children's social care services to bring in additional social workers in the face of high staff shortage or raised demands. Some decision-making roles critical to provision of care can only be made by social workers (within the existing legislative and government guidance framework), and staff shortages could leave vulnerable children and adults at risk and lacking safe care provision.

29. Disapplying legislation requiring social workers to undertake these roles – allowing anyone to take care-critical decisions – would though be a disproportionate response. Such decisions require the application of expert knowledge and experience. These are complex decisions, balancing law, risk of significant harm and personal freedom, which is why registration as a social worker requires a degree in social work. Disapplying requirements for social workers generally would unnecessarily expose large numbers of vulnerable children and adults to unacceptable levels of risk resulting from inadequate decision making.

Key considerations

30. The potential economic impacts of this provision include the increased cost to social work employers – largely local government – of paying for the wages of any additional staff brought in through this route. However, costs of delayed decision making could be far higher. Delayed decisions could cause a backlog that will create additional pressure on services for many months after any outbreak. Effective management of cases now would be needed to avoid a passing of pressure through the system: for example, children being taken into care unnecessarily would lead to increase cost to the local authority as well as increased pressure on the residential care system which would be suffering from its own lack of staff and capacity issues.

31. Employers may need to address this through employment of expensive agency staff. If there is a significant increase in staff absenteeism there is risk that this scarcity would lead to a spike in agency rates as competition increases for scarce social worker resource.

32. In some cases though the lack of social worker input at a critical time could result in increased harm to vulnerable children or adults, for example, leaving a child in the care of abusive parents. This increased harm would be highly likely to increase the long-term cost of future care provision. More importantly, it could leave some of society's most vulnerable people at risk of emotional or physical harm or death.

33. For individuals who are eligible to be emergency registered – based on the discretion of the Registrar of Social Work England and the Registrar of Social Care Wales – there will be no obligation for them to do so; it would be on a voluntary basis. DfE, DHSC and SWE for England and the Welsh Government and SCW for Wales will work with employers to establish how these additional social workers could best be deployed.

34. The full costs and benefits for this option are difficult to quantify. There are around 8,200 ex-social workers who have left SWE's register within the last two years, meaning they still have recent and relevant practise experience. However, we do not know how many may volunteer, nor likely employer need.

35. There will be some set up costs for SWE to run the registration scheme, but they expect these to be relatively low. The larger cost would be additional wages costs. Typically, agency social workers may be paid £25-£35 per hour, depending on role and experience. Local authority rates for permanent roles are lower. The potential benefits include additional capacity within the social care system, reducing harm and the costs associated with harm.

Emergency volunteers

Rationale for intervention

36. Volunteers are an integral and important resource for the health, community health (henceforth referred to collectively as health) and social care systems. With health and social care workforces under increasing pressure, health and social care volunteers play an essential role in the delivery of day-to-day services and are an invaluable resource for local areas to draw upon in the event of emergencies. Volunteers have a wide range of skills and experience that can deployed to undertake a number of regulated and unregulated activities that help to improve the patient experience, tackle health inequalities and support integrated care. These skills are often deployed in community health settings, acute hospital care, mental health care, palliative care, home care and in care homes. A Kings Fund report published in 2013 estimated that the number of volunteers in England alone numbers 3 million and concluded that it was doubtful whether the health and social care systems across the UK could continue to operate without the input of volunteers.

37. In the event of a severe coronavirus outbreak in the UK, the health and social care systems will come under significant pressure to tackle the outbreak and maintain the delivery of other non-coronavirus related essential services. Not only will demand on health and social care services increase substantially in the event of a severe coronavirus outbreak, but supply will be impacted as a result of coronavirus-related absenteeism within the health and social care workforce. NHS England estimates that in the event of a worst-case scenario the absenteeism rate could be as high as 30% for healthcare workers. In this situation, many essential health and social care services may cease with detrimental impacts on those that need them most.

38. Whilst volunteers are factored into local contingency plans, ensuring maximum resilience across the health and social care systems at the point of maximum pressure in a severe coronavirus outbreak is a priority. That is why this clause enables 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.

39. The clause, therefore, creates a temporary new form of statutory unpaid leave for employees and workers who wish to volunteer – Emergency Volunteering Leave. The clause also includes certain rights and protections for employees and workers who take Emergency Volunteering Leave, including, for example, the maintenance of terms and conditions of employment during any period of leave and protection from detriment for taking the leave. The clause also provides an obligation on the Secretary of State for Health and Social Care to establish a compensation scheme to compensate eligible volunteers for some loss of income and expenses incurred.

Other policy options considered?

40. Local areas could acquire additional volunteers at critical moments to support local relief efforts through informal arrangements between employees and workers and their employers. However, this relies upon employers implementing their own special leave arrangements and would allow for significant discretion on the part of the employer regarding the length of time these arrangements are in place for and the employment protections they afford to their employees and workers during this period. This would result in inconsistencies with some volunteers receiving better arrangements, benefits and protections than others doing similar roles.

Key considerations

41. Incentivising volunteers – in the event of a severe outbreak of coronavirus in the UK, existing health and social care services and workforces will be placed under significant pressure. Ensuring effective resilience across the health and social care system is critical. This measure will help to increase the available pool of volunteers that are available to support the delivery of essential non-coronavirus services upon which a large number of vulnerable citizens rely.

42. Impact on business/services – the introduction of a new temporary form of unpaid statutory leave will impact employers and businesses at a time when the overall economy will be hit hard by reductions in productivity and disrupted supply chains. This has been taken into consideration and to mitigate this the measure limits the total consecutive amount of Emergency Volunteering Leave an individual can take to 4 weeks in any volunteering period of 16 weeks. The measure also provides exemptions for micro businesses (those with 10 or fewer employees), civil servants, the military, police and parliamentary and commission staff; there is also a power to make regulations to add to the list exemptions.

43. Impact on Local Authorities – the policy requires LAs across the UK to identify volunteer social care opportunities and to match these opportunities to volunteers coming forward. This may add additional burdens to the work that LAs are doing in response to the outbreak. HM Government will provide detailed guidance for LAs to follow and will design a simple system in collaboration with them that is easy to administer. Additional funding may also be required.

44. Guidance and communication – clear guidance and effective communication of this measure will be critical to its success. Individuals will need to know what roles they will be expected to do and how local authorities and health systems will deploy them. In cases where they are employed, volunteers will need to know how to notify their employer and be made aware of the employment protections they will receive in respect of the leave. Guidance will be drafted for local authorities and national health services, employers and individuals that sets out the purpose of the measure, its implementation and application.

45. Compensation Scheme – compensating individuals for some loss of income and expenses is an important factor in ensuring that enough volunteers come forward. Maximising success will be aided by identifying and agreeing an appropriate rate of compensation and a simple means for individuals to claim.

46. Indemnity – volunteers will be involved in activities where there may be risks to themselves and others. Volunteers will only be placed in a volunteering activity where appropriate indemnity arrangements are in place.

Mental health and mental capacity

Rationale for intervention

47. During a severe coronavirus outbreak, it is anticipated that there will be a surge in demand for healthcare services, including mental health services. There will also likely be higher staff absence rates than usual, particularly during the peak weeks. It is thought likely that organisations will find it very difficult to comply with a number of procedural requirements set out in the Mental Health Act 1983. The consequences of this would include meaning that patients needing mental health treatment in an inpatient setting would be less likely to receive it, particularly in those cases where a person is so unwell he or she is not able or willing to consent formally to treatment. It would also mean that people would have to wait for an extended period before receiving mental health assessments, and be unwell and untreated for longer. These waits would include those for assessments following detentions made by the police under the Act, which would be a burden on police time, and could result in an increase of the number of people being assessed within police stations.

48. In order to support these services and give them the flexibility they will need to continue treating patients during a severe coronavirus outbreak, a number of temporary amendments to the Mental Health Act 1983 are proposed. These include allowing fewer health care professionals needed to undertake certain functions; and extension or removal of time limits relating to detention and transfer of patients.

49. In practice, the amendments would mean that an approved mental health professional may decide to detain a person on the advice of one doctor approved under section 12 of the Act. The Act requires the advice of two doctors, the second having acquaintance with the patient.

50. Patients who are being treated without their consent have the right, after three months, to have their treatment reviewed by a Second Opinion Appointed Doctor, a service provided by the Care Quality Commission. To reduce the impact on resources at the end of the emergency period and avoid a peak in demand on to fulfil this right, an amendment sets out that the three month period will commence from the end of the emergency period.

51. For prisoners, an amendment would help to ensure that defendants and prisoners with a mental health condition can be admitted to hospital for treatment during a time of staff shortages and disruption to services. The flexibilities will change the number of doctors' opinions and time limits required for detention and movement between court, prison and hospital.

Other policy options considered?

52. Mental Health Trusts are expected to plan for and respond to emergency and business continuity incidents in the same way as other category 1 responders. This includes planning for a coronavirus outbreak. There is specific guidance available to the NHS and Social Care, including Mental Health providers, to support the development of plans to deal with increased demand and staff absence

53. As such, there is a “do nothing” option regarding legislation. This was not seen as the preferred option as we are likely to see higher staff absence during the peak weeks of the coronavirus outbreak for most organisations. This will compound the impact of the increase in demand for health care services, including mental health services.

54. The Government also considered changing the requirements around Community Treatment Orders, to temporarily reduce the number of professionals approved under Act to make them, in order to facilitate release from hospital settings. This measure would not affect the primary issue, of ensuring that people in need, particularly those who are not consenting, get access to mental health treatment of a type that requires their detention in psychiatric hospital.

Key considerations

55. Under the NHS Act 2006, the Secretary of State has a duty, and under the NHS (Wales) Act 2006, the Welsh Minister has a duty to promote a comprehensive health service. This measure will ensure a reduced likelihood of a patient who requires treatment not receiving it whilst also ensuring that clinicians are provided with lawful flexibility they will need to continue to treat patients with significant staff shortages and increased strain on the health service.

56. These measures do decrease the immediate safeguards around these processes; however this is balanced with the interest of patients being able to access treatment if needed.

57. Clear communication of these amendments and how they should impact on provision will be key to their successful implementation. There is likely to be local variation in the impact of the coronavirus outbreak across the country and a clear understanding of when to utilise these flexibilities will be important.

Changes to Scottish Mental Health Legislation

Rationale for intervention

58. During a coronavirus outbreak, it is anticipated that there will be a surge in demand for healthcare services, including mental health services. There will also likely be higher staff absence rates than usual, particularly during the peak weeks. It is thought likely that organisations will find it very difficult to comply with a number of procedural requirements set out in the Mental Health (Care and Treatment) Scotland Act 2003, the Criminal Procedure (Scotland) Act 1995 and related subordinate legislation. Mental health legislation provides various procedural safeguards in relation to the care and treatment of mentally disordered persons. These safeguards include strict limitations on who can apply for detention for assessment and treatment of mentally disordered persons.

59. The consequences of this may mean that patients needing mental health treatment in an inpatient setting would be less likely to receive it, particularly in those cases where a person is so unwell he or she is not able or willing to consent formally to treatment. It would also mean that people would have to wait for an extended period before receiving mental health assessments, and be unwell and untreated for longer.

60. In order to support these services and give them the flexibility they will need to continue treating patients during a coronavirus outbreak, a number of temporary amendments to the Mental Health (Care and Treatment) Scotland Act 2003, the Criminal Procedure (Scotland) Act 1995 and related subordinate legislation are proposed. These include, amongst others, where the assent of two medical practitioners is required, or the assent of one medical practitioner and a mental health officer, this is reduced to a requirement for one medical practitioner in circumstances where seeking the assent of two would be impractical or result in undesirable delay; the extension of the duration of certain orders; and the extension of timescales for the assessment of those involved in criminal proceedings.

Other policy options considered?

61. Health Boards in Scotland are expected to plan for and respond to emergency and business continuity incidents in the same way as other category 1 responders. This includes planning for civil emergencies. There is specific guidance available to Health Boards and Local Authorities, to support the development of plans to deal with increased demand and staff absence. These include “Preparing Scotland – Scottish Guidance on Resilience” and detailed guidance on “Care for people affected by emergencies”.

62. The policy position is that the proposed changes should work alongside the original provisions in mental health legislation, providing flexibility where needed but not mandating their use. Persons acting during the time of the time of the emergency legislation should consider first if the normal processes under the 2003 Act or 1995 Act and associated legislation can be adhered to before using the emergency provisions. Use of the temporary modifications should be used only as an option of last resort, as such there is a “do nothing” option regarding legislation.

63. Place of safety orders can be used by the police under section 297 of the 2003 Act when they find someone in a public place who they believe may have a mental disorder and is in immediate need of care and treatment. The individual can be taken to, and detained in a, a place of safety for up

to 24 hours in order to be assessed by a medical practitioner. Consideration was given to extending the period from 24 to 48 hours. However, on balance, stakeholders felt that keeping people in a place of safety was not desirable and should be limited as far as possible. Therefore, these provisions were not instructed.

64. At the end of the emergency period, consideration was given to whether any order made on the evidence or advice of one medical practitioner (where the usual requirement was two) should be subject to review by the tribunal or relevant court. This review could allow consideration of whether a new order should be made. After a specified period of time, these orders would then cease to have effect. This provision was popular with stakeholders who felt that it provided additional support for patient rights, however, in practical terms it would place an additional administrative burden on services when they are trying to recover following a period of significant disruption. A general provision to review orders would remain in place and no person should continue to be detained who does not meet the criteria set out in the 2003 Act. The principles of the 2003 Act should also be taken into account throughout an individual's care and treatment and these include use of least restrictive alternative and benefit to the person. Therefore, these provisions were not instructed.

