

Briefing on the Coronavirus Act 2020

Update 28 May 2020:

- Additional guidance flowing from changes brought about by the Act (p.5)
- Progress of the Coronavirus (Scotland) Act 2020 and Coronavirus (Scotland) (No.2) Act (pp.5-7)

About the Act

The Coronavirus Act 2020 is temporary emergency legislation which became law on the 25 March 2020, granting additional powers in order to respond to the coronavirus pandemic and manage its effects.

The passing of this Act does not immediately put these powers and provisions into place, as a number of the individual powers granted by this Act are discretionary - only to be used if it is deemed strictly necessary to do so over the course of the pandemic.

The Act primarily aims to:

- **Contain and slow the spread of the virus**
- **Enhance capacity and ensure the flexible deployment of staff**
- **Ease legislative and regulatory requirements**
- **Manage the deceased with respect and dignity**

The Act in full can be found [here](#).

About this briefing

This Act contains an extensive range of measures which could affect health and social care among other areas. This briefing focuses only on the most relevant clauses affecting hospice and end of life care services. We have also indicated where clauses have already been implemented, and the geographical coverage of these provisions.

How many aspects of the Act will be put into practice remain to be explored. In the coming weeks and months Hospice UK will provide further updates.

Timeframes and territorial extent of the Act

This is a wide-ranging Act which affects all four countries of the United Kingdom. Scottish, Welsh, and Northern Irish devolved assemblies have agreed legislative consent procedures to allow the UK parliament to legislate on what would ordinarily be devolved matters. There are however differing implementations for some of the provisions across the devolved administrations, a full table detailing the territorial extent of each provision can be found [here](#).

The measures within the Act are intended to be time-limited and targeted, meaning powers could start and end at different times in different areas depending on the spread of the virus. The Act could be in place until March 2022, although there is a mechanism in place which allows for the temporary measures in the Act to be reviewed at six-monthly intervals.

An up to date status table for each of the provisions in the Coronavirus Act can be found [here](#), listing which aspects of the legislation are in force at any one time.

What could the Act change?

Emergency Registrations

Introduced - Eng, Scot, Wal, NI

Clauses 2-4 allow Registrars to implement emergency registration of any healthcare professionals regulated by the Nursing and Midwifery Council or the Health and Care Professions Council in order to increase the available workforce across the health system during this emergency period. The General Medical Council and General Pharmaceutical Council already had the required powers to register professionals in an emergency.

- This provision is not limited to re-registering those who have left practice, also allowing for early registration for final year students.
- Thousands of professionals have already registered under this voluntary scheme.
- The increase in capacity of the healthcare workforce could have significant impact on easing pressures on staffing levels during the coronavirus pandemic. We don't yet know how emergency registered professionals will be used, though some local areas plan to utilise retired doctors to fill in medical certificates of cause of death. The NHS will be responsible for overseeing the deployment of those professionals who volunteer to provide services during this period.

The Act also provides for emergency registration of social workers in order to respond to any shortages in children's and adult social care sectors.

Indemnity cover

Introduced - Eng, Scot, Wal, NI

Clauses 10-12 would provide indemnity for clinical negligence liabilities of healthcare professionals carrying out activities as a consequence of the coronavirus pandemic.

- This relates primarily to professionals who may be asked to undertake roles that are outside of their normal day-to-day practices, for example in the event that practice nurses or GPs are asked to assist staff in hospitals.

NHS Pensions

Introduced - Eng, Scot, Wal, NI

Clauses 43-45 make changes to NHS Pensions to ensure that returning professionals can re-enter the workforce or increase their hours during the pandemic without negative impact to their pensions.

Emergency Volunteering Leave

Discretionary

Clauses 7 and 8 create Emergency Volunteering Leave - a temporary form of statutory unpaid leave for workers who wish to volunteer in the health and social care system.

- In the event of the coronavirus pandemic reducing workforce capacity and increasing demand for health and social care services, authorities may need to use a pool of volunteers to reduce pressures on services.
- These clauses remove some of the barriers to volunteering by introducing employment rights and protections for those taking this leave, alongside an obligation for the

Secretary of State for Health and Social Care to establish a compensation scheme to eligible volunteers for any losses of income.

- This policy requires Local Authorities and health systems, under yet to be released guidance from the Government, to identify volunteer opportunities and match them to those volunteers who come forward. As it becomes clearer how this volunteering scheme is to be administered we will advise on how to best to engage with this measure, and what effects, if any, it could have on hospice and end of life care services and their existing volunteer-base.

