

Health and Social Care Alliance Scotland (the ALLIANCE)

Briefing on the Coronavirus Bill 2020

23 March 2020



Introduction

This briefing is intended to provide a short summary of some key issues for consideration by decision-makers and people who work for and with people who live with long term conditions, disabled people and unpaid carers in Scotland. It also outlines the ALLIANCE's views on key provisions in the Bill, indicated in bold at the end of each section.

This briefing is not an exhaustive review of all the measures proposed. For example, the Bill also outlines duties related to the Community Justice System, food supply, deaths, social security, transport, elections, gatherings, schools and childcare, which this briefing does not directly address. Information on all of these issues can be found in the Bill itself¹.

The ALLIANCE recognises that special measures will need to be taken during this unprecedented public health emergency to ensure people are safe and the pandemic is addressed. Our view is that we must ensure a person centred and rights based approach is taken during this difficult time. This is informed by our vision of a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

As the Equality and Human Rights Commission notes: "COVID-19 does not discriminate, but it does impact people differently."² In the ALLIANCE's 12 March 2020 Statement on Coronavirus (COVID-19), we stated that people who are most at risk should be prioritised, and their rights and needs assessed, ensuring that contingency planning arrangements are made fairly, transparently, and publicly available in accessible formats³.

¹ <https://services.parliament.uk/Bills/2019-21/coronavirus.html>

² <https://www.equalityhumanrights.com/en/our-work/news/human-rights-and-equality-considerations-responding-coronavirus-pandemic>

³ <https://www.alliance-scotland.org.uk/blog/news/alliance-statement-on-coronavirus-covid-19/#expanded>

The Coronavirus Bill 2020

The Coronavirus Bill⁴ is temporary, emergency legislation proposed by the UK Government. The named purpose of the Bill is to provide powers to respond to the COVID-19 epidemic. All stages of the Bill will be debated by the UK Parliament on Monday 23 March 2020. This Act expires at the end of a period of two years.

It is intended that a Legislative Consent Motion for the Coronavirus Bill will be debated by the Scottish Parliament on Tuesday 24 March 2020. The Scottish Government intends to bring forward its own emergency legislation, covering other devolved matters, “shortly after”⁵.

The ALLIANCE believes that is imperative that the legislation remains under regular and constant review given the deep human rights implications for millions of people living with long term conditions, disabled people and unpaid carers across the UK. Even during times of crisis, any changes to our hard-won human rights must be necessary and proportionate, and regularly assessed to ensure they remain so. The British Institute for Human Rights (BIHR) has noted that the two year time limit “raises significant proportionality issues”⁶.

We believe it is not unreasonable to expect that renewing these duties may be reconsidered before March 2023. Provision should be made for expiry, and then renewal of the Bill if required, to take place three months from the date of its passing (potentially in late June 2020).

Emergency registration of health professionals

The powers provided in this clause will allow Registrars the ability to carry out emergency registration of healthcare professionals. It is hoped that this will help to ease the pressure on services to enable to delivery of essential healthcare services in the emergency period.

The ALLIANCE believes that the UK and Scottish Governments should publicly reiterate that all healthcare professionals will still be assessed and accountable for the decisions they make during this crisis. The regulatory standards under which they were approved to deliver the care and support they trained and qualified for should not be suspended or forgotten. This message should be reiterated in clear, accessible and informative guidance to

⁴ <https://www.gov.scot/news/coronavirus-bill/>.

⁵ [Ibid.](#)

⁶ <https://www.bihhr.org.uk/coronavirusbill-20march>

all people with long term conditions, disabled people and unpaid carers in public guidance.

Temporary registration of social workers: Scotland

This will allow for the addition of emergency registrants to the social work register which aims to help to deal with any shortage of social workers in the children's and adult social care sectors as a result of increased staff absence, or increased demand, for example, for care planning.

The UK and Scottish Governments should publicly reiterate that all social work professionals will still be assessed and accountable for the decisions they make during this crisis. Regulatory standards must not be suspended or forgotten. This message should be reiterated in clear, accessible and informative guidance to all people with long term conditions, disabled people and unpaid carers in public guidance.

Emergency volunteers

This 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. The clause, therefore, creates a temporary new form of statutory unpaid leave for employees and workers who wish to volunteer – Emergency Volunteering Leave.

The ALLIANCE welcomes this clause in the Bill and encourages both the UK and Scottish Government to ensure that additional resources are diverted to the many third sector organisations with decades of experiences of working with volunteers. These are the organisations who can properly train, support and assess a range of volunteers to deliver person centre and rights based support across the country. This should be delivered against a set of standards that ensure good and safe delivery of support to people living with long term conditions, disabled people and unpaid carers.

Changes to Scottish Mental Health Legislation

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;
- the extension of timescales for the assessment of those involved in criminal proceedings.