Key considerations

65. Under the NHS (Scotland) Act 1978, the Secretary of State has a duty to promote a comprehensive and integrated health service, and Scottish Ministers have a separate duty to promote improvement of the physical and mental health of the people of Scotland. The proposed measures are intended to reduce the likelihood of a patient who requires treatment not receiving it whilst also ensuring that clinicians are provided with the lawful flexibility they may need to continue to treat patients during a period of significant staff shortages and increased strain on public bodies across Scotland. It would also support the autonomy of clinicians working within the health service by increasing their individual responsibilities.

66. The proposed changes to Scottish mental health legislation need careful presentation to ensure that they are viewed as a proportionate response in the event of a shortage of healthcare staff and other professionals required to meet the criteria for assessment, detention and treatment of individuals under the mental health legislation. The changes will enable individuals to continue to be assessed, treated and cared for in a way which respects their rights and retains adequate safeguards. However, there may be some concern that the changes allow for a greater infringement of an individual's human rights, beyond that of the current legislation, such as increasing timescales for detention in some cases as the measures decrease immediate safeguards around these processes. This should be balanced with the interest of patients being able to access timely care and support if needed. The competing rights of Articles 2,4, 5 and 8 of ECHR are particularly relevant. Article 2 rights (the right to life) must be prioritised in an emergency situation, for a limited time, meaning that safeguards protecting other rights may be temporarily reduced or limited. It should be made clear that compliance with the original legislation continues to be the default process unless it is not practically possible to do so, minimising the risk of an increased infringement of an individual's rights. In addition, all public bodies in Scotland must continue to act in a way which respects ECHR rights and all legislation must be interpreted, in so far as is possible, in a way that is compatible with ECHR rights.

67. Clear communication of these amendments and how they should impact on provision will be crucial to their successful implementation. In any event, there is likely to be significant local

variation in the impact of the emergency period across the country and a clear understanding of how and when to utilise these temporary flexibilities will be important.

Mental health and mental capacity (Northern Ireland)

68. Temporary modifications to Mental Capacity Act (Northern Ireland) 2016. The Act provides a statutory framework for deprivation of liberty of persons over 16 who lack capacity. The modifications amend the Act to:

- allow a relevant social worker rather than an approved social worker to provide consultation;
- allow the trust panel to work remotely; and
- extend various time limits.

Rationale for intervention

69. Without modifications it may be impossible for the HSC to comply with the statutory requirements for deprivation of liberty, thus increasing the risk of harm to persons or others. It would also expose HSC workers to the risk of not being protected from liability when carrying out acts amounting to deprivations of liberty.

Other policy options considered

70. The other option would be not to comply with the statutory framework.

Timing of when the clause will be needed (weeks from peak)

71. The modifications would be required if and when 20% of the workforce were unavailable.

How would clause be operationalised and time taken?

72. Commencement would be by Commencement Order by the Department of Health. A Code of Practice is prepared and will be shared with HSC Trusts.

Anticipated public reaction/controversy

73. Reducing the protections for persons deprived of liberty always carries the risk of negative reaction. However, considering the current position, it is not unlikely that the public reaction will be mostly positive. The move is widely supported across the HSC.

Special considerations for DAs

74. Devolved issue which require LCM.

Spending implications

75. None.

Health service indemnification

76. A coronavirus outbreak would bring about a significant increase in demand for healthcare services. We would also expect that, owing to staff members being diagnosed with coronavirus, fewer staff will be available in healthcare organisations to provide healthcare services. Therefore, when responding to a coronavirus outbreak, we expect this to have a serious and negative impact on the capacity of the NHS to manage any increase in the demand for healthcare services and to provide continuity in the provision of routinely provided NHS services.

77. Staff members who are not diagnosed as having coronavirus disease or suspected, or at risk, of having the disease 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. It may also be necessary to require medical students to assist in the delivery of some NHS services, although due consideration as to competence and supervision will feature as part of any assessment on whether this course of action is practical and effective. Medical practitioners and other healthcare workers from a range of disciplines and settings are likely to be required to help deal with a coronavirus outbreak. For example, dentists and GP practice nurses may be asked to assist staff in NHS hospitals in administering injections and medication that would normally only be administered by hospital medics.

78. Additional requests may be made of staff in relation to the services they provide in response to a coronavirus outbreak. 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. We expect that such changes to the normal, routine practices of healthcare professionals would only persist for the duration of the response.

79. This indemnity clause allows the Secretary of State for Health and Social Care (in relation to the NHS for England) and the Welsh Ministers (in relation to the NHS for Wales) to provide indemnity for clinical negligence liabilities of healthcare professionals and others arising from NHS activities carried out as part of the response to a coronavirus outbreak. Alternatively, the clause allows the Secretary of State or the Welsh Ministers to arrange for such indemnity to be provided by a person authorised by the Secretary of State or the Welsh Ministers. This indemnity will not apply to those already covered by state-backed schemes (the Clinical Negligence Scheme for Trusts (CNST) or the Clinical Negligence Scheme for General Practice (CNSGP) in England and the Welsh Risk Pool (WRP) or the Scheme for General Medical Practice Indemnity (GMPI) in Wales). It will also not cover healthcare professionals who have indemnity cover for the clinical negligence in question through a private Medical Defence Organisation (MDO), a professional body or where they have commercial insurance. There are similar provisions for Scotland and Northern Ireland.

80. The intention behind this clause is to ensure that, in the exceptional circumstances that might arise in a coronavirus outbreak, sufficient indemnity arrangements are in place to cover all NHS activities required to respond to the outbreak. The clause will provide indemnity for clinical negligence liabilities arising from NHS activities connected to the diagnosis, care and treatment of those who have been diagnosed as having coronavirus disease or who are suspected, or who are at risk, of having the disease. It will also cover healthcare professionals and others providing NHS business-as-usual activities (connected to the diagnosis, care or treatment of a patient) that a person is asked to carry out in consequence of the outbreak, including where such activities are outside the scope of their usual day-to-day practices. Cover under the indemnity clause will only apply, however, where such activities fall outside the scope of pre-existing indemnity cover arrangements (both in the state-backed schemes and privately provided cover).

Other policy options considered?

81. Existing powers under the NHS Act 2006 were reviewed in order to determine whether they might be sufficient to provide indemnity in a coronavirus outbreak to cover any gaps in existing indemnity arrangements. This included section 71 of the NHS Act 2006 in England and section 30 of the NHS (Wales) Act 2006 in Wales, under which regulations establishing state indemnity schemes (or extending the scope of existing schemes) can be made.

82. The coverage provided under the existing CNST, CNSGP, WRP and GMPI is likely to be sufficient in the majority of cases in the situations outlined above, namely where additional activities are required to be carried out by healthcare professionals and amended procedures for delivering NHS services are in place. This, however, is only the case where the NHS activities in question are carried out on behalf of an NHS trust or for a GP practice. There may, therefore, be the potential for gaps in such cover to arise if other measures are adopted in responding to a coronavirus outbreak. The option to amend the regulations for the CNST or, under the same regulation-making powers, to make regulations establishing a separate scheme to close any gaps in the indemnity cover required to respond to a coronavirus outbreak was considered. Similarly, the option to extend the coverage provided under the CNSGP to cover not only GPs and others providing GP services but also community dentists, pharmacists, nurses, etc. who might be called upon to assist in a coronavirus outbreak was also considered.

83. Other indemnity arrangements which are provided to medical practitioners and healthcare workers by medical defence organisations (MDOs), professional membership bodies and commercial insurers were reviewed. In theory, arrangements could be made with MDOs and other insurance providers to provide extended cover to their members if they were to take on extra clinical activities during a coronavirus outbreak.

84. However, the proposed option was preferred as it complements existing indemnity arrangements – in essence by covering any gaps in indemnity provision only where adequate cover is not otherwise provided for the relevant NHS activities carried out by healthcare workers and others for the purposes of responding to a coronavirus outbreak. The other options would require some time to make changes or agree arrangements, which will not work in a coronavirus outbreak where it will be essential to respond as soon as possible.

Key considerations

85. There may be a substantial cost associated with this provision; however, the exact number of healthcare professionals and other persons that the indemnity might cover is dependent on the severity of the outbreak, the availability of healthcare professionals and the extent of the current indemnity arrangements that are in place. The number of potential claims and the cost of successful cases are very difficult to quantify given this uncertainty. That said, the existing state-backed schemes are designed in such a way as to provide cover for all NHS healthcare services provided for an NHS trust or for a GP practice. As such, we would expect the vast majority of persons carrying out activities in connection with the provision of NHS services as a consequence of a coronavirus outbreak to have sufficient clinical negligence indemnity cover in place under the pre-existing state-backed schemes, reducing any reliance on the 'safety net' provisions created by this clause.

NHS and local authority care and support

This summary of impacts covers three provisions:

86. Provision that in a coronavirus outbreak a Local Authority ("LA") may lawfully prioritise who and what type of needs it will meet, rather than being required to meet all eligible assessed needs as specified under the Care Act 2014 (as at present).

87. Provision that in a coronavirus outbreak LAs may lawfully determine whether and the extent to which it will carry out assessments of individuals' needs or review care plans, or carry out financial assessments, rather than being required to carry these out in all cases required by the Care Act 2014 as at present.

88. Provision for the Secretary of State for Health and Social Care to direct LAs in relation to the prioritisation of services to meet care and support needs in accordance with guidance issued by the Department of Health and Social Care.

Rationale for intervention

89. The Care Act imposes very explicit duties on Local Authorities (Las) to: carry out an assessment of the needs of anyone who appears to require care and support; involve the individual in the process; provide an advocate if needed; consider their eligibility for state funded care and support; provide a care and support plan; meet the individual's eligible needs if they are entitled to this support. These duties ensure that LAs provide support to some of the most vulnerable people in society. We expect LAs, working with providers, to do everything possible to maintain services over the coming period.

90. However, during the peak, adult social care services will face surging demand and reduced capacity arising from higher rates of staff absence. This may make it impossible for LAs to continue to deliver at current service levels, or undertake the detailed assessments they would usually provide.

91. 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 without undertaking full Care Act compliant assessments.

92. 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 under the Care Act 2014. Specifically, an LA would be permitted to lawfully prioritise whose and what type of needs it will meet, rather than being required to meet all eligible assessed needs as specified under the Care Act 2014, and will not be required to carry out assessments of individuals' needs or review care plans.

93. Without these provisions, LAs would be constrained by existing assessments, which could result in them maintaining these at the expense of new, more urgent needs, or prevent them from allocating scarce support purely on the basis of severity of need. Such decisions could be inhibited by the fear of legal challenge under the Care Act or, once taken, could become subject to such challenge, consuming resources at a critical time. Concerns around legal challenge could cause LAs to delay the prioritisation process beyond the point of viability, resulting in poor

decision making and worse outcomes than if they were given the legal space to take strategic decisions around prioritisation.

94. These provisions would also provide Secretary of State with a power to direct LAs to comply with Government guidance regarding the principles they should follow when prioritising care. These prioritisation decisions are complex and it is important that Local Authorities are able to use their expertise and knowledge of individuals' needs to make the right decision in each situation. However, Government guidance, and the power to direct LAs to follow this, will ensure that these decisions are underpinned by consistent principles.

95. These changes to the Care Act 2014 would only be triggered if the spread of coronavirus was such that the Secretary of State considered LAs to be at imminent risk of failing to fulfil their duties under the Care Act 2014 and would be deactivated at the conclusion of the emergency period. 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, including requiring them to meet needs in order to prevent individuals' human rights being breached.

Other policy options considered?

96. An alternative option we considered was to provide no easements for LAs and accept that they could face legal challenge after the fact if they struggled to meet assessed needs during the coronavirus outbreak. Maintaining the status quo in terms of LA duties could be seen as providing encouragement to LAs to continue providing all services for as long as possible. However, this approach could risk LAs attempting to continue to provide all services beyond the point at which this is feasible. This in turn risks LAs making inconsistent or inadequately considered decisions as a result of lacking the opportunity to strategically prioritise.

Key considerations

97. As noted above, these clauses should not in themselves cause LAs to reduce their adult social care offer as (at the point of triggering) this would be an imminent risk regardless of any legislative easements made by the government. However, the policy intent of these clauses is to give LAs cover to make this reduction in the most planned, prioritised way possible, and the impacts of this intent are therefore a key consideration.

98. In this light, the triggering of these clauses is key; triggering too soon could introduce unnecessary risk by removing protections before this is appropriate while triggering too late could delay LAs undertaking strategic prioritisation and making poor decisions around the optimal management of reduced resources. The Secretary of State's triggering of these clauses will therefore be based on clinical and medical advice regarding the progress of the coronavirus outbreak.

99. If triggered, these clauses could result in individuals not receiving support for some needs where LAs' judge that resources need to be focused on meeting the most acute and pressing needs. This could also have secondary impacts on the family members or carers of individuals with needs or the local community, to whom LAs might have to look to provide temporary support. It is worth noting, however, that in these extreme circumstances these impacts would transpire regardless of the introduction of these clauses and that the intent of these clauses is to allow LAs to mitigate the negative impacts of necessary prioritisation as far as possible.

Pensions

100. This Clause suspends the operation of the following Regulations in the NHS Pension Scheme:

NHS Pension Scheme Regulations 1995

- Regulation S1
- Regulation S2(1A)(c)

NHS Pension Scheme Regulations 2008

- Regulation 2.D.6(2)(a)
- Regulation 3.D.6(2)(a)

NHS Pension Scheme Regulations 2015

- Regulation 86(3)

Rationale for intervention

101. The aim of suspending the above regulations is to remove barriers which would prevent otherwise able retired members from returning to work while continuing to receive their pension. These rules predominantly affect members of the 1995 Scheme, although a smaller number of members could be affected by draw down abatement in the 2008 Section and the 2015 Scheme. Members of the 1995 Scheme are affected by the 16-hour rule and special class holders are abated if they return to work in receipt of their benefits before age 60.

102. 16 Hour Rule: Members of the 1995 Section must take a 24-Hour break before returning to employment after retirement. This break can take place over a weekend meaning members could retire on Friday and return to work on Monday. However, a pension will be suspended if the member returns to work and commits to more than 16 hours per week within the first four weeks. This follows the expectation at the time the 1995 Section was introduced that members would retire at age 60 and either not return to work or return on limited hours.

