

# CORONAVIRUS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Coronavirus Bill as introduced in the House of Commons on 19 March 2020 (Bill 122).

- These Explanatory Notes have been produced by the Department for Health and Social Care in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The purpose of the Coronavirus Bill is to enable the Government to respond to an emergency situation and manage the effects of a covid-19 pandemic. A severe pandemic could infect up to 80% of the population leading to a reduced workforce, increased pressure on health services and death management processes. The Bill contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts.
- 2 The Bill aims to support Government in the following:
  - Increasing the available health and social care workforce
  - Easing the burden on frontline staff
  - Containing and slowing the virus
  - Managing the deceased with respect and dignity
  - Supporting people
- 3 The Bill is required as part of a concerted effort across the whole of the UK to tackle the covid-19 outbreak. The intention is that it will enable the right people from public bodies across the UK to take appropriate actions at the right times to manage the effects of the outbreak.
- 4 As part of its contingency planning, the Government has considered what measures would be needed during a severe covid-19 outbreak to reduce the pressure of key services and limit the spread of infection.
- 5 The action plan<sup>1</sup> sets out options that can be taken as part of the response. This Bill ensures that the agencies and services involved – schools, hospitals, the police etc. – have the tools and powers they need. Each of the four nations of the UK has its own set of laws, and thus these tools and powers differ to varying degrees in each area. Consistency of outcome will be achieved by making the range of tools and powers consistent across the UK.
- 6 While vital, this Bill is just one part of the overall solution. It is therefore not necessary for each tool or power needed to address the covid-19 pandemic to be covered in this Bill. Some exist already in statute. Some exist in some parts of the UK but not others. This Bill aims to level up across the UK, so that the actions to tackle this threat can be carried out effectively across all four nations.
- 7 These are extraordinary measures that do not apply in normal circumstances. For this reason, the legislation will be time-limited for two years and it is neither necessary nor appropriate for all of these measures come into force immediately. Instead, many of the measures in this Bill can be commenced from area to area and time to time, so as to ensure that the need to protect the

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<sup>1</sup>

<https://www.gov.uk/government/publications/coronavirus-action-plan/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk>

public's health can be aligned with the need to safeguard individuals' rights. These measures can subsequently be suspended and then later reactivated, if circumstances permit, over the lifetime of the Act.

- 8 The lifetime of the Act can itself be ended early, if the best available scientific evidence supports a policy decision that these powers are no longer needed. It is also possible to extend the lifetime of the Act for a further temporary period, again if it is prudent to do so.
- 9 This facility can be adjusted so that early termination ('sunsetting') can apply to some provisions; and further extension can be applied to others. The aim is to make sure that these powers can be used both effectively and proportionately.
- 10 These provisions also take due account of the UK's devolution settlement in a way that enables swift action to be taken when and where it is needed. The commencement (and all associated decisions) will be activated to implement a COBR decision. UK Government Ministers will control the use of provisions on matters that are reserved or England only. This is intended to be a streamlined system that is nonetheless consonant with the role of the Devolved Administrations.
- 11 The Bill includes provisions which relate to a wide spectrum of areas across the UK as explained below. However, they are all focused on responding to circumstances that may arise as a result of the covid-19 pandemic.

## Emergency registration of health professionals

- 12 The Bill introduces new registration powers for the Registrars of the Nursing and Midwifery Council (NMC) and the Health and Care Professions Council (HCPC). This is to help to deal with the increase in those needing medical care and any shortage of approved staff to help. On notification from the Secretary of State of an emergency, Registrars of the NMC and HCPC will be able to temporarily register fit, proper and suitably experienced persons with regard to an emergency, as regulated healthcare professionals.
- 13 The NMC registration will cover nurses, midwives, and nursing associates, and the HCPC registration will cover paramedics, biomedical scientists, clinical scientists, operating department practitioners and any other of the 'relevant professions' it regulates. [To note that there are existing legislative powers for the General Medical Council to register doctors in the UK, and for the General Pharmaceutical Council to register pharmacists in Great Britain, in an emergency. This Bill intends to confer similar powers onto the NMC and the HCPC.]
- 14 For Scotland, provision is made to modify the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 to support the fast deployment of temporarily registered health care workers by the NHS. The modifications permit general practitioners with temporary registration under section 18A of the Medical Act 1983 (temporary registration with regard to emergencies) to provide primary medical services despite not being included in the primary medical services performers list of a Health Board where they have applied to the Health Board and the Health Board has not refused or deferred the application.
- 15 As Performers Lists Regulations apply to all medical practitioners who are involved in primary medical services, under the current arrangements all temporarily registered GPs who are recruited to join the covid-19 emergency response would have to be on the performers list of the Health Board which recruits them. Scottish Government understands that the vast majority of GPs who leave the profession in Scotland also promptly leave the performers lists to which they used to belong. This relieves them of their obligations under the Regulations, chiefly the requirement to submit to an annual performance appraisal. It is expected that very few, possibly

none, of the additional GPs who are recruited will currently be on a Health Board performers list.

- 16 Action is therefore necessary to modify the requirement to be on a performers list in order to streamline the process. To ensure patient safety is not jeopardised if the requirement, the Bill is to maintain the requirement to be listed in order to provide primary medical services, and continue to require GPs to apply in the usual way. To speed up the emergency response and prevent performers lists requirements from being a barrier, GPs who are temporarily registered will be permitted to provide primary medical services in Scotland while their application is considered. This compromise allows the Health Boards to gather all of the information which they would usually, and to have access to the powers they usually would in case of any conduct incidents, but would also get GPs to the front line of the emergency response without undue delay. To note: The National Health Service (Performers Lists (England) Regulations 2013 make provision in relation to doctors registered under .18A Medical Act 1983 in relation to practising in the NHS in England.]
- 17 For Northern Ireland, the Pharmaceutical Society of Northern Ireland (the Society) is the regulatory body for the pharmacy profession in Northern Ireland. The Pharmacy (Northern Ireland) Order 1976 sets out the powers and responsibilities of the Society including the criteria required to be registered as a pharmaceutical chemist (pharmacist) and the criteria required for a pharmacist's entry in the register to be annotated as either a supplementary or independent prescriber. The Bill will allow for people who may have been prevented from registering under the 1976 Order to be registered when directed by the Department of Health in Northern Ireland that an emergency has occurred or is occurring. Groups that could be considered for temporary registration may include pre-registration pharmacists or recently retired pharmacists.
- 18 Medicines legislation in Northern Ireland requires a registered pharmacist to supervise certain activities, for example, the supply of prescription-only medicines from a registered pharmacy. In an emergency, the situation may arise where additional pharmacists are required, or additional pharmacists with annotations are required, to assist with the prescribing and supply of medicines. The Bill provides mechanisms which will help deal with such a situation.

## Temporary registration of social workers

- 19 The Bill introduces emergency registration powers for the Registrar of Social Work England (SWE) and the Registrar of Social Care Wales (SCW). The registrars of SWE and SCW will be able to temporarily register fit, proper and suitably experienced persons with regard to an emergency, as social workers. The addition of emergency registrants to the registers held by SWE and 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.
- 20 In Scotland, provision is also made to allow Ministers to direct the Scottish Social Services Council (SSSC) to temporarily register retired social workers, those on a career break and social work students, who are in their final year of training, in order to increase the pool of social workers available to deliver critical social services in Scotland due to the coronavirus.
- 21 The Bill will also provide that newly employed workers in social care services in Scotland will have a longer period of time to complete their registration, increasing this from 6 months to 12 months. This will help to reduce administrative requirements for new workers and employers and allow people to stay on the register after the initial 6 month period that will help deal with the shortage of social services workers in the care sector.