The ALLIANCE is extremely concerned about the implications of these amendments for people with mental health problems across Scotland. The Scottish Human Rights Commission has noted that: “All measures and decisions, including about resources, must be particularly cognisant of the rights of the most vulnerable. In this public health crisis, it is incumbent on all of us to focus on those at risk, not only from the coronavirus itself, but from the measures being rolled out and their wider impacts.”⁷ The ALLIANCE urges that further provisions should be made that place duties on Scottish Ministers to update and report on the number of mental health orders that have been made in the emergency period and what assessment of other person centred and human rights based options and capacity has been made by practitioners that led to the provisions in the Bill being applied.

The ALLIANCE is particularly concerned to note that Matt Hancock has proposed an amendment which would enable Tribunals to deal with proceedings “on paper rather than at a hearing”. If this becomes law it must be avoided at all costs in Scotland, to allow for the views of people requiring mental health support and their families to be properly heard during this period. In these emergency circumstances, we believe that video and audio technology should be taken advantage of, as is proposed in relation to courts and tribunals elsewhere in the Bill. We also urge ensuring easy access to independent advocacy services, which is an indispensable support for those that want it.

Health service indemnification

This indemnity clause allows Ministers 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.

This is considered to be required because 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

⁷ <http://www.scottishhumanrights.com/news/statement-human-rights-in-times-of-crisis/>

normal day-to-day work. It may also be necessary to require medical students to assist in the delivery of some NHS services.

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.

Duty of local authority to assess needs: Scotland

Where it is not practical or would cause unnecessary delay in providing community care services to any person local authorities will not need to comply with the following provisions in Scottish legislation related to social work:

- Duties related to the local authority assessing needs
- General principles for the provision of social care in Scotland.
- Duties to provide adult carer support plans and young carers statements
- Identification of adult and young carer's outcomes and needs for support
- Duties to assess the needs of disabled children

Provisions also allow for Scottish Ministers to issue further guidance to local authorities in this area.

The ALLIANCE is extremely concerned by reports of social care packages being withdrawn and announcements by public bodies that essential services for those most in need will be restricted⁸. This indicates that responses to COVID-19 are already having a disproportionate impact on disabled people, people living with long term conditions and unpaid carers.

The ALLIANCE believes that the Bill's provisions will have the potential to cause significant distress and unintended consequences for many people and families reliant on social care support to achieve their human rights. This also negatively impacts on wider society. We recommend that further provisions must be included in the final Act that ensure comprehensive and regular reporting to the public on how the Scottish Government will guarantee provisions for social care while this Act is in force. This should outline support being given to social care providers – including the crucial services provided by the third sector – and how high standards will be enforced. We also call for greater transparency and regular reporting – in clear and accessible formats –

⁸ <https://healthandcare.scot/default.asp?page=story&story=1502>

on how decisions on the allocation and distribution of resources are being made. The Scottish Government should also ensure local authorities guarantee that all social care provision returns – at a minimum – to its previous level following the emergency period.

Provision of vaccines in Scotland

Revision of existing clauses that would allow for vaccinations to be provided by health care professionals other than GPs during the duration of the coronavirus crisis. It is believed that this will allow for Scottish Health Boards to make best use of locally available resources.

Protection of public health: Scotland

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). This will allow for the ability for Scottish Ministers to make Regulations quickly in an emergency.

The ALLIANCE has long advocated for a human rights based approach to health and social care, and never more than now has that need been more acute. Scotland has already clearly expressed its intention to take a human rights based approach to public health⁹, and we believe that this should still be possible for difficult decision-making in response to COVID-19. A human rights based approach would provide a clear and practical framework and strengthen and inform the law to ensure the rights of people who are most marginalised at the centre of its provisions. We believe that this could prevent, protect and control further infection among these groups and wider society. Further provisions should be made in the Bill to ensure that people currently considered to have “no recourse to public funds” are considered to have recourse to public funds. We offer our support to the amendment in the name of Stuart C McDonald MP in this regard.

Disclosure Scotland: reclassification of disclosure checks

This clause provides the ability for Scottish Ministers to provide a shorter form of disclosure which would confirm if the individual was a member of the PVG scheme or not. The provisions are intended to improve operational delivery and increase timeliness of these checks during any emergency period, allowing workers the ability

⁹ <https://publichealthreform.scot/>

to quickly move into the workforce.

Provisions will also allow for 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. The purpose of this is to avoid inadvertently criminalising healthcare employers like the NHS or social care providers 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).

Further reading

- Health and Social Care Alliance Scotland (the ALLIANCE), Statement on Coronavirus (COVID-19):
<https://www.alliance-scotland.org.uk/blog/news/alliance-statement-on-coronavirus-covid-19/>
- UK Parliament, Coronavirus Bill:
<https://services.parliament.uk/Bills/2019-21/coronavirus.html>
- UK Government, Coronavirus Bill: summary of impacts:
<https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts>
- Scottish Government, Coronavirus Bill:
<https://www.gov.scot/news/coronavirus-bill/>

Contact

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About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of over 2,900 national and local third sector organisations, associates in the statutory and private sectors and individuals. Many NHS Boards, Health and Social Care Partnerships and Medical Practices are associate members.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.