103. Suspension of this rule by means of the Coronavirus Bill would allow staff to return immediately after retirement and continue their existing working commitments, or increase them, whilst they are in receipt of their full pension benefits. This would remove the financial disincentive of members having their pension benefits suspended if they return immediately to a working pattern in excess of 16 hours per week following retirement.

104. Abatement of Special Class: The Normal Pension Age (NPA) for members of the 1995 Section of the NHS Pension Scheme is 60. However, certain members such as nurses and mental health officers hold “special class status” if they were in post on or before 6th March 1995. This allows such members to access their pension benefits at age 55, earlier than the normal pension age of 60, without the actuarial reduction that would normally apply if benefits are claimed early.

105. Special class status dates back to the start of the NHS in 1948 and recognised the physically arduous nature of nursing and certain other types of care. It assumed that members working under these conditions would not be able to continue working until the normal pension age of 60. Advances in care methods over time have meant that the rationale for special class status has

become outdated, and it was withdrawn for new entrants from 6th March 1995 as part of NHS Pension Scheme restructuring at that time.

106. If a special class holder returns to work before age 60, their pension benefits will be abated if their post-retirement pay plus pension exceeds their pre-retirement income. This protects the public purse from the member receiving an enhanced pension from age 55 and continuing to draw their pre-retirement salary.

107. This clause suspends the abatement provisions that apply to special class holders. This will remove a barrier which currently prevents special class nurses aged 55-60 who have claimed their pension benefits from returning to work without having their pension suspended. The abatement rules also apply to persons who have retired on ill health grounds or in the interests of the efficiency of the service (IES), along with a limited class of persons who have retired on redundancy grounds. The abatement rules that apply to these groups have not been suspended.

108. Draw Down: Members of the 2008 Section and 2015 Scheme have access to increased retirement flexibilities, including the ability to 'draw down' a portion of their pension. From the age of 55, members can elect to draw down between 20% and 80% of their pension whilst continuing to work. Members also have the option to build further pension after drawing down, until they complete 45 calendar years of service (2008 Section) or they reach age 75.

109. Abatement does not apply in this scenario in the same way as it does for special class members of the 1995 Scheme, although members must reduce their pensionable pay by at least 10% in order to draw down. This is usually achieved by a member reducing their working commitments or stepping down to a role with a lower salary.

110. Suspending the requirement for staff to reduce their pensionable pay by 10% will allow staff who elect to draw down to continue with their existing work commitments and increase them if they wish to do so.

Provision of vaccines by Health Boards: Scotland

111. This clause restricts the provision of vaccines by Health Boards to General Practitioners and persons under their direction or control. We would look to revise to allow vaccinations by other health care professionals during the duration of the crisis.

Rationale for intervention

112. The clause is restrictive during a crisis and prevents Health Boards arranging vaccination by other healthcare professionals.

Other policy options considered

113. Patient Group Directives – these can only be authorised by Scottish Ministers and cannot be required.

Timing of when the clause will be needed in coronavirus outbreak (weeks from peak)

114. As soon as a vaccine is available.

How would clause be operationalised and time taken?

115. Health Boards will be made aware of the clause as soon as it is revised. They will be advised to prepare accordingly. Scottish Ministers would issue directions to Health Boards instructing them to put their plans into action as soon as a vaccine was confirmed.

Anticipated public reaction/controversy

116. We would anticipate the public would welcome this development. There would be a minor risk of controversy as to why revision was required in the first place.

Special considerations for DAs

117. This is devolved.

Spending implications

118. Slight – we would not anticipate other healthcare professionals costing more than general practitioners to supply a vaccine per patient, although with more professionals involved we could assume more patients would be vaccinated and thus a greater spend on vaccines.

Delivery of vaccinations by alternative providers: Scotland

Rationale for intervention

119. Clause 40 – National Health Service (Scotland) Act 1978 restricts the provision of vaccines by Health Boards to General Practitioners and persons under their direction or control. The clause is restrictive during a crisis and prevents Scottish Health Boards arranging vaccination by other healthcare professionals.

120. Revising the clause to allow vaccinations by other health care professionals would allow Scottish Health Boards to make best use of locally available resources.

Other policy options considered

121. The default option for vaccination in Scotland would be by GMS contractors i.e. GP practices. However their capacity during a crisis may be reduced. Scottish Government has considered whether Patient Group Directives would be sufficient. However, these can only be authorised by Scottish Ministers and cannot be required.

Protection of public health: Scotland

122. These provisions enable Scottish Ministers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risks originating there or elsewhere).

Rationale for intervention

123. These Regulations will ensure Scottish Ministers have the same powers to make Regulations about managing infectious diseases as apply in the rest of the UK. This includes the ability to make Regulations quickly in an emergency. Whilst the powers in the Bill provide tools for responding to an outbreak, the Regulation-making power will allow Scottish Ministers to make Regulations should it become necessary to make further provision.

Other policy options considered

124. Taking new primary legislation through the Scottish Parliament.

Timing of when the clause will be needed in coronavirus outbreak (weeks from peak)

125. Whilst it is not expected that the power would be used straight away, it may be necessary to make emergency Regulations quickly to respond to an unforeseen situation so the power itself needs to be in place immediately.

How would clause be operationalised and time taken?

126. The clause will come into force on Royal Assent, but Regulations will only be made under the clause if and when it appears necessary to do so. This could be some weeks after the UK Bill receives Royal Ascent, or soon after.

Anticipated public reaction/controversy

127. The regulation-making power itself is likely to be uncontroversial. The level of controversy over any Regulations ultimately made will depend on their content. Introducing powers and restrictions that could affect public freedoms and liberties is likely to attract significant media attention.

Special considerations for DAs

128. Health is a devolved matter.

Spending implications

129. Not explored, however, the proposed clauses provide for regulation making powers and so financial implications are unlikely. The implications would need considered at the point Regulations are made.

Protection of public health: Northern Ireland

130. The Secretary of State for Health made The Health Protection (Coronavirus) Regulations 2020. The Regulations only apply to England. In particular, the 2020 Regulations allow for further restrictions and requirements relating to the isolation of persons suspected to be infected with coronavirus and for the detention of persons in isolation where that is deemed to be necessary.

131. This Clause will allow the Department to make regulations for additional measures to be introduced to help delay or prevent further transmission of an infectious agent which constitutes a serious imminent threat to public health.

Rationale for intervention

132. NI currently has no legislative equivalent to the main provisions of Part 2A of the Public Health (Control of Disease) Act 1984 or the provisions of The Health Protection (Coronavirus) Regulations 2020. Clauses required to provide public health protection against infectious disease which is broadly equivalent to that available in the rest of the UK and in the quickest possible time given the current level of threat.

Other policy options considered

133. Taking new primary legislation through the NI Assembly.

134. Making coronavirus a notifiable disease under the Public Health Act (NI) 1967 to provide some limited powers.

Timing of when the clause will be needed in outbreak (weeks from peak)

135. It is hoped to have regulations drafted to be introduced to the NI Assembly as soon as the UK Bill receives Royal Assent.

How would clause be operationalised and time taken?

136. Powers would become available once the regulations are made. This could be some weeks after the UK Bill receives Royal Assent.

Anticipated public reaction/controversy

137. Introducing powers and restrictions that could affect public freedoms and liberties is likely to attract significant media attention.

Special considerations for DAs

138. Health is a devolved matter.

Spending implications

139. Not explored, however, the proposed clauses provide for regulation making powers and so financial implications are unlikely.

Section 2 – Easing of legislative and regulatory requirements

Delaying Continuing Health Care assessments

140. This provision allows NHS providers to delay undertaking the assessment process for NHS continuing health care (NHS CHC) until after the coronavirus outbreak has ended.

Rationale for intervention

141. NHS Continuing Healthcare provides fully funded packages of care to individuals outside of hospital when they are assessed as having a 'primary health need'.

142. NHS Continuing Healthcare assessments can cause delays to hospital discharge and are detailed processes which require significant input from both NHS and Local Authority employees.

143. During the peak of the coronavirus outbreak, the NHS will face surging demand and reduced capacity arising from higher rates of staff absence. In order to allow the NHS to make the best possible use of its staff and hospital space, it will be essential to ensure that patients who are ready to leave hospital can do so rapidly, and with the minimum administrative burden.

144. The undertaking of NHS Continuing Healthcare assessments could be a barrier to this as NHS organisations have a statutory duty to undertake these for individuals who may be eligible for Continuing Healthcare support before they are discharged from hospital.

145. This provision allows NHS organisations to delay undertaking NHS Continuing Healthcare assessments until after the peak of the coronavirus outbreak.

146. This measure would only be brought into operation for the shortest possible time at the peak of the coronavirus outbreak. It would support rapid discharges from hospital and the effective prioritisation of NHS staff resources

147. Pending CHC assessment, individuals would continue to receive NHS funded care.

Other policy options considered?

148. We considered providing no easements in terms of the statutory duties of CCGs. However, this would leave CCGs open to legal challenge subsequently and the continued attempt to undertake assessments could become an unnecessary blocker within the system in the context of the coronavirus outbreak.

Key considerations

149. This provision may increase uncertainty for individuals who would otherwise have had their future funding arrangements agreed sooner.

150. In order to mitigate the impact of this uncertainty, and the impact on individuals' finances, individuals who the CCG considers may be eligible for CHC funding will be directed towards NHS funded discharge routes and assessed for CHC following the conclusion of the emergency.

151. With this mitigation in place, the impacts of these provisions are outweighed by the benefits it will bring by ensuring rapid discharge of individuals from hospitals and freeing up both CCG and LA resources which would otherwise be spent on undertaking multi-disciplinary team assessments.

Power to make directions in connection with the running of the education and registered childcare systems

Rationale for intervention

152. These powers are needed to enable the education and childcare systems to keep running as far as possible, mitigating some of the negative impacts of a coronavirus outbreak on those systems and the wider economy. These powers may be used to require relevant providers to stay open or reopen, enable individuals or groups to attend different premises, to change term/holiday dates. The powers may also be used to required relevant institutions to provide additional services, for example, provide extended hours childcare.

153. Directions might be made in a variety of scenarios. Depending on the particular decision, these decisions currently sit mostly with the owner/proprietor of the relevant education institution or childcare provider, such as governing bodies for maintained schools or the academy trust for academies and would continue to do so in the first instance. However, this power enables the Secretary of State or the Welsh Ministers to override a decision if, for example, a school decided to close, contrary to advice and guidance from the Chief Medical Officer and the Secretary of State or Welsh Ministers wish to direct the school to re-open.

154. There is a significant risk that some schools, other educational providers and childcare providers may decide to close where there is no need to do this. This could cause avoidable disruption to children's or young people's education and to the working arrangements of parents. The power might therefore be used to prohibit a planned but not yet implemented closure or to require a closed institution to re-open and resume its normal activities. This could also cause avoidable disruption to students who are due to undertake assessment and sitting examinations for GCSEs, A levels and other qualifications at the educational institution, which has knock on effects in terms of their subsequent progression to tertiary and higher education or their access to the labour market in later life. This power also enables the relocation of students temporarily, for the continuation of the education or childcare, including for example, arrangements for students to sit exams at an alternative site.

155. If we did not take powers for students to attend different premises, there is a risk that where some educational institutions have closed, they would not be able to continue their education. Whilst this would cause general disruption to education, this would be a particular risk for students who need to undertake coursework assessment and/or sit exams which will affect their future lives.

156. The directions power may be used to ensure that transport is provided to children and students to travel to alternative locations, that other services connected with the provision of education or childcare are provided, and to vary term time or holiday dates according to the public health situation in a geographical area and educational need.

157. In the event of a serious coronavirus outbreak resulting in large-scale closure of schools and other educational institutions, Local Authorities (LAs) and providers may need to set up new education and/or childcare provision or extend provision as far as reasonably practicable. These powers would be needed to avoid unnecessary disruption to parents' working lives where provider closures are unwarranted. There may also be a specific need to require education or childcare providers to open outside normal hours and/or for non-education providers to make premises available in order to allow exams (e.g. for GCSEs and A levels) to go ahead.

Other policy options considered

158. We have considered not taking these powers but consider them necessary to ensure that schools, educational institutions, including childcare providers, stay open and reopen as necessary in line with Chief Medical Officer advice, as well as powers beyond this such as alternative to attendance at different premises, exam provisions etc. Without this power we would have to rely on institutions following advice and guidance; there have already been a number of examples in the education sector of institutions not doing this.

Registered early years and childcare providers

159. We have considered whether local authorities' existing statutory duty to manage the local childcare market might be a basis for equivalent actions, but it does not give LAs sufficient powers to do so.

Maintained schools

160. There are a number of existing intervention powers in relation to maintained schools – these include powers under public health and education legislation. Local authorities also have some powers. But these generally relate to failures of educational performance, irrationality, or failure to discharge statutory duties, none of which are likely to be appropriate triggers for the different policy aims of this power. The possible outcomes of such interventions are also limited; for example they do not require schools to remain open (unless it would be irrational not to do so).

Academies

161. The Secretary of State has some intervention powers as the regulator of independent schools (which includes academies). However, these powers are largely concerned with educational standards; and the enforcement process is protracted.

162. When considering potential enforcement mechanisms, we looked at option of issuing a "Financial Notice to Improve" (FNTI) to academy trusts that failed to comply with a temporary direction to remain open or re-open. An academy trust is bound to comply with such a notice under the terms of its funding agreement. However, it was considered more coherent from a policy perspective to have one enforcement mechanism that applied to all educational and childcare institutions to which the direction power applied. Further, the FNTI process is protracted therefore unsuitable in the context of a coronavirus outbreak.