## Emergency volunteers

- 22 The Bill introduces a new form of unpaid statutory leave, and powers to establish a



compensation scheme to compensate for some loss of earnings and expenses incurred by volunteers. These measures will enable relevant appropriate authorities (local authorities and relevant health and social care bodies) 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.

- 23 These measures will maximise the number of volunteers that are able to fill gaps in capacity, thus helping to safeguard essential services that could be at risk due to demand on services as a result of pandemic pressures.

## **Mental health and mental capacity**

- 24 The Bill introduces temporary amendments to the Mental Health Act 1983, the Mental Health (Care and Treatment) (Scotland) Act 2003, the Criminal Procedure (Scotland) Act 1995, the Mental Health (Northern Ireland) Order 1986, the Mental Capacity Act (Northern Ireland) 2016 and associated subordinate legislation. The amendments allow certain functions relating to the detention and treatment of patients to be satisfied by fewer doctors' opinions or certifications. Temporary amendments also allow for the extension or removal of certain time limits relating to the detention and transfer of patients.
- 25 Further provisions will temporarily amend current provisions in respect of defendants and prisoners with a mental health condition. It will reduce the number of doctors' opinions required and modify time limits for detention and movement between court, prison and hospital. This will enable them to be admitted to hospital for treatment where there might otherwise be delay owing to shortage of qualified staff in a pandemic.
- 26 In Scotland, provisions will also permit the reduction in the number of members required to constitute a mental health tribunal and permit a tribunal to make a decision without holding an oral hearing.
- 27 In Northern Ireland, provisions temporarily amend the Mental Health (Northern Ireland) Order 1986 and the Mental Capacity Act (Northern Ireland) 2016 to allow for social workers, other than approved social workers, to carry out certain statutory functions in relation to detention and deprivation of liberty. The provisions will also temporarily amend the timelines for carrying out examinations and reports and the operation of the trust panel.
- 28 Also, in Northern Ireland, further provisions temporarily amend parts relating to criminal proceedings and transfers from prisons to healthcare facilities, and longer time periods for assessment and detention in criminal and civil justice settings relating to mentally ill persons and persons who lack mental capacity.

## **Health service indemnification**

- 29 The Bill includes powers to provide indemnity coverage for clinical negligence of health care workers and others carrying out NHS and Health and Social Care (HSC) activities connected to care, treatment or diagnostic services provided under the arrangements for responding to the covid-19 pandemic. This indemnity is intended to act as a 'safety net' where clinical negligence arising from the provision of such services is not already covered under a pre-existing indemnity arrangement, for example under state indemnity schemes, private medical defence organisation or commercial insurance policies or through membership of a professional body.
- 30 Existing indemnity arrangements in England include the Clinical Negligence Scheme for Trusts and the Clinical Negligence Scheme for General Practice. Existing indemnity arrangements in Wales include state indemnity for clinical negligence indemnity provided by the Welsh Risk Pool and under the General Medical Practice Indemnity scheme. Existing indemnity

arrangements in Scotland include the Clinical Negligence and Other Risks Indemnity Scheme.

- 31 Existing indemnity arrangements in Northern Ireland include the Clinical Negligence Scheme for Trusts and indemnity arrangements for General Practice, which also include arrangements with medical defence organisations. Other existing indemnity arrangements include indemnity provided to members of organisation representing certain professions, indemnity arrangements with medical defence organisations and insurance policies with insurance companies.

## **NHS and local authority care and support**

- 32 Currently, patients with social care needs go through a number of stages before they are discharged from hospital. For some patients, one of these stages is an NHS Continuing Healthcare (NHS CHC) Assessment a process that can take a number of weeks. The Bill will allow the procedure for discharge from an acute hospital setting for those with a social care need to be simplified to.
- 33 There are also duties on Local Authorities in Part 1 of the Care Act 2014 to assess needs for care and support, and to meet those needs. The Bill will replace these duties with a power to meet needs for care and support, underpinned by a duty to meet those needs where not to do so would be a breach of an individual's human rights, and a power to meet needs in other cases.
- 34 The Bill also allows that, if a Local Authority has not charged an individual for their care during the covid-19 pandemic, they are able to do so retrospectively after the conclusion of this period subject to financial assessment.
- 35 The immediate operationalisation of these provisions will involve the ceasing of current practices and is intended to reduce operational burden so local authorities can prioritise the service they offer in order to ensure the most urgent and serious care needs are met.
- 36 In order to support Local Authorities in operating under the new powers, including making prioritisation decisions in a consistent, and ethical manner, the Government will publish guidance. The clause will therefore enable Secretary of State to support Local Authorities by directing them to comply with this guidance.

## **Registration of deaths and still-births etc**

- 37 It is important to ensure that the administrative processes relating to the registration of births, deaths and still-births can operate effectively during the covid-19 outbreak as systems may be put under additional pressure and people may not be able to attend Registrars' offices in person.
- 38 In England and Wales, the Births and Deaths Registration Act 1953 places a responsibility on the deceased's doctor to provide a medical certificate giving, to the best of the doctor's knowledge and belief the cause of death. This medical certificate is given to the registrar and used to record the cause of death in the death registration. If the doctor is not able to sign the medical certificate, for whatever reason, the death has to be referred to the coroner for investigation. The Bill will simplify this and provide more flexibility in an emergency situation by enabling a doctor who may not have seen the deceased to certify the cause of death without the death being referred to the coroner.
- 39 Current civil registration legislation also requires a person, normally a family member, to attend the register office to register the death. The Bill will allow a person to register without attending the register office and will also extend the list of those people who can give the relevant information to the registrar to register the death to funeral directors.
- 40 These provisions aim to provide flexibility in respect of health provisions during a pandemic, and mitigate the spread of infection. Provisions will also be made for the necessary

documentation relating to death registration to be transmitted by alternative methods, including electronically.