Local Authority Care Assessments

Discretionary, Introduced 01/04 - Eng, Wal

Clause 14, if activated, gives Local Authorities the provision to prioritise which needs to meet under the Care Act 2014.

- According to the DHSC impact assessment, this clause would only be activated by the Secretary of State in the extreme event that reduced capacity arising from staff absence and surging demand on adult social care services meant that LAs were at imminent risk of failing to meet their obligations under the Care Act.
- This clause could mean that LAs may lawfully discontinue needs assessments or delay the review of care plans for individuals who would ordinarily have eligible needs. This change would be in order to focus on meeting only the most acute and pressing needs and prevent human rights breaches.
- If this clause is triggered, individuals with end of life care needs who are currently in receipt of support organised through their Local Authority could face a significant reduction in their care package. This could have a serious impact on patients, their families and carers.
- In England the Care Quality Commission are [listing online](#) local authorities that are using these 'easements'

Delaying NHS Continuing Health Care Assessments

Discretionary

Clause 13 would allow for a delay in conducting detailed assessments for NHS continuing health care until after the coronavirus outbreak has ended, in order to reduce delays in hospital discharges.

- If introduced this provision could prevent access to fully-funded packages of care for those with eligible primary health care needs, including those with terminal illness, until after the peak of the pandemic. This could cause difficulties for patients and their families and carers.

Mental Health Legislation

Discretionary - Eng, Scot, Wal

Section 10 details the legislation around mental health and capacity which could be temporarily relaxed, meaning that the detention and treatment of patients requires fewer doctors' opinions.

- This change would also allow for the extension or removal of time limits relating to the detention and treatment of patients who are detained under mental health and mental capacity legislation.
- If activated, similar provisions will also be applied to prisoners with a mental health condition.

- In Scotland and Wales, this section allows for a reduction in the number of health professionals present at mental health tribunals.

For more information: [The Mental Capacity Act and Deprivation of Liberty Safeguards during the coronavirus pandemic](#), Department of Health and Social Care, April 2020

Managing the Deceased with Respect and Dignity

A number of provisions within the Act concern managing the deceased, ensuring that current procedures relating to death registration and management are adjusted to account for the protection of public health; an increase in demand on services; reduced capacity to register and manage deaths due to workforce sickness or absence; and the impact on families and/or carers.

Registration of Deaths, including still-births

- Local Authorities may decide to limit face to face contact and facilitate the registering of deaths remotely by telephone.
- The list of people who can register a death would be expanded to include a funeral director who is authorised by a relative to give the information.
- Certificates of registration of death could be provided electronically.
- This provision would also allow for correction or possible re-registration of incomplete or incorrect death records after the pandemic.

Confirmatory medical certificates for cremations

- If introduced this provision would allow for a crematorium medical referee to authorise cremations on the basis of a medical certificate (Cremation Form 4) only, rather than the additional need for secondary medical certification (Cremation Form 5).
- The relaxing of these requirements would reduce potential delays faced by families in making funeral and cremation arrangements.

Notification of deaths to coroners

- During a designated emergency period where clinical and coroner services could become stretched, regulations around notifications to coroners could be relaxed.
- Currently medical practitioners must automatically refer a certification of cause of death to the coroner if they did not see the deceased in the 14 days prior to death. This time period is being extended to 28 days.
- If anyone has any concerns surrounding a death they will still be able to refer to the coroner as normal.

Certificates of cause of death

- If triggered, this clause would allow for Medical Certificate Cause of Death (MCCD) to be completed and issued by a doctor who was not in medical attendance of the deceased during their last illness, or after death.
- Where patients die with a medical practitioner on site, the arrangements for certification of deaths will remain the same.

Powers in relations to bodies

- Under the current scientific advice guiding the Government's planning assumptions, roughly 50% of all total deaths from coronavirus could occur within a three week peak. Such a death rate would cause pressure on crematoria, burial sites and funeral services such that unprecedented Government intervention may be necessary in order to prevent local death management systems from becoming overwhelmed.
- The Act contains broad undefined powers for national and local authorities to direct matters related to the transportation, storage, and disposal of bodies, including the direction of crematorium and burial sites.
- One of the powers laid out in the Act would enable the direction of whether a deceased person must be buried or cremated. Following an amendment to the Bill in response to concerns raised by Muslim and Jewish faith groups, the Act now specifies that any authority using this provision must arrange for the disposal of a body '*in accordance with the person's wishes or religious beliefs, if known.*'

It is of course important that the information given to families and carers during a bereavement is as up to date and accurate as possible, therefore we recommend contacting your local register office in order to receive updates about changes to local arrangements.