Further Education providers

163. The Secretary of State has intervention powers in relation to general further education and sixth form college corporations, and local authorities, that would in principle enable a direction to be issued to the governing body of the institution, including a direction to close. But the use of these powers is limited to circumstances in which there has been clear mismanagement or unreasonable behaviour, so would not be suitable for the circumstances here. In addition, these powers do not cover large numbers of providers – such as independent training providers.

164. One option considered was to use contractual or other funding agreements. However, this approach would have been inconsistent with the overarching approach taken for other educational settings. More students aged 16-18 study at an FE or Sixth Form College than in schools and it is important that the arrangements particularly in respect of these learners is clear. Relying on contractual obligations would have also made the enforcement of the temporary

closures more difficult, and would fail to capture significant areas of provision delivered by subcontractors (who do not have a direct contractual relationship with the Secretary of State).

165. The Department for the Economy (Northern Ireland) has no powers to direct the temporary continuation of further and higher education provision at the further education colleges or higher education institutions in Northern Ireland. Therefore, this power has been sought within this Bill. These powers will only be used on the advice of the Chief Medical Officer in Northern Ireland, or its deputy.

166. The same benefits and disbenefits to this provision identified above apply to Northern Ireland with regards to further and higher education.

Higher Education

167. HE providers are independent and autonomous institutions regulated by the Office for Students (OfS) as Government's independent regulatory body for the Higher Education sector. The OfS does not have the power to direct registered providers and its greatest sanctions are deregistration and fines for non-compliance with the conditions of registration. It has limited engagement and hence no direct power with unregistered providers. One option considered was to use informal agreements through sector bodies or contractual agreements. However, this approach would have been inconsistent with the overarching approach taken for other educational settings

Further Education

168. An alternative option would be to secure voluntary co-operation of institutions to make the changes needed to set up new education and/or childcare provision or extend provision.

Directly contracted holiday provision

169. The terms Grant Funding Agreement currently enable the department to withhold funding from the provider in the event of unauthorised closure, but this may not be enough to guarantee re-opening, and the more limited geographical spread of provision makes referral to another provider impractical.

Key considerations

Early years and childcare providers

170. Keeping childcare providers open will support parents to be able to continue to work, and will also ensure continuity of care and support for children with additional needs. However, our ability to require the providers that are privately-owned businesses may be limited.

171. If providers are asked to take on additional functions or stay open longer, that will incur costs and parents may not be in a position to spend more on childcare than they already do. This power will be more important in relation to private, voluntary and independent childcare providers. The Secretary of State and Welsh Ministers/Ofsted and Care Inspectorate Wales (CIW) have less control and this additional power would be most needed to ensure these childcare providers comply with a request to extend their hours.

Maintained and Independent Schools

172. Keeping schools open will support parents to be able to continue to work. It will also ensure that children's' education is not disrupted due to over-cautious closures on the part of the proprietor.

It will also allow provision to be maintained where this is required due to other school closures and to ensure that the pattern of provision best meets the needs of local communities. This includes in particular enabling exams for GCSEs, A levels and other qualifications to go ahead as scheduled.

173. Compelling schools to remain open where there are no compelling grounds for closure should not in principle create additional pressures on the school workforce. In cases where schools are compelled to remain stay open but are experiencing some short-term staffing shortages due to wider health measures there may be cost implications arising from an increased reliance on contingency workers, which could result in calls for additional central funding.

174. The school workforce may be unable or resistant to working longer or different hours or working in different locations. There accordingly could be cost implications arising from the need to remunerate staff at higher rates or from increased need to use contingency workers, which could result in calls for additional central funding.

Independent and residential schools

175. Keeping schools open will support parents to be able to continue to work.

Further education providers

176. Keeping further education providers open will minimise the disruption to students and progression to further study or work, particularly by allowing exams for A levels and other qualifications to go ahead. It will reduce the risk that some students may drop out of their programmes of study and become NEETs.

Directly contracted holiday provision

177. Due to the limited number of locations (currently in only 11 local authority areas) and the focus on activities rather than lessons, we do not anticipate that closures would cause unduly negative educational impacts on large numbers of children. However, as the provision is targeted at disadvantaged (free school meal) children, unnecessary closure would have an impact on them in terms of access to food and engagement in holiday experiences, and would also result in increased costs to parents who are already on low incomes.

Higher Education

178. The power should apply to all premises occupied by Higher Education Providers (HEPs) or their students, regardless of whoever is the building's owner. This means premises, or sections of premises, used for the purposes of higher education are included in the power, including purpose-built student accommodation (PBSA) occupied primarily by higher education students, whether that PBSA is HEP or privately owned. This power will cut across the property rights of private businesses and perhaps individuals and will need drafting with reference to other government departments such as MHCLG and BEIS.

179. The main focus may need to be on PBSA to avoid large numbers of students travelling and spreading the virus, especially non-UK domiciled students.

180. Where there are concerns to protect HEPs from being sued for reneging on their consumer protection (and/or contractual) obligations in the event of course closure we believe force majeure would be relevant.

181. There is potential for financial detriment to providers arising from closure, and from being asked to do things additional to their normal business.

182. Providers will retain much of their costs but risk losing income from commercial activities, facing compensation/refund claims from students, and potentially some extra charges for void accommodation caused by students moving to somewhere they better protects them from contagion. In the event we decide to compensate providers for adverse financial impact from the financial burden of requirements we would need the ability to direct relevant public funds to them. We understand that for registered providers in the "approved fee cap" category, we might be able to achieve this through OfS under the provisions of s39 HERA 2017. That power would not cover payments to registered providers in the "approved" category or non-registered providers. We understand that under the powers being proposed generally here, we would not need specific provisions, as there would be wider powers for government to deploy public funds. If that is not the case, then this is an issue we would need resolving here.

<u>Using power to enable students to attend different premises</u>

183. The power would also enable students to attend different premises – for example it would enable us to insist that school A allowed in students from school B for the purposes of sitting GCSE exams. This might require school A to send home students from other year groups temporarily in order to make space, which would have a knock-on consequence for their parents' ability to work. There could also be calls to reimburse costs for institutions or for individual students (e.g. in relation to additional travel).

Special considerations for DAs

184. In Scotland, Scottish Ministers have many similar powers in relation to the Scottish education system as those held by the Secretary of State and referred to above. In particular, since public schools in Scotland (which are the vast majority) are all directly operated by local authorities in their role as education authorities, these authorities have complete control over these schools. There are well established relationships between Scottish Ministers and local authorities in relation to schools which might be sufficient to ensure any necessary actions could take place without a direction. Nevertheless, mindful that these powers are designed for use in an emergency when there may be little scope for the normal consultation with authorities; and the importance of providing clarity to all in the system, it is felt appropriate to take matching powers in Scotland to give directions. The need to be able to act clearly and with speed in an emergency also applies in relation to non-Local Authority schools, for example grant aided and independent schools, and the powers therefore apply to all types of schools in Scotland.

185. The same benefits and disbenefits to this provision identified above apply in Scotland.

186. In Northern Ireland, NI Assembly Ministers have many similar powers in relation to the Northern Irish education system as those of the Secretary of State. There are well established relationships between Ministers and authorities in relation to schools which might be sufficient to ensure any necessary school closures could take place without a direction. However, many of these would not allow for immediate action and their complexity mean they would be administratively

burdensome to use at a time of public health emergency. For those reasons NI Assembly Ministers considered it appropriate to take matching powers in Northern Ireland to give directions to temporarily close educational institutions and childcare providers.

Power to disapply or modify provisions in relation to education and childcare

Rationale for intervention

187. This gives the Secretary of State and Welsh Ministers the power to temporarily disapply or modify existing legislative requirements in education and childcare legislation e.g. requirements to provide school meals, including free school meals, and local authority duties to ensure education. This will enable Local Authorities (LAs) and education and childcare providers to operate a service level different from usual practice, without being in breach of regulatory requirements. The intention is that this would, however, not extend to essential requirements such as safeguarding, health and safety or permanent exclusion. It will also enable the Secretary of State to suspend duties, such as those on parents in respect of child attendance at school.

188. In the event of an emergency, the education and childcare system will need to operate in a way that continues to benefit children, young people and students of all ages, but in a way that is operationally viable. Relaxing existing requirements may be desirable and necessary to allay any concerns that Local Authorities, schools, childcare providers, FE and HE providers may have when operating in these difficult circumstances and would help to maintain staff morale and wellbeing. This power would enable us to act quickly to remove these duties on a temporary basis and provide clarity and certainty to those working in education and childcare systems, parents and the public about what legislative requirements must be complied with.

Other policy options considered

189. We considered whether guidance and communications alone were sufficient, however this may not give the sector the clarity they need or provide for necessary consistency in interpretation because of the scope for confusion and variation in practice. In addition, the sector and those who insure them may be concerned that institutions may be open to litigation or judicial review for failing to comply with requirements – this may stymie the sector's ability to respond quickly or pragmatically. Similarly, we considered simply not enforcing requirements, but rejected this on the same basis and also that in some cases it is not within the Secretary of State's power or the Welsh Ministers' power to decide not to enforce.

Key considerations

190. Our aim is to help LAs and education and childcare providers to deliver their services in a pragmatic way, without fear of breaching their duties or other requirements. This is likely to be seen by the sector as a sensible and necessary approach, although for early years in particular it is likely that concerns about safeguarding will be expressed.

191. We need to be clear that these arrangements do not relax requirements such as safeguarding or health and safety, and that any action taken will be focused on the interests of children and young people and their wellbeing. The key and immutable principle is the safety and wellbeing of children, young people, staff and others engaged in the sector. Therefore, there are **certain requirements that cannot be relaxed**, such as those relating to safeguarding or health and safety. Also, in operating under requirements that are relaxed, consideration must be given to these factors.

192. Relaxing these requirements is likely to have a detrimental effect on things such as the quality of services or pupil education/progress, particularly given a longer outbreak or a rolling series of them. The Secretary of State and Welsh Ministers will regularly review the dis-applications, each dis-application will last a maximum of a month before it ends or needs to be renewed.

193. We expect the sector and public to welcome these powers, as part of necessary steps to manage an emergency. However, we need to be clear that these arrangements do not relax requirements such as safeguarding or health and safety, and that any action taken will be focused on the interests of children and young people and their wellbeing.

194. Some parents may be resistant to the relaxation of certain measures which may result in pupils or children not receiving a normal service, suspending free school meals, or children not being able to attend their normal school.

Maintained and Independent Schools

195. The power would only be used to protect schools from the risk of legal challenge where they were unable to comply with existing legislative requirements due to restrictions they were operating under as a result of public health measures or severe disruption to the supply chain. The power would only be used where this was necessary to ensure the provision remained open and able to provide required education services.

Special considerations for DAs

196. An equivalent power to disapply provisions in relation to education and childcare has been taken in Scotland for Scottish Ministers. The same benefits and disbenefits to this provision identified above apply in Scotland.

197. An equivalent power to disapply provisions in relation to education and childcare has been taken in Northern Ireland for NI Assembly Ministers. The same benefits and disbenefits to this provision identified above apply in Northern Ireland.

Courts and tribunals: use of video and audio technology

Rationale for intervention

198. Legislation is required to ensure that proceedings can be conducted in more circumstances then currently allowed (such as those on bail and victims and witnesses) and also entirely by video and or telephone to avoid the risk of the spread of disease through public congregation in public places.

199. These arrangements would enable the use of fully video and video enabled courts, so that proceedings could be conducted with all parties at remote locations. The clauses would:

- permit the expansion of the use of fully video and video-enabled hearings in various criminal proceedings;
- make provision for public participation in those fully video hearings to ensure that the principle of open justice is protected; and
- provide for all parties to an appeal to the magistrates' court against a quarantine order to participate by video link unless the court directs otherwise.

Other policy options considered?

200. None considered appropriate. Primary legislation is needed to expand the circumstances and to hold fully video hearings and this cannot be done through secondary legislation or rules.

Key considerations

201. These measures would be used to deal with defendants on bail, witnesses and victims who do not need special measures, and other parties will be used for urgent business during the outbreak. Other arrangements would be used to manage the non-urgent business of the courts.

202. Video is already used in a number of criminal and civil proceedings in the courts, but Parliament and legal stakeholders have previously expressed concern about the use of fully video enabled proceedings, where all participants are remote. However, we consider that these concerns could be managed in the context of an emergency response to this public health issue.

Lords Commissioner

203. This clause ensures the Treasury can transact its business at all times during a coronavirus outbreak. The aim is to ensure that the Treasury is not prevented from discharging its functions by the possible unavailability of sufficient Commissioners of Her Majesty's Treasury ("the Commissioners") during a coronavirus outbreak.

Rationale for intervention

204. The functions of the Treasury are carried out by the Commissioners. There are currently eight Commissioners; the Prime Minister (the First Lord of the Treasury), the Chancellor of the Exchequer (the Second Lord of the Treasury) and 6 Junior Lords of the Treasury. By virtue of section 1 of the Treasury Instruments (Signature) Act 1849 ("the TISA"), where any instrument or act is required to be signed by the Commissioners, it may be signed by two or more of the Commissioners.

205. The concern is that the unavailability of sufficient Commissioners during a coronavirus outbreak period could prevent the Treasury from complying with section 1 of the TISA and consequently could prevent the Treasury from carrying out certain of its functions during that period.

206. We have adopted the approach of modifying section 1 of the TISA so that, during a coronavirus outbreak period, the reference in that section to two or more of the Commissioners has effect – (a) as if it were a reference to one or more of the Commissioners, and (b) as if a Minister of the Crown in the Treasury (who is not also a Commissioner) were a Commissioner. In practice, this means that, during the coronavirus outbreak, it will be possible for a single Commissioner or a single Treasury Minister to sign instruments and acts on behalf of the Commissioners.

Other policy options considered?

207. An alternative approach would have been to make provision for senior officials in the Treasury to act on behalf of the Commissioners. However, although these officials can already act on behalf of the Treasury in accordance with Carltona principles, we considered it unnecessary and inappropriate to take action of this type. We consider it more appropriate to retain existing procedures (that is, signature by the Commissioners) as far as possible and only to alter those procedures (to allow for signature by Treasury Ministers on behalf of the Commissioners) in ways which are consistent with the practices of other government departments.