- 41 There is a legislative framework across the four nations which sets out when coroners need to be notified of a death and what medical certificates are required before a cremation to take place. This Bill enables the streamlining of some of those processes by temporarily modifying much of existing legislation.
- 42 The registration of births, deaths and still-births in England and Wales is governed primarily by the Births and Deaths Registration Act 1953 (the “1953 Act”), the Births and Deaths Registration Act 1926 (the “1926 Act”), the Registration of Births and Deaths Regulations 1987 (the “1987 Regulations”) and the Registration of Births and Deaths (Welsh Language) Regulations 1987 (the “1987 Welsh Regulations”). The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is the main legislation governing the registration of births and deaths in Scotland. The registration of deaths and still-births in Northern Ireland is governed by the Births and Deaths Registration (Northern Ireland) Order 1976 (the “1976 Order”) and the Civil Registration Regulations (Northern Ireland) 2012 (the 2012 Regulations).
- 43 The Bill will make similar changes to the relevant legislation relating to England and Wales, Scotland and Northern Ireland to streamline processes.
- 44 The Cremation (England and Wales) Regulations 2008 sets out the conditions that must be met before the body of a deceased person may be cremated. The Bill would allow cremations to take place without the need for additional medical practitioner oversight, reducing the burden on healthcare professionals allowing them to be available to support with other duties. It will also reduce the likelihood of delays to allowing families to be able to make cremation arrangements for the deceased.
- 45 In Scotland, a review of death certificates is established under the Certification of Death (Scotland) Act 2011. The review system requires that a random selection of death certificates is independently audited by a team of medical reviewers. Where a certificate is being reviewed the death cannot be registered and so funerals cannot proceed until the review has been completed. The Bill will enable Scottish Ministers to suspend this system if, in consultation with the review service, this is considered appropriate to free up medical personnel and expedite the disposal of bodies.
- 46 The Burial and Cremation (Scotland) Act 2016 places duties on cremation authorities, funeral directors and local authorities to take steps to trace and contact relatives of deceased persons to make arrangements for the collection or disposal of ashes. The Bill will suspend these duties and the relevant bodies will be under a duty to retain the ashes. Once the provisions are re-instated the original duties to ascertain the wishes of the family will also be re-instated in relation to any retained ashes.
- 47 The Cremation (Belfast) Regulations (Northern Ireland) 1961 set out the conditions that must be met before the body of a deceased person may be cremated. The regulations require both a medical certificate giving the cause of death which must be given by a registered medical practitioner and a confirmatory medical certificate which must be given by a second registered medical practitioner, independent of the first, before a cremation may take place. The Bill modifies those Regulations to streamline this process and to remove the requirement for a confirmatory medical certificate.

## Investigatory Powers

### Appointment of Judicial Commissioners

- 48 The Investigatory Powers Act 2016 (the “IPA”) is a critical piece of domestic legislation for national security. It creates the statutory basis for the use of the investigatory powers by the intelligence and law enforcement agencies, using warrants issued under the IPA. These warrants provide the agencies with the capability they need to protect national security and investigate and prevent serious crime. The Investigatory Powers Commissioner is the independent overseer of almost all investigatory powers. They also have oversight functions under the Regulation of Investigatory Powers (Scotland) Act 2000, and the Police Act 1997. They are supported in this role by 15 Judicial Commissioners, all of whom have held, or do hold, high judicial office. A warrant under the IPA must be signed by the relevant Secretary of State (or, in relation to certain warrants, the Scottish Ministers) and then approved by a Judicial Commissioner for it to be lawful, which is known as the “double lock” (other than urgent warrants, which need to be approved by a Judicial Commissioner within three working days of being issued).
- 49 Section 227 of the IPA specifies the appointment procedure for a Judicial Commissioner. It requires that a Judicial Commissioner must be jointly recommended by the Lord Chancellor, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session, the Lord Chief Justice of Northern Ireland and the Investigatory Powers Commissioner before they can be appointed by the Prime Minister.
- 50 The Bill provides the ability to increase the number of Judicial Commissioners should the effects of covid-19 mean that there is a shortage of Judicial Commissioners. Having a sufficient number of Judicial Commissioners is critical in protecting national security and preventing serious crime, given their vital role in the ‘double lock’ for warrants.
- 51 The Bill creates a regulation-making power to allow the Secretary of State to vary the appointment process for Judicial Commissioners at the request of the Investigatory Powers Commissioner where there are too few judicial commissioners available to exercise their functions as a result of the effects of Covid-19. The variation would allow the Commissioner to directly appoint temporary Judicial Commissioners for a term of up to 6 months, renewable to a maximum period of 12 months.

### Urgent warrant process

- 52 Provisions in the IPA create a procedure for urgent warrants. This allows for ex post facto authorisation by a Judicial Commissioner within three working days of the warrant being issued. Such urgent warrants only last for a maximum period of five working days unless renewed.
- 53 The Bill creates a regulation making power to enable the timespan of an urgent warrant to be varied at the request of the Investigatory Powers Commissioner., extending the period for ex post facto Judicial Commissioner authorisation and the lifespan of the warrant for up to 12 working days. This will ensure impacts on the warranty process from the pandemic can be mitigated and will ensure the safeguard of judicial approval within the lowest possible time frame after a warrant is issued continues, and the agencies are able to maintain their ability to protect national security and prevent serious crime during a period of potential widespread upheaval.

### Food supply

- 54 The Department for Environment, Food and Rural Affairs (Defra) holds UK Government Departmental responsibility for food as a Critical National Infrastructure sector jointly with the Food Standards Agency (FSA), with Defra being responsible for supply and the FSA responsible for safety. This includes planning for and responding to disruptions to food and drink supply chains, working closely with the food industry.

- 55 Defra has a long history of working collaboratively with industry and across Government to respond to food supply disruption, as do the Devolved Administrations. Defra and Devolved Administration officials work closely in this area, to ensure an aligned, inter-governmental approach. There are a number of regular engagement forums, including the Food Chain Emergency Liaison Group (FCELG), comprising Trade Associations from across the food supply chain, as well as Defra and DA officials, which provides a conduit between industry and Government to plan for and respond to food supply disruption in any scenario.
- 56 The Government response to food supply disruption relies on information being provided to Defra and the Devolved Administrations by industry on a voluntary basis during the disruption, to enable them to assess the situation and scale of disruption. Intelligence from industry (for example on the nature of disruptions and their impact) allows Government to develop an overall assessment of the implications “on the ground”, which in turn informs the industry response as well as a proportionate and effective cross-Government response.
- 57 As part of our response to the covid-19 scenario Government has agreed a Data Sharing Protocol with food retailers to regularly gather information on a voluntary basis. The FCELG will also be convened on a more regular basis as a response to Covid-19. The information gathered through these methods will help Government to effectively support an industry-led response to any food supply disruption resulting from covid-19, and inform a cross-Government response.
- 58 Whilst we anticipate ongoing collaboration on a voluntary basis between Government and industry, it is right and proper for a responsible Government to plan for every scenario. Therefore, we need a power to act if a member(s) of the food industry were to refuse to comply with voluntary requests for information in order to ensure Government has the necessary information to build a clear understanding of the situation, make informed judgements and respond effectively.

## Inquests

- 59 Under current legislation, the status of covid-19 as a notifiable disease in England means that any inquest into a death where the coroner has reason to suspect that the death was caused by covid-19 must take place with a jury.
- 60 This could have very significant resource implications for coroner workload and Local Authority coroner services, resulting in a possible 25,000 additional jury inquests even at the lower end of covid-19 mortality modelling in England and Wales.
- 61 Although the inquests could be adjourned until the pandemic has passed, this would deprive bereaved families of swift closure and would, in any event, simply delay resource pressure for the future.
- 62 The Bill will modify the current legislation to disapply the requirement that coroners must conduct any inquest with a jury where they have reason to suspect the death was caused by covid-19. In respect of Northern Ireland, the Bill makes corresponding provision, including in relation to inquests into a death in prison from natural illness.

## Disclosure: Wales

- 63 The regulations governing social care service providers and independent health care providers in Wales include requirements relating to vetting procedures for staff before they are permitted to start work. This provision will allow Welsh Ministers to issue a notice disapplying or varying the requirements to provide increased flexibility for providers to enable them to take steps to address workforce issues in a more agile way.
- 64 Notices issued in this way must contain a statement by the Welsh Ministers, explaining why the



step is appropriate and proportionate. Notices will have effect for one month though Welsh Ministers may issue further notices as well as cancelling them.