Further information and guidance is available here:

- [Gov.uk collated resources for guidance related to coronavirus](#)
- [Scottish Partnership for Palliative Care Covid-19 Guidance and Resources](#)
- [Guidance for care of the deceased with suspected or confirmed coronavirus](#) - Public Health England, 15 May 2020
- [COVID-19 Hospital Discharge Service Requirements](#)
- [Guidance on shielding and protecting people defined as extremely vulnerable](#) - Public Health England, 18 May 2020
- [Verification of death in times of emergency, Department of Health and Social Care](#), 5 May 2020
- [Local Authorities' adult social care duties, Care Act easements](#), Commons Library Briefing, 6 May 2020
- [COVID-19 adult social care action plan](#), Department of Health and Social Care, 16 April 2020

Coronavirus (Scotland) Act and (No.2) Act

Scotland has introduced its own legislation, to complement and support the UK-wide Coronavirus Act 2020. The [Coronavirus \(Scotland\) Act 2020](#) received Royal Assent on 6 April and came into force on 7 April 2020.

The majority of the Coronavirus (Scotland) Act focuses on temporary changes to the justice system, a relaxation of some requirements on public bodies, and increased protection for private and commercial tenants.

The legislation will automatically expire after six months, unless Scottish Parliament passes regulations for it to continue for another six months. It may pass one further six month extension, so the measures in the Act will have a maximum duration of 18 months. The Act also gives Scottish Ministers the power to allow certain parts of the Act to expire earlier if they are satisfied that measures are no longer appropriate or proportionate.

More information about the legislation is on the [Scottish Parliament's website](#). The Care Inspectorate has also written a [briefing note](#) for care providers.

The areas of the legislation which potentially may impact people with palliative care needs, their families and/or hospice and palliative care providers in Scotland include:

Adults with Incapacity

- The Coronavirus (Scotland) Act removes duties on local authorities to apply some of the principles of the Adults with Incapacity (Scotland) Act 2000, so that the wishes of the adult with incapacity and the views of other interested parties do not need to be taken into account.
- It allows local authorities to provide a community care service to an adult with incapacity, despite them having a guardian, welfare attorney or an intervener with powers relating to the proposed intervention or guardianship order. The intention is that people can be discharged from hospital to a community setting without delay and without needing to consult family members or welfare guardians.
- Some of the timescales around guardianship orders are relaxed, including allowing for an automatic extension of any guardianship order due to expire while the Act is in force.
- It allows authorities to 'stop the clock' on the period of time a section 47 certificate (to authorise treatment of incapacitated adults) is granted for
- For more information, see [Coronavirus: adults with incapacity guidance](#)

Children

The Act introduces measures to make it easier for children's hearings and formal child protection decision-making to take place, and relaxes some of the timescales around this.

Social security

The Act relaxes some of the timescales in the Social Security (Scotland) Act 2018, including around redetermination and appeals.

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- It extends the time that people can apply for certain benefits, including the Young Carers Grant and Funeral Expense Assistance, if they were unable to apply because of the coronavirus outbreak.

The Coronavirus (Scotland) (No.2) Act 2020 has now gone through the Scottish Parliament, with further emergency changes to legislation introduced. The Act can be viewed in full [here](#). The most relevant provisions are:

- This Act introduces an increase in financial support available to unpaid carers. Through introducing the Coronavirus Carers' Allowance Supplement (CCAS), unpaid carers who currently receive carers allowance will be eligible for additional financial uplift of £230.10 for the period of 1 April - 30 September 2020.
- Within mental health legislation, the requirement for a 'prescribed person' to witness the signature of a person nominated by someone to act as their advocate if they have a mental disorder has been removed.
- Powers have been given to Health Boards and Scottish Ministers to step in and manage care home services on a temporary basis where there is believed to be serious risk to the health and wellbeing of residents due to coronavirus.

- In an instance where a care home or care at home service is ‘distressed’, ie serious financial difficulties or a threat to life, health or wellbeing to people in its care, then a local authority or health board can acquire that service and its assets/liabilities.
- A social care staff support fund will be established to provide financial assistance to social care sector staff experiencing financial hardship as a result of restrictions on their ability to work due to coronavirus.

For further information

This briefing is up-to-date at time of writing. However, the powers in the Act are likely to be ‘switched on or off’ at different times, and as a result, the situation is likely to be fast changing. If you have any specific questions on the provisions of the Act please email the Policy team at policy@hospiceuk.org

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