208. We, therefore, consider that, by allowing a single Commissioner or a single Treasury Minister to sign instruments and acts on behalf of the Commissioners during a coronavirus outbreak, this clause strikes the right balance between constitutional propriety and making necessary provision for the Treasury.

Key considerations

209. The only impact is that this clause will enable a single Commissioner or a single Treasury Minister to sign instruments and acts on behalf of the Commissioners during a coronavirus outbreak.

210. Costs and benefits: In order for public money to be issued by the Treasury a Royal Order must first be signed by the Queen after money (Departmental Estimates) has been granted by an Act or resolution and Royal Assent is granted. The Queen can make a Royal Order under the Royal Sign Manual to authorise and require the Treasury to issue sums out of approved credits for specified votes. This is provided for in section 14 of the Exchequer and Audit Departments Act 1866.

211. Royal Orders are required by statute to be countersigned by the Treasury. This is done by the appointed Commissioners. Where Commissioners' signatures are needed, the Treasury Instruments (Signature) Act 1849 provides that 2 Commissioners must sign. There are no enforcement/implementation issues as this clause only concerns how the Treasury will carry out its functions during a coronavirus outbreak.

Disclosure Scotland: reclassification of disclosure checks

212. This clause provides the ability for Scottish Ministers not to issue full disclosure certificates for scheme members on application, but to provide instead a shorter form of disclosure which would confirm if the individual was a member of the PVG scheme or not.

Rationale for intervention

213. In the event of an emergency, the Disclosure services will need to continue to operate in a way that enables the protection of children and vulnerable adults. The provisions are intended to improve operational delivery and increase timeliness of these checks during any emergency period, allowing healthcare workers the ability to quickly move into the workforce.

Other policy options considered?

214. As part of the response to the coronavirus outbreak, Disclosure Scotland has a number of operational plans in place to deal with the possibility of additional demand. These include things like prioritising essential applications and robust business continuity plans.

215. There would be an option of suspending disclosure checks and the direction of Scottish Ministers. However, the route of reclassified disclosure checks is favoured as a way of continuing to ensure safeguarding.

Key considerations

216. This is devolved.

Disclosure Scotland: PVG offences

217. The ability to enable the Scottish Ministers, during the period of a declared national emergency or pandemic attributed to an outbreak of coronavirus, to suspend the offence provisions applying to organisational employers and personnel suppliers in Part 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

Rationale for intervention

218. In the event of an emergency, the Disclosure services will need to continue to operate in a way that enables the protection of children and vulnerable adult. The purpose of this is to avoid inadvertently criminalising healthcare employers like the NHS during the emergency period if they employ a barred person to do regulated work (for instance, if there has been insufficient time to obtain a PVG check in advance).

Other policy options considered?

219. There would be an option of "do nothing", however, the route of dis-applying these PVG offences is favoured as a way of ensuring health services can recruit the people they need to quickly without fear of legal repercussions.

Key considerations

220. This is devolved.

Investigatory Powers

Rationale for intervention

221. The Government wants to ensure that the Investigatory Powers Commissioner (the independent overseer of almost all investigatory powers) is not prevented from discharging his functions due to the possible unavailability of sufficient Judicial Commissioners, who assist him in performing his functions, due to the impact of the coronavirus outbreak. There are currently 15 very senior Judicial Commissioners, many of whom are in high risk groups from the virus itself or highly likely to be affected by other measures the government is taking to mitigate the virus' impacts.

222. The investigatory powers in the Investigatory Powers Act 2016 (IPA), and therefore warrants for them, play a vital part in almost all MI5 and NCA investigations to protect our national security and prevent serious crime. The IPA created the 'double lock' for all warrants sought under its powers. A warrant under the IPA has to be signed by the relevant Secretary of State and then approved by a Judicial Commissioner for it to be lawful (other than urgent warrants, which are valid for only short periods of time and require Judicial Commissioner approval up to three days after being issued). Therefore, unless there are enough available Judicial Commissioners there is a real danger that the warrantry regime would cease to function, which would have extremely significant impacts on national security and the prevention and investigation of serious crime.

223. The provisions in the Bill create a regulation-making power to allow the Home Secretary, at the request of the Investigatory Powers Commissioner, to vary the appointment process for Judicial Commissioners to allow for the Investigatory Powers Commissioner to directly appoint temporary Judicial Commissioners. The temporary Judicial Commissioners will be appointed for terms not exceeding 6 months each and no more than 12 months in total.

224. As mentioned above, the IPA creates a procedure for urgent warrants. This allows for *ex post facto* authorisation of an urgent warrant by a Judicial Commissioner within three working days. Such urgent warrants only last for a maximum period of five working days unless renewed.

225. The Bill will create an order making power to allow the Home Secretary to vary the time periods of an urgent warrant at the request of the Investigatory Powers Commissioner. This would extend the timeline for *ex post facto* Judicial Commissioner authorisation and the lifespan of the warrant for up to 12 working days.

Other policy options considered?

226. We considered and rejected suspending the use of Judicial Commissioners to approve warrants should there be a shortage of Judicial Commissioners. The role of Judicial Commissioners forms a vital part of the safeguards contained in the IPA to ensure that the very intrusive powers contained within it are exercised only when it is necessary and proportionate to do so. Allowing temporary Judicial Commissioners to be appointed quickly, and a short extension of the time periods for urgent warrants were considered the simplest and least disruptive method of ensuring that the warrantry system as a whole, with all the safeguards contained within it, is able to function effectively during a coronavirus outbreak.

227. Given the prescriptive nature of the relevant sections of the IPA, there were no non-legislative methods of achieving a similar outcome.

228. Alternative timelines were considered for extending the urgent warrant timelines, but after consultation with stakeholders, the proposed option was felt to be lowest possible extension which would also mitigate the potential risk that warrants made under the urgent procedure – which include the most serious of situations, including where there is an imminent threat to life – do not fall away due to a lack of available Judicial Commissioners.

Key considerations

229. The only impact of the first clause is that it will allow for a temporary Judicial Commissioner to perform the functions of a Judicial Commissioner during the coronavirus outbreak should their appointment be deemed necessary by the Investigatory Powers Commissioner. There are no implementation issues.

230. The only impact of the second clause is that if the power was used it would result in an extended period between an urgent warrant being issued (following Secretary of State approval) and it receiving approval from a Judicial Commissioner. There is also an extended period of time before a renewal is required. This could be argued to have an increased interference with ECHR Article 8 rights, but it is one which is judged to be necessary and proportionate in the circumstances. There are no implementation issues.

Section 3 – Containing/slowing the virus

Powers to direct suspension of port operations

Rationale for intervention

232. Protecting the border is a fundamental duty of government. In the event that Border Force resources are depleted due to Covid-19 to such an extent that that there is a real and significant risk that there are or will be insufficient border force officers to maintain adequate border security, 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.

233. The proposed powers will allow the Secretary of State to direct a port operator (i.e. a person concerned in the management of a port) to suspend relevant operations, partially or wholly, in the event that there is a real and significant risk there are or will be insufficient resources to maintain adequate border security. The power will also provide for the Secretary of State to issue a direction in writing to any other person requiring the person to make such arrangements, or take such steps, as the Secretary of State considers appropriate in consequence of the primary direction.

234. The power is only available when the Secretary of State has exhausted all relevant alternative mitigations. Use of the power would be governed by strict safeguards to ensure that the it is used fairly, responsibly and proportionately and with the appropriate level of authority. While responsibility for an initial direction may be made by senior Border Force officials on behalf of the Secretary of State, our expectation is that any decision to extend the period beyond 12 hours would be taken at Ministerial level and subject to engagement with relevant government departments and devolved administrations.

Failure to comply with a port direction or supplementary direction would constitute a criminal offence, subject to excuses for reasonable cause. The Bill will be in force for a limited time and is aimed at the threat from Coronavirus and we anticipate ports will comply; directions are only anticipated to be used on rare occasions.

Other policy options considered

235. The measure will only be employed once other measures as are reasonably practicable to mitigate the risk have been taken.

236. There are no suitable alternative mechanisms to either close ports or divert inbound services where there is a need to do so for border security purposes: this could result in control breaches and a risk to border security (e.g. potential non-detection of national security or criminality threats, importation of drugs or other prohibited items).

Key considerations

237. We would expect to use this power only once other appropriate mitigating measures had been exhausted by Border Force. The power would apply in respect of any port of arrival in the UK. It would not have extraterritorial effect and would not therefore apply at juxtaposed ports in France

or Belgium although the powers would be applicable at Dover, St. Pancras, Ashford, Ebbsfleet or Cheriton.

238. The measures are likely to have an impact on port operators, carriers and their customers: we will therefore engage with them to discuss implementation in an effort to minimise the impact where possible. However, there is a risk port operators could:

- Challenge the need for the provisions and question whether the objective cannot be achieved instead through operational and decision-making structures and without recourse to legislation.
- Challenge the measures in the absence of consultation or a comprehensive impact assessment.

Powers relating to potentially infectious persons: constables and immigration officers

Rationale for intervention

239. The policy aim is to give constables and immigration officers the necessary powers to support the wider public health efforts to manage the spread of coronavirus.

240. The proposals will provide the police with the means to enforce sensible public health restrictions, and where necessary, directing individuals to seek relevant treatment or attend suitable locations for further help. These measures look to fill existing gaps in powers which prevent the screening of people who may be infected or contaminated with the virus and which prevent the police from enforcing such measures where necessary.

241. The proposals will also ensure that immigration officers and constables can support the wider public health effort where they encounter a person who is, or may be, infectious during the course of their normal functions at the border or while exercising immigration enforcement functions in country. The proposed powers will allow an immigration officer to direct or remove such a person to a suitable place for the purpose of screening and assessment or to keep that person there or at another suitable place for a time-limited period to be handed over to a relevant health official for the same purpose. Obstructing an immigration officer or a constable in the exercise of a power under the Schedule would constitute a criminal offence, but we expect the vast majority to comply without compulsion.

Other policy options considered

242. In advance of making the Health Protection (Coronavirus) Regulations 2020, which introduced public health measures to tackle coronavirus in England consideration was given to whether existing police powers might be available to constables to assist in the containment of coronavirus in the absence of further legislation. It was concluded that, while existing powers could be used in some circumstances, all had substantial limitations. There was also a lack of consistency across the different jurisdictions.

243. The limited existing powers of constables to detain people or direct them to do things to contain coronavirus would leave them in a weak position and open to potential criticism given their frontline role in the community. The proposed measures will address those concerns by giving constables the necessary powers to take action to direct or detain persons for the purpose of screening and assessment and to assist in the enforcement of health protection provisions where requirements have been imposed by the Secretary of State.

244. Immigration officers working at the border or exercising enforcement functions in country may encounter people who have travelled from infected areas or who they have reasonable grounds to suspect may be infectious with coronavirus.

245. Immigration officers have very limited powers in respect of British citizens and there are restrictions on their powers in respect of EEA nationals - the proposed power will ensure that immigration officers operating at the border, or carrying out immigration enforcement functions in country, will have the authority to direct or take an individual suspected of being infectious, regardless of their nationality, to a hospital or other suitable place.

246. We considered whether the same outcome could be achieved by simply asking individuals to voluntarily submit to public health testing but there would be no means of enforcing compliance. This would be of particular concern at a port where we know that a person has arrived from an infected area and we would have no means of ensuring that they dock into public health arrangements.

Key considerations

247. The health and safety of our officers is paramount, and the exercise of these powers will be underpinned by clear guidance developed in accordance with public health guidelines.

248. with regards to police and IOs, any provisions giving broad powers of detention would be highly likely to be controversial with stakeholders who regard police and IO detention as needing to be strictly limited and subject to several safeguards against abuse.

249. With regards to IOs, the powers will apply in respect of any person who an immigration officer reasonably suspects may be carrying the virus, including British and EEA citizens. They will provide IOs with an additional capability which is both responsible in principle and proportionate in scope/application, however, given that EEA and British citizens are normally out of scope of their enforcement powers, this is likely to result in some controversy.

250. In mitigation, the measures are a reasonable and proportionate response and in the vast majority of cases we do not anticipate the need to use them will arise.

Power to temporarily close educational institutions and registered childcare providers

Rationale for intervention

251. These powers would be needed to stop the spread of the disease and ensure welfare and safety of those working and studying in schools and other educational institutions, including childcare providers, by temporarily closing institutions as required. This would involve schools, including independent schools, Further and Higher Education institutions as well as registered childcare providers (including childminders) closing temporarily to prevent the spread of the virus. Closing such institutions and providers will reduce the risk of the virus spreading amongst children and students where it is likely that due to the numbers and close proximity in such places, the virus may spread rapidly. This power gives the Secretary of State and the Welsh Ministers the ability to direct institutions to take steps to stop people attending for a temporary period of time specified in the direction.

Other policy options considered

252. We have considered whether we will require some institutions to remain open in tandem to continue the provision of education and support the continued operation of the economy by enabling parents to continue working.

Registered early years and childcare providers

253. "Registered" means providers that are registered on either or both of the Early Years Register (for children up to five) or General Childcare Register (for children over five). Ofsted currently has some power to close individual providers, particularly under public health and education legislation. However, they are not deemed suitable for the sorts of necessary closures required. This is due to high threshold for using the powers (risk of harm to children); and the secondary issue, in that they could not be applied to several institutions concurrently. In Wales, "registered childcare providers" means a person who provides childcare and is registered under Part 2 of the Children and Families (Wales) Measure 2010. The powers the Welsh Ministers currently have to close providers is not deemed suitable for the sorts of closures that may be necessary as a response to a coronavirus outbreak.