## Disclosure: Scotland

- 65 In Scotland, the Bill will allow Scottish Ministers to relax certain requirements under the Protecting Vulnerable Groups legislation to allow the disclosure service to better cope in an emergency and continue to support recruitment in key sectors.
- 66 To ensure that safeguarding is not compromised should its staff be seriously affected by illness, the Bill contains powers for the Scottish Ministers to reclassify certain types of disclosure application to allow faster processing.
- 67 Disclosure Scotland (an Executive Agency of Scottish Government) is also working to ensure that disclosure checks are not a barrier to fast employment and deployment of emergency health and care workers. With this in mind, the Bill will permit the Scottish Ministers to suspend certain offences which would otherwise apply if an employer appointed a person who was barred from working with vulnerable groups to do regulated work. It will continue to be an offence for a barred individual to take on regulated work.

## Vaccinations: Scotland

- 68 There are currently requirements set out the National Health Service (Scotland) Act 1978 which provide that vaccinations and immunisations be administered by medical practitioners or persons acting under their direction and control. The Bill will make modifications to the current legislation to allow a wider range of health professionals to administer vaccinations and immunisations (in accordance with existing regulatory provisions about the administration of vaccines in the Human Medicines Regulations 2012) in order to respond as flexibly as may be required to the pandemic.

## Schools, childcare providers etc

- 69 Covid-19 presents particular challenges and risks to those operating in an educational or childcare context, whether children, students, teachers or visitors, because of the need or tendency for persons to learn together in groups and because of the harmful effect that any break in education may have on a young person's development and progression to further study or employment.
- 70 The Government believes that what is in the best interests of those in the education arena will vary according to the level of risk which presents itself in a particular place at a particular time. Accordingly, this Bill seeks to take a suite of powers to enable Government to react flexibly to manage differing levels of risk
- 71 The provisions would only be in place for the period of time required to mitigate the effects of a covid-19 pandemic. Some provisions will remain in force after the expiry of other provisions in the Act to deal with any residual matters.
- 72 The Bill includes three powers relating to education:
  - a. a power to require/direct temporary closure of an educational institution or registered childcare provider
  - b. a power to make specified types of directions in connection with the running of the education and registered childcare systems; and
  - c. a power to dis-apply or vary specified existing requirements contained in or arising out of education and childcare legislation.

## Statutory sick pay

- 73 Statutory Sick Pay (“SSP”) was introduced in 1983. It is paid by an employer to an employee who is absent from work due to sickness. SSP is paid at a flat weekly rate and may be paid for maximum of 28 weeks.
- 74 The legislative framework for SSP is set out in Part 11 of the Social Security Contributions and Benefits Act 1992 (“SSCBA”) and Part X1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and associated regulations.
- 75 The current Statutory Sick Pay system does not provide the flexibility required for the response to managing and mitigating the effects of a covid-19 pandemic. In the event of a severe Covid-19 outbreak in the UK, the number of people off work would increase significantly. This would present a significant financial burden on employers through increased SSP costs. The legislative changes proposed are intended to provide the ability to provide relief to employers, with the primary focus being on small and medium size enterprises.
- 76 The Bill will enable the Secretary of State to make regulations regarding the recovery from HMRC of additional payments of Statutory Sick Pay (“SSP”) by certain employers for absences related to covid-19. The ability to recover SSP is important so that employers are supported in a period when their payments of SSP are likely to escalate. It is also necessary to ensure that employees are incentivised not to attend work when advised not to do so for reasons of health security.
- 77 Ordinarily, statutory sick pay is not payable for the first three days of sickness. These are commonly referred to as “waiting days”. This may discourage people from taking sick days in order to prevent the spread of covid-19. The Bill therefore allows for the temporary suspension of waiting days for those employees who are absent from work due to covid-19, should this be necessary.
- 78 The approach to statutory sick pay and the waiving of the waiting days needs flexibility and to align with the most up-to-date public health guidance. The Bill will allow guidance issued by Public Health England, National Health Services Scotland, Public Health Wales and the Regional Agency for Public Health and Social Well-being to be used when determining whether an employee should be deemed to be incapable of work by reason of covid-19, for example because the employee is self-isolating. It is anticipated that the guidance will change frequently and it is necessary to ensure that employees who self-isolate in accordance with whatever is the current guidance are deemed incapable for work and entitled to SSP from day

## Pensions

- 79 It is important that restrictions on returning to work whilst in receipt of a pension do not act as a disincentive for healthcare professionals who wish to re-enter the workforce in order to assist the healthcare response to covid-19. The Bill will therefore suspend certain rules that apply in the NHS Pension Scheme in England and Wales so that healthcare professionals who have recently retired can return to work and those who have already returned can increase their hours without there being a negative impact on their pension entitlements.
- 80 The Bill contains provisions to make changes for the NHS Pension Scheme in England and Wales, as well as corresponding changes in the respective NHS Pension Schemes in Scotland and Northern Ireland.

## Protection of public health

- 81 The Public Health (Control of Disease) Act 1984 (as amended by the Health and Social Care Act 2008) contains regulation making powers that enable a number of public health measures to be

taken in situations such as the current covid-19 outbreak. To increase consistency of the powers available across the UK the Bill includes new powers which are broadly based on the existing powers that apply in England and Wales, in respect of Scotland and Northern Ireland. It is noted that Scottish Ministers already have powers under the Public Health etc. (Scotland) Act 2008 to make regulations to give effect to international agreements or arrangements, including World Health Organisation recommendations, and so that element is not covered in respect of new Scottish powers in the Bill.

## Suspension of port operations

- 82 Protecting the border is a key priority for Government. In the event that Border Force resources are depleted due to covid-19 to such an extent that it creates a real and significant risk to border security, the Bill provides powers to ensure that arrivals can be directed to ports of arrival in the UK where there will be sufficient Border Force officers to carry out the necessary border security checks.
- 83 The proposed powers will allow the Secretary of State to direct a port operator (i.e. a person responsible for the management of a port) to suspend relevant operations, partially or wholly, in the event that there are insufficient resources to adequately secure the border. The power will also provide for the Secretary of State to issue supplementary directions to other parties if the Secretary of State considers it necessary in connection with the primary direction.
- 84 These powers will only be used where the Secretary of State believes that it is necessary and proportionate and once all relevant alternative mitigations have been exhausted. Use of the powers would be governed by strict safeguards to ensure that they are 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, 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.
- 85 Failure to comply with a port direction or supplementary direction without reasonable cause would constitute a criminal offence.

## Powers relating to potentially infectious persons

- 86 The Health Protection (Coronavirus) Regulations 2020 were made and came into force on 10th February 2020, and provide for the detention, isolation and screening of, and other appropriate restrictions to be imposed upon, persons who have or may have coronavirus, or who have arrived in England from an area in which the virus is prevalent. The Regulations apply only in relation to England, and where the Secretary of State has made a declaration that the incidence or transmission of novel Coronavirus constitutes a serious and imminent threat to public health (such declaration was made on 10th February 2020), and where the measures outlined in the Regulations are considered as an effective means of delaying or preventing further transmission of the virus.
- 87 The Bill will include similar provisions for the screening and isolation of certain persons, including powers to impose other restrictions and requirements, and will revoke the Regulations. In this way:
- a. there will be a consistent, UK-wide approach, since the provisions will be capable of applying not only in England, but to the UK as a whole;
  - b. enforcement provisions for immigration officers (including Border Force officers) can be included, since these officers act across the UK.
- 88 We assume that the vast majority of people will comply with relevant public health advice. The



policy aim of these provisions is to ensure that proportionate measures can be enforced if and when necessary. The proposals will provide public health officer, constables and (in some circumstances) immigration officers with the means to enforce sensible public health restrictions, including returning people to places that they have been required to stay. Where necessary and proportionate, constables and immigration officers will be able to direct individuals to attend, remove them to, or keep them at suitable locations for screening and assessment. These measures look to fill existing gaps in powers to ensure the screening and isolation of people who may be infected or contaminated with the virus and to ensure that constables can enforce health protection measures where necessary.

## **Powers relating to events, gatherings and premises**

- 89 The provisions give the Secretary of State the power to prohibit or restrict events and gatherings, and to close premises, if the public health situation deems it necessary. This streamlines existing legislation in England and Wales, to ensure that powers to prevent events or gatherings can be deployed as quickly as possible in the event this is justified by the evidence. It also extends the power to Scotland and Northern Ireland too, where there is no equivalent legislation.
- 90 This can be deployed if, having had regard to the relevant advice, such a prohibition or restriction would:
- a. prevent, protect against or control the incidence or transmission of coronavirus, or
  - b. facilitate the most appropriate deployment of medical or emergency personnel and resources.

## **Courts and tribunals: use of video and audio technology**

- 91 The efficiency and timeliness of court and tribunal hearings will suffer during a covid-19 outbreak. Restrictions on travel will make it difficult for parties to attend court and without action a significant number of hearings and trials are likely to be adjourned. In criminal proceedings, the courts have a duty to deal with cases effectively and expeditiously and that includes making use of technology such as live video links, telephone or email where this is lawful and appropriate. Video link technology is increasingly being used across the court estate enabling greater participation in proceedings from remote locations. The courts currently have various statutory and inherent powers which enable them to make use of technology.
- 92 The Bill amends existing legislation so as to enable the use of technology either in video/audio-enabled hearings in which one or more participants appear before the court using a live video or audio link, or by a wholly video/audio hearing where there is no physical courtroom and all participants take part in the hearing using telephone or video conferencing facilities.
- 93 Provisions are also made within the Bill to enable the public to see and hear proceedings which are held fully by video link or fully by audio link. This enables criminal, family and civil courts and tribunals to make directions to live stream a hearing which is taking place in this manner.
- 94 There are existing restrictions on photography and sound recording in physical courts. Section 41 of the Criminal Justice Act 1925 provides prohibitions on photography in courts. The Contempt of Court Act 1981 prohibits the making of unauthorised sound recordings. These offences were created to protect participants in court proceedings, but long before the concept of a virtual hearing was thought possible. Provisions in the Bill therefore create similar offences to protect participants and prohibit recording or transmitting live-streamed proceedings photography and sound recordings in the context of virtual hearings and live-links.
- 95 The Bill provides for restrictions to be imposed on individuals who are potentially infectious and

that the decision to impose such restrictions can be appealed to magistrates' court. The Bill therefore makes provision that such hearings should be conducted fully by video link, unless the court directs otherwise, given the person appealing the decision would be subject to restrictions, and there is the risk of passing on the infection if they were to travel to court.

## Powers in relation to bodies

- 96 The Bill introduces powers of direction to give local authorities the necessary powers to direct those in the death management system to ensure excess deaths caused by covid-19 do not overwhelm the system. National and local authorities across the UK will have, where necessary, additional powers to direct organisations to support the death management processes. This will ensure that deceased bodies can be stored, transported and disposed of with care and respect.

## Postponement of elections

- 97 On Friday 13 March, the Prime Minister announced that the elections scheduled for 7 May 2020 would be postponed until 6 May 2021. There are a number of polls scheduled for 7 May 2020 due to the ordinary cycle of such elections:
- a. 40 Police and Crime Commissioner (PCC) elections in England and Wales
  - b. 118 English council elections
  - c. 3 local authority mayors (Bristol, Liverpool and Salford)
  - d. 4 combined authority mayors (Greater Manchester, Liverpool, Tees Valley, and West Midlands)
  - e. London Mayor and Greater London Assembly
  - f. Parish elections
- 98 There are also other polls set to be run on that day and that will need to be postponed:
- g. Certain other local referendums that are planned for 7 May 2020
  - h. local authority by-elections for seats that would not ordinarily be completed on that day but become vacant by, for example, resignation.
- 99 Most of these polls were due to take place in England only, with the exception of PCC elections which were planned in both England and Wales.
- 100 The decision to postpone was taken following advice from the Government's medical experts in relation to the response to the covid-19 virus and the advice of those delivering elections (for example, a call by the Electoral Commission that the 7 May elections be postponed until the Autumn).
- 101 The need for the postponement arises from concerns that running a poll will be, at best, inadvisable and, at worst, impossible if candidates, campaigners, electors, electoral administrators and those providing supply and support to them are affected by either covid-19 or the measures around it. Concerns have already been raised by electoral administrators that there would be insufficient staff available to them or their suppliers. Additional risks include polling station safety, the possible demands on local authority electoral staff to support other key services, and the impracticality or potential impossibility of campaigning activity. Attempting to run a poll in those circumstances could lead to questions as to legitimacy of the outcome and sets a context for legal challenge to the results and the more general question of why it went forward in the circumstances.
- 102 There is no existing legislative provision that allows for any of the statutory polls scheduled for 7 May to be postponed. There are some powers to move poll dates by secondary legislation, but these are only available significantly in advance and can no longer be used for 7 May

polls. These clauses will enable the postponement of the polls scheduled for 7 May. The legislation will also cover the handling of other elections and referendums (such as by-elections and local referendums) that might arise during the covid-19 outbreak and may need to be postponed - for public health reasons - in a similar way. The legislation will also provide for the postponement of the canvass in Northern Ireland - an exercise to create a new register of electors that happens every decade. The canvass will be moved from 2020 to 2021.

## Other administrative requirements

- 103 The functions of the Treasury are carried out by the Commissioners of Her Majesty's Treasury ("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.
- 104 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. It is crucial that the work of the Treasury can continue unimpeded during any covid-19 outbreak and instruments are not delayed in a situation where Commissioners are not available because they are impacted by the covid-19 outbreak. The Bill will provide flexibility on who can be considered Commissioners and reduce the number of Commissioners needed to sign instruments during any covid-19 outbreak.

## National Insurance Contributions

- 105 The Bill will allow Government to temporarily modify the existing procedures around introducing national insurance contribution (NIC) changes, in order to respond quickly to the covid-19 outbreak if required. The clauses will remove the statutory requirement that a report from the Government Actuary Department accompany secondary legislation implementing rate changes. The Bill also provides for the secondary legislation to be subject to the negative procedure in Parliament rather than the affirmative procedure. The temporary modifications will last for two years from the day the Act receives Royal Assent.
- 106 Section 143 and 145 of the Social Security Administration Act 1992 provide that orders may alter the rate of contributions payable by employees, employers and the self-employed. Section 5 of the National Insurance Act 2014 provides that regulations may be made to alter the amount of the Employment Allowance and who qualifies for it.