Maintained schools

254. There are a number of existing intervention powers in relation to maintained schools– these include powers under public health and education legislation. These powers would not be sufficient in the event of a coronavirus outbreak – broadly, because (i) they relate to educational performance in schools; (ii) they could not be exercised quickly; (iii) they could not be exercised in relation to large numbers of institutions or areas (iv) where the power is conferred on a local authority it is felt this would not provide a sufficiently rapid response to a coronavirus outbreak and may further increase the potential loss of lives.

Academies

255. The Secretary of State has some intervention powers as the regulator of independent schools (which includes academies). However, these powers are largely concerned with educational standards; and the enforcement process is protracted.

256. When considering potential enforcement mechanisms; we looked at option of issuing a "Financial Notice to Improve" (FN) to academy trusts that failed to comply with a temporary closure direction. An academy trust is bound to comply with such a notice under the terms of its funding agreement. However, it was considered more coherent from a policy perspective to have one enforcement mechanism that applied to all educational and childcare institutions; that the direction power applied to. Further, the FN process is protracted therefore unsuitable in the context of a coronavirus outbreak.

Independent schools & Further Education Institutions - day and residential

257. Consideration was made to use the Independent school standards 'enforcement action', which is currently in existence. This was subsequently ruled out as an option, mainly due to the length of time it would take to implement. Similarly, a current Emergency Power exists for Independent sector institutions, however the length of timed required to implement a closure (approx. two weeks) rendered this option as ineffective.

258. The Secretary of State has intervention powers in relation to general further education and sixth form college corporations, and local authorities, that would in principle enable a direction to be issued to the governing body of the institution, including a direction to close. But the use of these powers is limited to circumstances in which there has been clear mismanagement or unreasonable behaviour, so would not be suitable for the circumstances here. In addition, these powers do not cover large numbers of providers – such as independent training providers. One option considered was to use informal agreements through sector bodies or contractual or other funding agreements. However, this approach would have been inconsistent with the overarching approach taken for other educational settings. More students aged 16-18 study at an FE or Sixth Form College than in schools and it is important that the arrangements particularly in respect of these learners is clear. Relying on less formal sector agreements or contractual obligations would have also made the enforcement of the temporary closures more difficult, and would fail to capture significant areas of provision delivered by subcontractors (who do not have a direct contractual relationship with the SoS). Rather than apply at an institutional level we considered applying a direction to the individual student. This would mean taking a different approach to schools and early years providers but would have the advantage of bringing into scope other providers of FE not captured by the legal power. However, it was considered that applying the direction at individual rather than institutional level would be administratively much more complicated and burdensome (particularly for the courts) and make enforcement more difficult to achieve. We therefore determined that it was better to apply the power at an institutional rather than individual level, and have a broad discretionary closure power, which would allow certain activities or facilities of the institutions within the further education sector to be excluded where there was a clear case for doing so.

Higher Education

259. While the Office for Students does have some discretion in the application of its conditions of registration, its ability to completely disregard its own conditions, as set out in the regulatory framework under the Higher Education and Research Act (HERA) 2017, is unclear and untested, especially if there was prolonged disruption. Hence we consider it appropriate to take specific power to enable the OfS to disregard its conditions in these circumstances.

Key considerations

Early years

260. In the event of a period of closure, there would be an immediate impact on parents, resulting in many adults potentially having to take paid or unpaid leave. Some may even leave or lose their jobs as a consequence of having to stay at home.

261. Aspects of the department's early years entitlements (i.e. the universal 15 hours of funded early education for 3 and 4 year olds, the additional 15 hours for children of working parents and the 15 hours for more disadvantaged 2 year olds) and equivalent early years and childcare arrangements in Wales would also be affected by closures. Parents would lose entitlement hours during periods of closure, in the same way that they would lose hours because of flooding or snow. We considered 'pausing' the entitlements during closures, but this would be extremely challenging to administer and it is not clear that parents losing hours during closure would want to use more hours later in the year. We also considered encouraging local authorities to work together to allow children to take up funded hours of early education in an unaffected area, but again this would be complicated to administer, and more importantly, would risk further spreading disease.

262. Parents may lose money for paid-for hours during periods of closure (i.e. hours of early education on top of the entitlements). Compensating individual families would be extremely difficult to manage. Mindful that providers can unexpectedly close or a number of reasons, we considered whether agreements that are already in place between a provider and a family would cover compensation in the event of unexpected closures, but this does not appear to be the case. And work with stakeholders has shown that providers' insurance policies are highly unlikely to cover any loss of income due to coronavirus.

Before school, after school and holiday childcare for school-age children

263. As with early years provision, there would be an immediate impact on parents, although for before and after school childcare, the impact would be less than, for example, all-day childcare. However, the closure of holiday provision would have a similar effect. There are no entitlements for school-age childcare, and the agreements between parents and individual providers will determine what would happen to 'lost' hours of paid-for childcare. And as with early years, providers may have in place insurance to cover lost income, but it is very unlikely to cover coronavirus-related closures.

Schools (Academies and maintained schools)

264. If the school is closed for a long period of time, there may be a detrimental effect on pupil progress. This could be even more acute for pupils sitting examinations and for those with SEN. Closure of the school may disproportionately affect children receiving free school meals, which to some pupils may be their only meal of the day.

265. Protracted closures could also hinder the delivery of the school-based elements of initial teacher training, which could present longer-term risks to teacher availability.

Independent day and residential schools

266. The impact on Independent schools as 'private business' and the financial implications of having to close for a period of time and the subsequent knock on effect of taking such a decision is a key consideration.

267. Another consideration focuses on residential schools and how the closure would impact on children from abroad and those whose parents work and live overseas.

268. Children who attend both day and residential schools whose parents are resident abroad will have a UK based educational guardian. Parents and educational guardians may be resident a significant distance from school.

269. The solution to this consideration would be to evaluate on a case-by-case basis and to exercise common sense and practicalities. For example, skeleton staff may remain at the residential school and a restriction of movement (outside of the school grounds) may be applied in order to reduce the spread of infection.

Further Education

270. The direction to close temporarily conflicts with duties on young persons aged 16 and 17 to take part in education, employment and training under section 2 of the Education and Skills Act 2008, and duties on institutions within the statutory further education sector that flow consequential to the duty under section 2 is therefore removed for the duration of any temporary closure.

271. Some institutions will provide residential accommodation (sometimes in respect of higher education, land based provision or for those with SEND) – this will need to be factored in when determining the basis on which the temporary closure direction is made.

272. Some institutions will also have learners who spend a significant amount of their time in the workplace, for example, as apprentices. The closure power will only apply to the institution, and not the workplace.

273. The points above re the impact on students due to sit exams in schools apply equally to FE.

274. The purpose of Power 2 ('the Directions Power') is to enable many of the negative impacts mentioned above to be mitigated.

Qualifications

275. Closing schools and other educational institutions with students undertaking assessment and exams for GCSEs, A levels and other qualifications, alongside other providers that are exam centres, could adversely impact on their progression to subsequent study (e.g. in tertiary or higher education) and their access to the labour market.

Higher Education

276. The power of closure should apply to all premises occupied by Higher Education Providers (HEPs) or their students, regardless of whoever is the building's owner. This means premises, or sections of premises, used for the purposes of higher education are included in the power, including purpose-built student accommodation (PBSA) occupied primarily by higher education students, whether that PBSA is HEP or privately owned.

277. Closure of PBSA would mean, however, that students are forced to travel, thereby potentially spreading the virus. This would need to be balanced against the infection risk of having what is often several hundred students living in close proximity, sharing kitchen facilities in groups of usually 8 or 6. An example of where the balance might be struck is if domestic students with family homes available to them moved directly back home while those without an alternative remained e.g. international students, care leavers and estranged students.

278. The main focus for closures should be on buildings on campus where people congregate (lecture halls, cafes etc). Such buildings may include sections where private companies have

proprietorship, although a supermarket, cafe or laundry business would have little reason to stay open if there were no students or staff on campus.

279. Where there are concerns to protect HEPs from being sued for reneging on their consumer protection (and/or contractual) obligations in the event of course closure we believe force majeure would be relevant.

280. There is potential for financial detriment to providers arising from closure.

281. Providers will retain much of their costs but risk losing income from commercial activities, facing compensation/refund claims from students, and potentially some extra charges for void accommodation. In the event we decide to compensate providers for adverse financial impact from the financial burden of requirements we would need the ability to direct relevant public funds to them. We understand that for registered providers in the "approved fee cap" category, we might be able to achieve this through OfS under the provisions of s39 HERA 2017. That power would not cover payments to registered providers in the "approved" category or non-registered providers. We understand that under the powers being proposed generally here, we would not need specific provisions, as there would be wider powers for government to deploy public funds. If that is not the case, then this is an issue we would need resolving here.

Special considerations for DAs

282. In Scotland, Scottish Ministers have many similar powers in relation to the Scottish education system as those referred to of the Secretary of State does. In particular, since public schools in Scotland are all directly operated by local authorities in their role as education authorities, these authorities have complete control over these schools. There are well established relationships between Scottish Ministers and local authorities in relation to schools which might be sufficient to ensure any necessary school closures could take place without a direction. And as described above for the English education system, there are various existing powers and levers in Scotland in relation to independent schools, childcare providers and further and higher educations. However, many of these would not allow for immediate action and their complexity mean they would be administratively burdensome to use at a time of public health emergency. For those reasons Scottish Ministers considered it appropriate to take matching powers in Scotland to give directions to temporarily close educational institutions and childcare providers.

283. The same benefits and disbenefits to this provision identified above apply in Scotland.

284. The Department for the Economy (Northern Ireland) has no powers to direct the closure of the further education colleges or higher education institutions in Northern Ireland. Therefore, the Department has sought these powers to ensure it can contain or prevent the spread of coronavirus. These powers will only be used on the advice of the Chief Medical Officer in Northern Ireland, or its deputy.

285. The same benefits and disbenefits to this provision identified above apply to Northern Ireland in regards to further and higher education.

Closure of childcare facilities – Northern Ireland

286. This clause involves the Department communicating temporary closure directions to registered childcare providers via HSCB/HSC Trust staff in order to temporarily prevent the mass gathering of children, their families and staff.

Rationale for intervention

287. Intended to prevent the spread of infection.

Other policy options considered

288. Provision allows for single, multiple or all facilities to be directed to close.

Timing of when the clause will be needed in outbreak (weeks from peak)

289. Peak minus 4 weeks (estimated).

How would clause be operationalised and time taken?

290. Temporary closure directions finalised and issued to HSCB Family Support NI team to communicate to registered providers by email/phone and post. Non-compliance addressed through the Department seeking an injunction.

Anticipated public reaction/controversy

291. At least some providers are likely to resist on the grounds of loss of income. Particularly in the event that some facilities are allowed to remain open to provide childcare for medical staff, for example.

Special considerations for DAs

292. This is devolved.

Spending implications

293. Legal fees associated with drafting directions and injunctions.

Powers relating to events, gatherings, and premises

Rationale for intervention

294. Should the medical and scientific situation dictate such a response, Government wants to ensure it has the necessary powers to enable Ministers to restrict or prohibit gatherings or events and to close premises during the coronavirus outbreak period. This would form part of a wider Government response aimed at containing and controlling the virus or facilitating the most appropriate deployment of medical or emergency personnel and resources.

295. Government also wishes to ensure that across the UK, the necessary enforcement regime is in place to ensure compliance and that there are also sufficient powers across the UK that enable an option to provide appropriate compensation.

296. The clause will ensure that there is the same provision across England, Scotland, Wales and Northern Ireland. The clause would create direction making powers which would provide Ministers with an efficient and deployable response, appropriate to the emergency and public health context in which the power would sit.

Other policy options considered

297. Part IIA of the Public Health (Control of Disease) Act 1984 Act could be used to control events in England and Wales. However, no similar powers exist in Scotland and Northern Ireland. The proposed clause would also allow Ministers in England and Wales to use more streamlined and efficient Direction making powers).

298. Other options include seeking agreement from relevant organisations to close events and gatherings voluntarily. Officials consider this to provide insufficient coverage in the event that Ministers determine it essential to prohibit one or more events or gatherings. There is no guarantee that any given organisation would agree to close or cancel an event and this approach could also create insurance and compensation issues.

Key considerations

299. This power is clearly a back-stop provision in the event that the medical and scientific situation require its deployment. The approach has been agreed by all four nations of the United Kingdom.

300. Separate consideration is being given to wider issues around compensation (and business support more generally) although there is clearly a link between Government Ministers mandating a closure or cancellation of an event or gathering and the financial impact that this would create. The proposed clause will include a discretion - but not an obligation - allowing Government to provide compensation to those affected by mandatory closures or restrictions. This will be an important part of the Government's potential wider response.

Section 4 – Managing the deceased

Registration of deaths and still-births

Rationale for intervention

301. Presently deaths and still-births which take place in England and Wales have to be registered. The registration is made on information given by a 'qualified informant' unless a coroner has investigated the death. Such an informant is usually a relative. The registration must be made in person at the register office and the informant signs the register in the presence of the registrar. (see para 52 in explanatory notes)

302. The provision aims to relax these requirements by allowing information for a death or still-birth to be given by other means where the local authority has decided it is not appropriate, or they are unable, to provide face to face registration. The purpose of the provision is to enable civil registration officials who cannot travel to their office, either because of transport difficulties or because of child care commitments, to register deaths from home. It is also intended that this will reduce the chance of cross infection by collecting information for death registration via other means rather than face to face interview.

Other policy options considered?

303. The different ways of working may not all be necessary or appropriate in all circumstances and local plans should be tailored to meet local requirements. They divide into three categories or phases – Phases 1 and 2 equate to maintaining business as usual for as long as possible, whereas phase 3 involves necessary legislative change to ensure the death management process when excess deaths cannot be managed using the provisions contained within phases 1 and 2.

304. To deal with resource pressures and limiting the spread of infection local authorities may be able to arrange for deaths to be registered other than by in person at the register office.