## Legal background

- 107 The relevant legal background is explained in the policy background of these notes

## Territorial extent and application

- 108 Clause 85 sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The territorial extent of the Bill is, variously, the United Kingdom, England and Wales, Scotland and Northern Ireland. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. The commentary on individual provisions of the Bill explain their extent and application.
- 109 The Bill contains provisions which cover reserved and devolved subject areas.
- 110 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for

Wales or the Northern Ireland Assembly without the consent of the legislative concerned.

111 To the extent that the provisions of the Bill fall within the legislative competence of devolved legislatures, the legislative consent procedure would be appropriate.

112 [See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.]

## Fast-Track Legislation

113 The government intends to ask Parliament to expedite the parliamentary progress of this Bill. In its report, *Fast-track legislation: Constitutional Implications and Safeguards*[1], the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked[2].

### **Why is fast-tracking necessary?**

The Bill is emergency legislation. Some provisions will come into force on Royal Assent and others may need to come into force quickly after that in order to respond to developing circumstances. On 11 March 2020 the World Health Organisation declared the covid-19 outbreak a pandemic. It is crucial that this legislation comes into force as soon as possible in order to put appropriate safeguards in place to manage the effects of a covid-19 pandemic in the UK.

### **What is the justification for fast-tracking each element of the bill?**

All of the provisions in the Bill are aimed at enabling the Government to respond to an emergency situation and to manage the effects of the covid-19 pandemic. It is therefore important that the entire Bill be fast-tracked.

### **What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?**

In order for the measures included in the Bill to be effective in managing the effects of a covid-19 pandemic, Royal Assent needs to be secured as soon as possible. The government will therefore ask Parliament to pass the Bill before it goes into recess on 31 March. Given the need to draft and then pass this legislation at pace, it has not been possible to give Parliament more time to scrutinise the Bill.

### **To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?**

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[1] [House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I](#)

[2] [House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I](#).

With the need to pass the legislation as soon as possible to manage a covid-19 pandemic, it has not been possible to give interested parties and outside groups an opportunity to influence this Bill. The Government has been taking expert advice from the Chief Medical Officers and the deputy chief medical officers through its response to the covid-19 outbreak.

**Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the government judge that their inclusion is not appropriate?**

The Bill is designed to respond to the covid-19 pandemic and will expire after [two] years with the exception of the provisions relating to the power to award indemnity payments, various transitional provisions to deal with the sunset of the substantive provisions and the technical provisions in the Bill (clause 75). To provide flexibility, clause 75, allows for the application of the Act to be extended (or shortened) by way of regulations made by a Minister of the Crown. The regulations must not extend the period that the Act is in force for more than 6 months at a time. It is important to have this extension mechanism since the health and welfare implications of letting the provisions expire when covid-19 is still spreading could be serious and at this time the duration of the covid-19 pandemic is not known. It will also be possible to extend some provisions of the Bill while letting others sunset – so if some measures are no longer necessary as the pandemic gets less severe these could be sunset while the provisions that are still being relied on could be retained. This is to ensure that measures are only in place as long as is necessary to manage the effects of a covid-19 pandemic.

**Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the government judge that their inclusion is not appropriate?**

The Bill will be debated in the House of Commons one year after its implementation.

**Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?**

Yes. The Bill consists of measures that modify existing legislation during a covid-19 pandemic and also introduces new measures which are not found in other pieces of legislation. These measures are required during exceptional circumstances to help the UK manage the effects of the pandemic.

**Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?**

Given the need to pass legislation at pace, the relevant committees have been engaged via letter.

## **Commentary on provisions of Bill/Act**

### **Part 1: Main Provisions**

#### **Clause 1: Meaning of “coronavirus” and related terminology**

114 This clause defines “coronavirus” and “coronavirus disease” which are terms used throughout the Bill. It also explains that references to infection or contamination in the Bill are references to infection or contamination with covid-19. However, references to persons infected by covid-19 do not (unless a contrary intention appears) include any person who has been infected but is clear of covid-19 (unless the person is re-infected).

## **Clause 2 and Schedule 1: Emergency registration of nurses and other health and care professionals**

- 115 This clause and Schedule make temporary modifications to the Nursing and Midwifery Order 2001 and the Health Professions Order 2001, allowing for the temporary registration of certain healthcare professionals.
- 116 On notification from the Secretary of State that an emergency has, is or is about to occur, the Registrar of the Nursing and Midwifery Council has the power to register a person or specified group of persons, as a nurse, midwife, or nursing associate. On the same emergency notification procedure by the Secretary of State, the Registrar of the Health and Care Professions Council has the power to register a person or specified group of persons as a member of a “relevant profession” i.e. physiotherapists, paramedics and others.
- 117 The relevant Registrar must be satisfied that the emergency registration requirement is met, i.e. that the person or persons are “fit, proper and suitably experienced to be registered” as a professional, with regard to the emergency.
- 118 Conditions of practise may be imposed, and the relevant Registrar may revoke the registration at any time including where the Registrar suspects that the person’s fitness to practise may be impaired.
- 119 The relevant Registrar must revoke the registration on notification from the Secretary of State that the emergency no longer exists, and transitional provision is made to ensure the Registrar’s power to revoke registration continues after the Act has expired.
- 120 There is no appeal right available where the relevant Registrar has refused to register a person under the emergency provision, or where the Registrar has revoked a person’s registration under the emergency provision.
- 121 If a person breaches a condition to which their registration is subject, anything that is done by the person in breach of the condition, is to be treated as if it has not been done by a professional regulated by the NMC or HCPC.
- 122 For the purposes of the temporary modifications made by clause 2 and Schedule 1 of the Bill, certain provisions of the Nursing and Midwifery Order 2001 and the Health Professions Order 2001 do not apply to persons registered under the emergency provision. These disapplied provisions relate to the standard registration of healthcare professionals, education and training, and fitness to practise (save for articles enabling identification of an individual).
- 123 It is expected members of these professions who are recently retired, students, trainees and those on sabbatical would be appropriate for emergency registration, but this is not an exhaustive list. It will be at the discretion of the Registrars to determine on the emergency registration requirement being met, who to register on a temporary basis.
- 124 The territorial extent and application of this clause and schedule is the England and Wales, Scotland and Northern Ireland.

## **Clause 3 and Schedule 2: Emergency arrangements concerning medical practitioners: Scotland**

- 125 The clause and Schedule modifies the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 to support the fast deployment of temporarily registered health care workers by the NHS. The modifications permit general practitioners with temporary registration under section 18A of the Medical Act 1983 to provide primary medical services despite not being included in the primary medical services performers list of a Health



Board if they have applied to the Health Board and the Health Board has not refused or deferred the application.

126 Provision is also made to ensure necessary associated contractual changes to the National Health Service (General Medical Services Contract) (Scotland) Regulations 2018.

127 The territorial extent and application of this clause is Scotland.

### **Clause 4 and Schedule 3: Emergency registration of and extension of prescribing powers for pharmaceutical chemists: Northern Ireland**

128 This clause and Schedule amend the Pharmacy (Northern Ireland) Order 1976 (the 1976 Order) to allow the registrar to temporarily enter in the register the name of a pharmacist, or a group of pharmacists when directed by the Department of Health that an emergency has occurred or is occurring. This will allow people who do not meet the qualifications under the 1976 Order to be registered in an emergency situation at the discretion of the registrar. Groups that could be considered for temporary registration may include pre-registration pharmacists or recently retired pharmacists.

129 Provision is also made to allow the registrar to temporarily annotate a pharmacist's record or the record of a group of pharmacists in the register when directed by the Department of Health that an emergency has occurred or is occurring. The purpose of the annotation would be to extend the power to prescribe certain drugs, medicines and appliances to people who would not be authorised under the 1976 Order.

130 The schedule also provides that certain provisions of the 1976 Order that do not apply to temporary registrations and annotations, will be able to be reapplied to such registrations and annotations by regulations.

131 Paragraph 3 of the Schedule removes certain decisions relating to temporary registrations and annotations from the scope of the normal appeal mechanisms under the 1976 Order.

132 The territorial extent and application of this clause and Schedule is Northern Ireland.

### **Clause 5 and Schedule 4: Emergency registration of social workers**

133 The clause and Schedule modify the Social Workers Regulations 2018 and the Regulation and Inspection of Social Care (Wales) Act 2016, allowing for the temporary registration of social workers in England and Wales. Social Work England ('the regulator') and the registrar for Social Care Wales ('the registrar') have the power to register a person or specified group of persons, as a social worker.

134 As with the emergency registration of healthcare professionals, the regulator or registrar must be satisfied that the emergency registration requirement is met, i.e. that the person or persons are "fit, proper and suitably experienced to be registered" with regard to the emergency. It will be at the discretion of the regulator or registrar to determine who to register on a temporary basis. Conditions of practise may be imposed, and the regulator or registrar may revoke the registration at any time including where they suspect that the person's fitness to practise may be impaired. The regulator or registrar must revoke the registration if the Secretary of State advises the regulator or registrar that the circumstances leading to a notification of an emergency no longer exist.

135 Certain provisions of the Social Workers Regulations 2018 and the Regulation and Inspection of Social Care (Wales) Act 2016 are disapplied with regard to the conditions of registration of social workers. These disapplied provisions relate to the standard registration, education and training,

and fitness to practise of social workers.

136 The territorial extent and application of this clause is England and Wales.

## **Clause 6 and Schedule 5: Emergency registration of social workers: Scotland**

137 The clause and Schedule modifies the Regulation of Care (Scotland) Act 2001 ('the 2001 Act') to give the Scottish Social Services Council ('SSSC') the power to consider applications for a temporary social worker in Scotland from those who have retired from being a social worker, those who are on a career break and from social work students. The Scottish Ministers have the power to direct the SSSC to start considering applications for temporary registration. Before issuing a direction, they must have regard to any advice from the Chief Medical Officer of the Scottish administration (or Deputy Chief Medical Officer of the Scottish administration), and be satisfied that the direction is necessary and proportionate in response to the risk of transmission of covid-19, and its impact on the provision of social services in Scotland.

138 In order for the SSSC to register a person as a temporary social worker, it must be satisfied that the relevant criteria are met. An application for temporary registration can only be made by a retired social worker or a person on a career break who was previously working as a social worker within the last 5 years. Applicants for temporary registration can only be made suitable by social work students who are in the final year of their training. The amendments set out what educational requirements need to be satisfied and make it clear that applications can be received from persons who may have worked or obtained qualifications in Scotland, or another part of the UK. In each case, the SSSC has the discretion to determine if applicants are persons who are of good character and satisfy any requirements for competence and conduct.

139 It will be at the discretion of the SSSC to determine who to register on a temporary basis. Conditions on temporary registrations may be imposed. The SSSC may revoke the registration at any time including where they suspect that the person's fitness to practise may be impaired. The SSSC must revoke the temporary registration if the Scottish Ministers directs it to cease considering applications for temporary registration. Provision is made to make it clear that any person who is on the register as a temporary social worker can apply, at any point they are on the register, for registration in another part of the register. This enables people who are retired or on a career break to make an application to return to work as a fully qualified social worker if they choose to do so. Equally, it will enable social work students to apply to be registered as a social worker as soon as they complete their education, if they are still registered as a temporary social worker. If any such application is successful, that person would be removed from the register of temporary social worker. The SSSC have power to make rules in relation to the applications for temporary registration or those who are registered as temporary social workers. Certain provisions of the 2001 Act in relation to appeals against the decisions of the SSSC for application for full registration have been disapplied in respect of applications for temporary registration.

140 Clause 6 and Schedule 7 amend the Registration of Social Workers and Social Services Workers in Care Services (Scotland) Regulations 2013 to increase the period of time which a person who is a social services worker or a social worker who works in the care service sector in Scotland must be registered to work in those services from 6 months to 12 months.

141 The territorial extent and application of this clause is Scotland.

## **Clause 7 and Schedule 6: Emergency volunteering leave**

142 The Clause and Schedule establish a new form of unpaid statutory leave for employees and workers (hereafter "workers") that qualify as emergency volunteers for the purpose of



Emergency Volunteering Leave (“EVL”).

143 Part 1 of the Schedule sets out the entitlement to take EVL. To qualify for EVL a worker must be issued with an Emergency Volunteering Certificate (an “EVL Certificate”) by an appropriate authority confirming that they have been approved as an emergency volunteer, and that they will volunteer for a specified period. A worker must then provide written notice, including the EVL Certificate to their employer at least 3 working days before the first day of the period specified in the EVL Certificate. A worker is entitled to take a set block of 2, 3 or 4 consecutive weeks of EVL during a period of 16 weeks (a “volunteering period”). There is no requirement for a worker to have any qualifying period of service with their employer to take EVL. Subsequent volunteering periods can be specified by relevant national authorities in regulations. The categories of workers who are exempted from the entitlement to take EVL are set out in paragraph 3 of the Schedule and relevant national authorities are able to make regulations to extend the list of exempted workers.

144 Part 2 of the Schedule sets out the effect of an individual taking EVL. Paragraph 5 mandates the continued application of terms and conditions of employment during any period of EVL. Paragraph 6 sets out an individual’s right to return after a period of EVL. Paragraph 7 describes the effects of EVL on an individual’s pension rights.

145 Part 3 of the Schedule modifies the Employment Rights Act (1996) so as to be read as if new provisions were inserted to ensure that workers who take or seek to take EVL are protected from detriment and that employees receive additional unfair dismissal protections. Part 3 also modifies the Employment Rights Act to allow for workers who take or seek to take EVL to pursue complaints and obtain remedies in the Employment Tribunal.

146 Part 4 of the Schedule modifies the Employment Rights (Northern Ireland) Order 1996 to insert equivalent protections to those described in respect of Part 3.

147 Part 5 of the Schedule is a general provision, which sets out the application of this Schedule to agency workers, contains definitions and more information on powers to make regulations under the Schedule.

148 The territorial extent and application of provisions relating to EVL is England, Wales and Scotland and Northern Ireland, but Part 3 of the Schedule extends and applies only to England, Wales and Scotland, and Part 4 extends and applies only to Northern Ireland.

## **Clause 8: Compensation for emergency volunteers**

149 This clause requires the Secretary of State to make arrangements for the payment of compensation to emergency volunteers for some loss of earnings (where relevant) and travelling and subsistence.