Key considerations

305. Although personal attendance at the register office can be helpful for relatives and is often seen as part of the grieving process, in a coronavirus outbreak situation, in order to limit the spread of infection, the local authority may decide that it wants to limit face to face contact.

306. There is a risk that changes to the ways that information may be provided, to registrars for the registration of death, may lead to registrations that are incomplete or that contain errors. However policy is in place to enable, following a coronavirus outbreak, consideration to be given to the correction or possible re-registration of death records on the application of relatives of the deceased.

307. As well as the benefits, for local authorities, as set out above, informants may be unwilling to attend at the register office, due to their concerns over the possible spread of infection and their

own requirements regarding care for sick relatives etc.. Registering by other means (other than face to face) provides for the obligation to register to be met and the necessary documents for the disposal to be issued.

308. It will be important that medical practitioners, hospitals, coroners and funeral directors are kept informed of the services for death registration that are being provided by their local register office(s) in order to give that information to the bereaved relatives. Local authorities may decide to use their websites to make available the information about changes to local arrangements for registration.

Confirmatory medical certificate not required for cremations

Rationale for intervention

309. In the event of a severe coronavirus outbreak, the number of deaths and absence rates for the healthcare workforce would increase; this would have a significant impact, and increase the pressure, on registered medical practitioners dealing with a larger than normal number of applications for cremation.

310. Currently, applications for cremation of a person whose death is not being investigated by the coroner require the deceased's attending medical practitioner to complete a medical certificate (Cremation Form 4), and a confirmatory medical certificate (Cremation Form 5) which must be completed by an independent registered medical practitioner. These provisions change the relevant legislation in the event of a severe coronavirus event to allow the crematorium medical referee (who authorises each cremation) to do so on the basis of Cremation Form 4 only. This would simplify the process, allowing cremations to take place without the need for secondary medical certification, while keeping a necessary level of safeguards in place.

Other policy options considered?

311. We considered removing the requirement to complete both medical certificates (Cremation Forms 4 and 5) and relying instead on the certificate for burial or cremation (known as the 'Green Form') issued by the registrar for births and deaths once the death is registered. However, this would remove all safeguards in terms of appropriate medical certification prior to registration of the death. In addition, in order for a safe cremation to take place it must be determined whether the deceased has any hazardous implants that require removal and the Green Form does not contain this information.

312. We also considered removing the role of the crematorium medical referee in authorising each cremation. However, we concluded this important safeguard was required particularly where there was no longer a requirement for the confirmatory medical certificate (Cremation form 5).

Key considerations

313. In the event of a severe coronavirus outbreak, there will be significant pressures on healthcare workers due to an increase in both the number of patient cases and the number of deaths, and in absence rates for the healthcare workforce. As Cremation Form 5 must be signed by a medical practitioner, there are likely to be delays to the processing of this form. Removing this requirement in the event of a severe coronavirus outbreak would reduce the burden on healthcare professionals, allowing them to be available to provide support with other medical duties. It will also reduce the likelihood of delays in allowing families to be able to make cremation arrangements for their loved ones.

Notification of deaths to coroners

Rationale for intervention

314. In the event of a severe coronavirus outbreak, the number of deaths would increase, as would absence rates for the healthcare workforce; this would have a significant impact, and increase the pressure, on registered medical practitioners, registration services and coroners dealing with a larger than normal number of deaths to be registered.

315. This provision relaxes existing regulations around the notification of death by doctors to allow a registered medical practitioner who may not have seen the deceased to certify the cause of death, without a requirement to refer the death to a coroner, as they would usually.

316. The impact will be to reduce the administrative burden on medical practitioners, and the number of deaths reported to the coroner, at a time when both medical and coroner services will be stretched. It will also reduce delays in the system, enabling bereaved families to conclude the cremation or burial process more quickly.

What other policy options were considered?

317. The only other policy option for achieving the same objective would be to remove the requirement for any medical practitioner to have attended the deceased in order for the death to be registered. However, this would remove all safeguards in terms of appropriate medical attendance and scrutiny prior to registration of the death, and is therefore disproportionate.

Key considerations

318. We have considered the possibility that the amended requirements could facilitate the concealment of unlawful killing as the death could be certified without referral to the coroner even when the certified medical practitioner has not seen the deceased. However, the revised requirements will apply only during the emergency period, and a registered medical practitioner will still be required to certify the death. In addition, if anyone, including the medical practitioner or registrar, has any concerns surrounding a death, they will still be able to refer the death to the coroner as in usual circumstances.

Certificates of cause of death

Rationale for intervention

319. Currently Medical Certificate Cause of Death (MCCD) can only be completed by doctors who have been in 'medical attendance 'of the deceased during their last illness. Decreasing the safeguards within the present system for death certification is a serious step requiring justification. A balance needs to be struck between the provision of these safeguards and ensuring the effective management of excess deaths during a coronavirus outbreak.

320. When required, provision needs to be put in place to provide for a medical practitioner to certify death irrespective of whether he/she was in medical attendance during the deceased's last illness. This thus enables flexibility and capacity within the death certification process and the wider health care systems to ultimately ensure that excess deaths are managed effectively.

321. By changing the relevant legislation further flexibility will exist within the death certification system. This would free up resources within the health authority as well as ensuring that excess deaths are managed effectively.

Other policy options considered?

322. The different ways of working may not all be necessary or appropriate in all circumstances and local plans should be tailored to meet local requirements. They divide into three categories or phases – Phases 1 and 2 equate to maintaining business as usual for as long as possible, whereas phase 3 involves necessary legislative change to ensure the death management process when excess deaths cannot be managed using the provisions contained within phases 1 and 2.

323. During phase 2 there will be an ability for the registrar and other experienced officers to undertake a first stage scrutiny of all MCCD to ensure that the form has been completed correctly and that all queries are resolved or referred to the coroner if appropriate. Although this should enable certain numbers of excess deaths to be effectively dealt with, further action may be required to manage high numbers of additional deaths and the introduction of the provision will be necessary to manage this

Key considerations

324. Allowing a medical practitioner to certify an influenza death without the need for him/her to be either in medical attendance or have seen the deceased after death helps to increase health service capacity and to reduce potential additional reporting of natural cause deaths to coroners.

325. The arrangements for the certification of deaths relating to patients who die in hospitals or in the presence of a medical practitioner (e.g. a patient who dies in a care home while a medical practitioner is on site) should proceed broadly as normal. However in those circumstances in which there is no medical practitioner who can be deemed to have been in 'attendance on the deceased….' provision will exist for any registered medical practitioner to certify those deaths (to

the best of their knowledge and belief, based on the information provided to them) without the need to have seen the patient before or after death.

326. There will need to be training in death certification provided to avoid delays that may occur because the registrar needs to make enquiries with the certifying doctor or the coroner before he/she can register a death and issue the authority for disposal, as well as the additional pressures placed on these services.

Extension to list of qualified informants

Rationale for intervention

327. Deaths and still-births which take place in England and Wales have to be registered. The registration is made on information given by a 'qualified informant' unless a coroner has investigated the death. Such an informant is usually a relative. The full list of such qualified informants is prescribed in the Births and Deaths Registration Act 1953 and this list does not presently include funeral directors (undertakers).

328. The provision seeks to extend the list of those who can act as a qualified informant to include a funeral director when authorised by the deceased's family to act on their behalf. This will enable a funeral director to provide the information for the registration and to have the certificate of burial or cremation issued by the registrar. This will further enable a record to be compiled, so that national information about deaths is available as soon as possible.

Other policy options considered?

329. The different ways of working may not all be necessary or appropriate in all circumstances and local plans should be tailored to meet local requirements. They divide into three categories or phases – Phases 1 and 2 equate to maintaining business as usual for as long as possible, whereas phase 3 involves necessary legislative change to ensure the death management process when excess deaths cannot be managed using the provisions contained within phases 1 and 2.

330. The provision will enable a funeral director, when acting on behalf of the family, to give the information for the registration. However a relative will still, if desirable, be able to provide the information for the registration.

Key considerations

331. There is a risk that changes to the ways that information may be provided to registrars for the registration of deaths during a coronavirus outbreak may lead to registrations that are incomplete or that contain errors however policy is in place to enable, following a coronavirus outbreak, consideration to be given to the correction or possible re-registration of death records on the application of relatives of the deceased.

332. Seeking to increase the pool of informants may serve to pre-empt delays – for example should the next of kin/ other qualified informant be ill, their appointed funeral director may act on their behalf. A further benefit may be that if a funeral director is representing several families – registering all deaths could take place at the same time.

333. To enable a funeral director to give all the relevant information to the registrar; processes/instructions need to be in place for the funeral director to be aware of the relevant information needed to register a death. A pro-forma sheet has been prepared to be given to funeral directors to collect the information from the family.

Delivery of documents by alternative methods

Rationale for intervention

334. Currently a certificate of the registrar (or alternately an order of the coroner) authorising the disposal (a disposal certificate) has to be issued prior to the disposal of a body. Additionally, a person effecting to the disposal of a body has to to deliver a notification of disposal to the registrar within 96 hours of the disposal. Legislation provides that any document required under the Act may be sent by post, however, it is silent as to what other modes of delivery are permitted.

335. The provision clarifies that during a coronavirus outbreak period any document or certificate relating to the disposal of a body may be delivered by alternative methods specified in guidance issued by the Registrar General.

336. In the event of a severe coronavirus outbreak, there may be disruption to the postal service. Additionally, this enables documents to be delivered without the need for members of the public or the postal workforce to travel unnecessarily.

Other policy options considered?

337. The different ways of working may not all be necessary or appropriate in all circumstances and local plans should be tailored to meet local requirements. They divide into three categories or phases – Phases 1 and 2 equate to maintaining business as usual for as long as possible, whereas phases 3 involves necessary legislative change to ensure the death management process when excess deaths cannot be managed using the provisions contained within phases 1 and 2.

Key considerations

338. Following a death registration, the registrar is required to issue a certificate of registration to the informant to enable the funeral to take place. This certificate is normally handed to the undertaker, who in turn delivers the certificate to the relevant person at the crematorium or burial ground. The funeral cannot take place until the relevant person has the certificate in their possession.

339. Delivering any documents (required under the legislation), including the certificate of registration, either in person or by post may not be practical or desirable during a coronavirus outbreak.

Excess deaths: increasing timeframe for doctors to have seen deceased prior to death.

Rationale for intervention

43. Currently registrars have a legal obligation to refer deaths to the coroner under certain circumstances. The Registration of Births and Deaths Regulations 1987 prescribes, among other circumstances, that if the doctor who has completed the medical certificate has not seen the deceased after death or within 14 days before their death the registrar must report the death to the coroner.

44. During a coronavirus outbreak there will be considerable burdens placed on doctors, in particular GPs, in respect of their time and it is unlikely that they will be able to see all their patients within the statutory timescale and likewise, given the circumstances of a coronavirus outbreak including infection control, it will be unlikely that the doctor will see the deceased after death.

Other policy options considered?

45. The different ways of working may not all be necessary or appropriate in all circumstances and local plans should be tailored to meet local requirements. They divide into three categories or phases – Phases 1 and 2 equate to maintaining business as usual for as long as possible, whereas phases 3 involves necessary legislative change to ensure the death management process when excess deaths cannot be managed using the provisions contained within phases 1 and 2.

Key considerations

340. Currently if a doctor has not seen the deceased after death or within 14 days before their death the registrar must report the death to the coroner for investigation irrespective of the fact that the death may have been due to natural causes (including coronavirus). This will add considerable burdens on the coronial service within England and Wales

341. Extending the period from 14 to 28 days allows for more flexibility within the system to cope with excess deaths due to a coronavirus outbreak. It will also maintain business as usual for as long as possible allowing the doctor who has been in medical attendance on the deceased to sign a medical certificate without the need for it to go to the coroner or alternatively other provisions being brought in to alleviate the pressures brought by a coronavirus outbreak

Powers in relation to bodies

Rationale for intervention

342. The UK typically deals with roughly 600,000 deaths per year. In a severe coronavirus outbreak, the death management industry may be rapidly overwhelmed.

343. The numbers of additional deaths are unprecedented. Whilst the death management industry has some flexibility to deal with fluctuations in death rates, these are of a different order of magnitude. The average weekly death rate is roughly 11,800 deaths which fluctuates between 14,800 deaths during winter flu season and drops to 8,500 in milder months. Under current planning assumptions roughly 50% of total deaths from coronavirus could fall across a three week peak. A death rate of this scale would far exceed existing capacity in the death management industry.

Other policy options considered?

344. MoJ has no operational responsibility for crematoria or burial sites and therefore has no powers to intervene to increase throughput. Existing legislative provisions that give local authorities powers (e.g. Local Government Act) are insufficient to deal with the scale of the unprecedented problem. To ensure we can respond effectively to this demand on the death management sector, Local Authorities may have to direct a fragmented sector and current legislation does not allow this.

345. We considered using the Civil Contingencies Act (2004). However, part of the triple-lock on activation on this legislation is that you cannot see the emergency coming. Therefore, as there is doubt whether the 'urgency' can be evidenced, there is legal risk that CCA measures, as secondary legislation, could be struck down and leave the government without the powers it needs to prepare for and respond to a RWCS outbreak.

Key considerations

346. The industry is fragmented and is largely unregulated, with most funeral homes being privately owned. Government therefore has no power to direct this sector to maximise capacity that may be needed.

347. The wishes of the deceased and their next of kin is a very important consideration. These wishes will be respected as far as possible, and increasing the capacity of the death management system is critical for extending the length of time these wishes can be complied with.

348. Human Tissue Authority guidance recommends a body should be kept in refrigerated storage for a maximum of 30 days. After which it should be moved to frozen storage.

349. The current registered mortuary storage (refrigerated and frozen) capacity in the UK is 17,600. The Crown Commercial service have already identified commercial options that could rapidly add

an additional capacity to store 25,000 bodies. There still remains a significant gap in body storage requirements to ensure we are prepared for the reasonable worst-case scenario.

350. The only way to ensure bodies are not stored for longer than appropriate is to increase body disposal capacity. This may require direction of crematorium and burial sites to increase their throughput by extending operating hours and curtail or ceasing services. This will bring additional risks to these businesses and likely will financially disadvantage them. Therefore, the individuals coordinating the death management system during this emergency require the power to direct them to increase their capacity.

Suspension of requirement to hold inquest with jury

Rationale for intervention

351. Coronavirus (COVID-19) has been designated as a notifiable disease. This engages a requirement in the Coroners and Justice Act 2009 that any inquest into a death caused by a notifiable disease must have a jury. In the event of a severe coronavirus outbreak, the number of deaths would increase; the requirement for all inquests involving such deaths to have a jury would therefore have a significant impact on coroners' workload and local authority coroner services and other resources. In addition, given likely sickness rates among the general population, the need to identify and convene a jury in each such case would be unlikely to be sustainable and, in any event, could exacerbate the spread of the coronavirus outbreak.

352. The provision therefore amends the 2009 Act to disapply the requirement for a jury in relation to inquests into coronavirus deaths. The provision will only apply during the emergency period.

Other policy options considered?

353. The only other policy option for achieving the same objective would be to disapply the requirement for a jury in an inquest relating to any notifiable disease. However, this would remove safeguards in terms of additional scrutiny in all such cases and, as such, would be disproportionate (particularly as the number of inquests relating to other notifiable diseases is not expected to increase during a coronavirus outbreak).

Key considerations

354. The measure is needed to avoid potentially significant impact on coroners' workload, local authority run coroner services and other resources, and will reduce delay. It will also enable bereaved families to avoid delay in the inquest process, and thereby achieve swifter closure.

355. Coroners will still retain the discretion to hold a jury inquest in coronavirus cases where they consider this appropriate. This mitigates the concern that, under these provisions, coronavirus deaths could not be afforded the additional scrutiny of a jury inquest.

Suspension of the referral of MCCDs under the Certification of Death (Scotland) Act 2011

Rationale for intervention

356. The Burial and Cremation (Scotland) Act 2011 (the 2011 Act) updates the certification of death process in Scotland with the aims of introducing a single system of independent, effective scrutiny applicable to deaths that do not require a Procurator Fiscal investigation, and improving the quality and accuracy of Medical Certificates of Cause of Death (MCCD).

357. The primary function of medical reviewers is to conduct reviews of MCCDs. They also have a role in providing education, guidance and support to doctors who certify the cause of death and they liaise with other persons and bodies with a view to improving the accuracy of these certificates.

358. The policy proposal is that during the outbreak period, Scottish Ministers should be able to determine that the referral for review of MCCDs under section 24A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (the 1965 Act) and under section 4 of the 2011 Act should be suspended until such time as they determine it is appropriate to re-instate the review system.

359. It is considered that suspending the referral for review of medical certificates of cause of death in an emergency may help to expedite the disposal of bodies and free up medical personnel.

Other policy options considered?

360. The Death Certification Review Service (DCRS) operates in Scotland only and policy options for streamlining the service without legislative intervention have been explored and are being progressed where appropriate.

361. Before taking a decision to suspend the referral of MCCDs to DCRS, Scottish Minsters in consultation the Senior Medical Reviewer at DCRS, would consider lowering the % of certificates to be reviewed by the service, making the workload more manageable. This arrangement would be implemented by agreement between DCRS and Scottish Ministers.

Key considerations

362. The effect of suspending the referral of review of MCCDs will be that from the date on which the Registrar General has been directed to suspend referrals, no new referrals to medical reviewers will be made under either section 24A of the 1965 Act or section 4 of the 2011 Act.

363. All referrals which have been made under section 24A of the 1965 Act prior to the date of the direction but not concluded by that date, except for those where a referral to the Procurator Fiscal is being considered under section 11 or 12 of the 2011 Act, should be stopped and the registrars can proceed to register the death and issue the relevant certificate under section 27 of the 1965 Act.

364. Where a referral to the Procurator Fiscal is being considered under sections 11 or 12 reference should be made to the Procurator Fiscal who will then determine whether to investigate further.

Suspension of cremation provisions under the Burial and Cremation (Scotland) Act 2016

Rationale for intervention

365. These clauses suspend various provisions of the Burial and Cremation (Scotland) Act 2016 ("the 2016 Act") and the Cremation (Scotland) Regulations 2019 ("the 2019 Regulations") in the event of an exceptionally high morbidity rate from coronavirus. These clauses relate to the legal requirements in respect to cremation in Scotland only.

Suspension of offence relating to signing of declaration

366. Scottish Ministers may determine that section 49 of the 2016 Act (offences relating to applications for cremation), in so far as it applies to the signing of the declaration in section 4 of form A1, should be disapplied.

367. A person is entitled, under the hierarchy set out in section 65 or 66 of the 2016 Act, to make arrangements for a person's funeral.

368. The intention of this clause is to allow for the situation where it is known, or suspected, by the person making the arrangements that there is someone higher up in the hierarchy who may be able to make the arrangements, but that person is unwell or otherwise unable. For example, it may be that a friend of longstanding is available and content to make the arrangements, even where they are aware that the deceased does have a next of kin who cannot be immediately contacted. Individuals may be more willing to sign the declaration if the associated offence was removed. This will expedite the process of arranging a cremation.

Suspension of provisions relating to collection of ashes

369. Scottish Ministers will have a power to direct that sections 53 to 55 of the 2016 Act will be suspended until such time as Ministers direct otherwise. During this period, the administrative tasks associated with tracing relatives when ashes have not been collected, will be removed. Instead, all ashes, including where a local authority is making arrangements for the cremation under section 87, would be retained until such time as the suspension of sections 53 to 55 is lifted, unless a relative wishes the ashes returned to them or for the cremation authority to inter or scatter the ashes.

370. By removing the administrative burden during an outbreak period, funeral directors and crematorium staff will be able to use their resources more effectively, particularly if facing staff shortages. By ensuring that ashes are retained during this period, it gives families, who may have been struck by illness, an longer period in which to make their wishes known.

371. Once the suspension is lifted, the normal duties to follow the wishes of the applicant will resume for retained ashes.

Suspension of local authority duty to make enquiries as to surviving relatives

372. Where a local authority is making arrangements under section 87 of the 2016 Act, regulation 8(3)(e) of the 2019 Regulations provides that the local authority when arranging for the cremation must complete an application in on form A5 set out in schedule 5 to the 2019 regulations. Section 5 of that form contains provisions in relation to the disposal of the ashes. During the period in which sections 53 to 55 are suspended, the local authority is not under any duty to take steps to enable them to complete section 5 of Form A5 and that where they are unable to do so the cremation authority should retain the ashes until such time as the suspension of sections 53 to 55 has been lifted. Once the suspension of sections 53 to 55 has been lifted the local authority is once more under a duty to take reasonable steps to ascertain whether there is any surviving relative and if so whether they wish to have the ashes returned to them or for the ashes to be scattered or interred. If relatives cannot be found, following the lift of suspension, then ashes will be disposed of in accordance with the Cremation (Scotland) Regulations 2019.

Other policy options considered?

373. Yes, all other policy options were considered. The selected provisions were considered to be the most effective for utilising resource during staff absence and to expedite the death management process.

374. These clauses will only be activated by direction of the Scottish ministers, if required.

Key considerations

375. Key consideration included:

- More flexibility around who can arrange a person's funeral and the recognition that removing the offence will make people more willing to step forward.

- The potential to pause administrative workload to allow more effective use of resources for funeral directors and crematorium staff.

Section 5 – Other

Statutory sick pay: funding of employers' liabilities

Rationale for intervention

376. Currently, employers are obliged to pay Statutory Sick Pay (SSP) to eligible employees who are unable to work because of sickness. It is paid at a flat rate of £94.25 (increasing to £95.85 from 6 April 2020) for up to 28 weeks. The full cost of SSP is met by the employer.

377. In the event of a severe outbreak (pandemic) of Covid-19, the number of people off work would likely increase significantly. This would include those who are displaying virus-like symptoms, as well as those who are self-isolating as a precautionary measure in accordance with government public health advice. In a stretching scenario, it is possible that up to one fifth of employees may be absent from work during peak weeks. This would present a significant financial burden on employers through increased SSP costs.

378. The government wants to ensure that small and medium enterprises (SMEs) receive financial support where they incur additional SSP costs due to absences relating to coronavirus. The ability to recover SSP in this scenario is important to ensure that these employers are supported in a period when their payments of SSP are likely to escalate, and that employees are incentivised not to attend work when advised not to for reasons of public health security.

379. As delivery mechanisms for making payments to employers are limited to those currently in place, and as the intention is that the scope of recovery payments will be wider, a new power is needed.

380. The provisions in the Bill will allow for a rebate to be paid to employers to refund employers the costs of SSP for absences relating to coronavirus.

Other policy options considered?

381. Do nothing – this would mean that employers faced with an increased SSP burden as a result of an outbreak are left unsupported and may not be encouraged to support employees who are advised not to work for reasons of public health security.

382. There are different delivery mechanisms being considered as there is not an existing system by which government can refund SMEs for SSP costs. Any delivery mechanism needs to be operationalisable as quickly as possible to ensure timely payments are made to SMEs to limit short-term financial pressures during a severe outbreak of coronavirus.

Key considerations

383. There would be an immediate impact on employers should many of their employees being incapable of work due to coronavirus. There is the potential for cost to employers through additional costs of SSP combined with a loss of productivity.

384. To support with the short-term financial pressures in this scenario, a rebate will be paid to employers to refund small and medium employers the costs of SSP for absences relating to coronavirus. The rebate will be capped at 2 weeks of SSP per employee. This means that the additional cost to SME employers of paying SSP for coronavirus-related absences, including the

suspension of SSP waiting days provided for in the Bill, would be fully met by government up to a limit of two weeks of absence.

385. Some employees may be able to continue working from home if they are self-isolating but not displaying symptoms. In these circumstances, they would be entitled to their normal wage as per their contract.

386. For employers who pay occupational sick pay (OSP), they may require a mechanism to distinguish between payments of SSP and OSP.

387. It is anticipated that this will be welcomed by the business community and reassuring to the public that the government is responding to business pressures faced by small and medium employers during an outbreak of coronavirus.

388. The rebate will only be made available in the event, and for the duration, of the outbreak, and will lapse once this period is over.

Statutory sick pay: suspension of waiting days

Rationale for intervention

Statutory sick pay (SSP) is paid from the fourth qualifying day of sickness absence. The first three days are known as waiting days.

There is concern that not paying sick pay for the first three days of sickness absence will encourage people to go into work even if they are sick, or if they are not sick but have been advised to self-isolate. This will reduce the effectiveness of efforts to contain or limit the spread of the virus.

The provisions in the Bill will allow for the government to temporarily suspend waiting days in the event of a severe outbreak/pandemic and lapse once the outbreak is over.

Other policy options considered?

Do nothing – retain waiting days. However, if individuals do not receive pay for the first three days of sickness, including a period where they are being required to self-isolate, they may still go to work. This risks a greater spread of the virus and will limit efforts to contain or delay. There would also be increasing public pressure to bring about the change.

Key considerations

The change will only apply to absences relating to coronavirus. In practice it will be for employers to determine which cases of sickness absence relate to coronavirus and which are due to other sickness reasons.

Temporarily suspending waiting days will place a direct financial burden on employers. As a result of the suspension of the rule, employees will also receive the daily rate of SSP for the first three qualifying days of absence. The cost to the employer per employee will vary depending on the number of qualifying days that the employee has in a week.

To offset some of these costs, the provisions in the Bill will also allow for a rebate to be paid to employers to refund employers the costs of SSP for absences relating to coronavirus.

The rule change will apply in the event, and for the duration, of the outbreak, and will lapse once this period is over.

Food supply chain (information)

389. These clauses will not be commenced unless there is a food supply chain disruption (or risk thereof) **and** a member of industry stops complying with requests for the voluntary provision of data.

Rationale for intervention

390. In the event of disruption to food supply chains due to the outbreak of coronavirus, the Government may seek to intervene to support industry efforts to restore efficient and equitable supply. The Government response to food supply disruption currently relies on information which is provided by industry on a voluntary, regular basis to Defra during the disruption. Without the provision of information from industry, Government is unable to develop an accurate view, making it difficult to support any industry response and inform a proportionate and effective Government response.

391. Defra has drafted these clauses (Food Supply Chains (Information)) which would give the Secretary of State for Environment, Food and Rural Affairs the power to require the provision of specified information (e.g. on the location of certain food stocks). This would be required from individual companies/members of the food supply chain, in the event of disruption to food supply, and in the event that industry does not provide information to Government when asked.

392. Given our preference to continue to collaborate with industry on a voluntary basis, Defra does not wish to activate these clauses unless the power is required. Safeguards have been drafted into the clauses to ensure that they could not be used in any other situation.

Other policy options considered

393. Do nothing. Rely on industry to continue cooperating with existing information sharing procedures.

394. Non-legislative influence. In the event of non-compliance, we could seek to influence through industry representative bodies and ministerial engagement. There would be no explicit power of compulsion but previous events have shown that engagement with sector bodies and senior ministers can be persuasive.

Postponement of elections

395. The policy makes provision to postpone elections in England and Wales scheduled for 7th May 2020 by a year to 6 May 2021. It also makes provision for other relevant elections and referendums that may arise (for example, by-elections) to be postponed up to 5 May 2021, and for supplementary provisions to be made to handle the consequences of any election postponements.

Key considerations

396. The Bill will lead to some costs being deferred to next year for the postponement of scheduled polls and to a later date for postponed by-elections and local referendums, etc. There will be some costs already incurred for preparations for 7 May scheduled polls and for by-elections etc. Necessary expenditure will still need to be reimbursed to the Returning Officers that are responsible for the polls given they were incurred in good faith and with expectation of reimbursement as normal.