150 The territorial extent and application of the provision to establish an emergency volunteer compensation scheme is England, Wales and Scotland and Northern Ireland.

## **Clause 9 and Schedules 7,8,9 and 10: Temporary modification of mental health and mental capacity legislation**

151 This clause gives effect to Schedules 7, 8, 9 and 10 which make temporary modifications to mental health and mental capacity legislation in England and Wales, Scotland and Northern Ireland.

152 Schedule 7 applies to England and Wales and modifies the Mental Health Act 1983 (“MHA”) and related provisions.

153 Paragraph 3 relates to sections 2 and 3 of the MHA, which allow for the compulsory

hospitalisation of patients with mental disorders. Normally applications by Approved Mental Health Professionals to detain patients must be supported by the recommendations of two doctors. However paragraph 3(1) allows for applications to contain only one such medical recommendation, if obtaining the advice of two doctors is either impractical or would unduly delay the application.

- 154 Paragraph 4 modifies the effect of section 5 of the MHA, which allows for the short-term detention of patients who are already in hospital. It extends the maximum period for which a patient can be detained under section 5.
- 155 Patients involved in the criminal justice system are provided for in paragraphs 5 to 8. Paragraph 5 extends the period for which a person accused of a crime can be remanded to hospital under sections 35 and 36 of the MHA, by removing the rule that a person cannot be remanded for more than 12 weeks in total. It will remain the case that a person cannot be remanded to hospital for more than 28 days at a time. Paragraph 6 applies to various sections of the MHA which allow a court to send an accused or convicted person to hospital. It provides that, in certain circumstances, courts can make such orders on the advice of one doctor rather than two.
- 156 Paragraph 7 modifies the conditions under which the Secretary of State may make a “transfer direction”, to move a serving prisoner or other type of detainee to hospital. Paragraph 8 deals with the time limits imposed by the MHA for taking an accused or convicted person to hospital, following a decision to admit them. It allows for the person to be taken to hospital as soon as is practicable after the normal limit expires.
- 157 Paragraph 9 changes procedures around the administration of medication to detained patients without their consent. Paragraph 10 extends the time for which a person can be kept in a “place of safety” by a police officer under sections 135 and 136 of the MHA.
- 158 Paragraphs 11 to 13 contain transitional provisions.
- 159 Schedule 8 contains temporary modifications of the Mental Health (Care and Treatment) (Scotland) Act 2003, the Criminal Procedure (Scotland) Act 1995 and related subordinate legislation, to provide measures including:
- a. The modification of forms that are used in connection with the Mental Health (Care and Treatment) (Scotland) Act 2003 and Criminal Procedure (Scotland) Act 1995 or for such forms to be read as if they were so modified.
  - b. Extending maximum periods of detention to 120 hours.
  - c. Permitting a short term detention certificate (STDC) to be granted without the need to first consult a mental health officer in certain circumstances and permits a second STDC to be granted.
  - d. Enabling a mental health officer (MHO) to apply for a Compulsory Treatment Order (CTO) under section 63 of the 2003 Act founded on only one mental health report, provided the MHO considers that it would be impractical or involve delay to obtain two mental health reports.
  - e. Where a serving prisoner is found to be suffering from mental disorder and requires medical treatment, Scottish Ministers may make a transfer for treatment direction (TTD) under section 136(2) of the 2003 Act. Paragraph 6 permits that Ministers may be so satisfied on the basis of one report from an AMP, where they consider that to obtain two reports would be impractical or involve delay.
  - f. Extending the limit on the length of time nurses can detain patients in hospital from 3 to 6 hours.
  - g. Allowing for a prisoner to be transferred to hospital by a TTD.
  - h. Section 136(3) and (6) provide that where a prisoner is to be transferred to hospital by a TTD they should be so moved within 7 days of the date the direction was made.

Paragraph 8 provides that the transfer may be made as soon as practicable after that period.

- i. Enabling reviews of certain orders and directions at certain specified intervals carried out by responsible medical officers (RMO) to be suspended.
- j. Suspending the requirement imposed on Scottish Ministers in certain circumstances to make a reference to the Tribunal in respect of hospital directions or transfer for treatment directions.
- k. Allowing that, where certain conditions are met, the RMO may administer medication to someone being treated under mental health legislation after the 2 month period laid out in the 2003 Act without the need to seek a second opinion from a designated medical practitioner (DMP) if the RMO has made a request for a DMP visit and it would cause undesirable delay to wait for the DMP's assessment.
- l. Allowing a Mental Health Tribunal panel to operate with a reduced number of members where it is not practical to proceed with the required three members, as long as one of the members is a legal member or Sheriff Convener.
- m. Allowing the period of extension for assessment orders to be increased at the discretion of the court, from 14 days to 12 weeks.
- n. Enabling detention on the advice of just one medical practitioner (instead of the two required under the 2003 Act), if the court considers that it would be impractical in the circumstances to secure the second recommendation and the court is satisfied that the evidence of the single practitioner is sufficient.
- o. Providing that the conveyance or admittance of accused or convicted persons to hospital may be achieved as soon as is practicable after the end of the prescribed time limits in the 1995 Act.
- p. Allowing the Tribunal to decide a case without a hearing in the circumstance where the patient may have requested oral representations or oral evidence to be heard. In those circumstances, relevant parties could make written submissions to the Tribunal before a decision is reached.
- q. Allowing medical practitioners in Scotland who are not independent (e.g. are in the same hospital, or with a supervisory relationship, or working in an independent hospital where the patient is being treated), to examine a patient for the purposes of the 2003 Act.

160 Schedule 9 contains temporary modifications of the Mental Health (Northern Ireland) Order 1986 and related provisions including:

- a. Providing for the modification of forms used in connection with the Mental Health (Northern Ireland) Order ("the 1986 Order") or for such forms to be read as if they were so modified.
- b. Modifying Part 2 of the 1986 Order relating to the application for detention and the periods of detention. This includes temporary modifications of the professional requirements to make applications and reports, and the length of time a person can be detained.
- c. Modifying the period during which a person can be remanded in hospital.
- d. Making modifications related to the medical evidence required before a court can make a remand or a healthcare disposal under the 1986 Order or make a determination of unfitness to plead or a direction for recording a finding that a person is not guilty by reason of insanity.
- e. Making modifications in relation to the medical reports required before a transfer of a prisoner or other person detained in a custodial environment to a healthcare environment can take place.

- f. Modifying the timescales within which an accused or convicted person is conveyed or admitted to hospital under the 1986 Order.
- g. Allowing the Department of Health in Northern Ireland to designate a different hospital than the one it previously designated in order to allow maximum flexibility during a period when it may be impractical to admit a person to the previously designated hospital and it would be possible that a person may be admitted sooner to a different hospital.
- h. Enabling the Department of Health in Northern Ireland to provide a modified Code of Practice during the time of the emergency.
- i. Making transitional provision where the procedures in Part 2 of Schedule 9 to the Bill are already underway at the end of the period for which the relevant provision of this Schedule has effect.

161 Schedule 10 provides for modifications to the Mental Capacity Act (Northern Ireland) 2016 ('the 2016 Act'), including:

- a. Providing introductory provisions - including interpretation and how to read the forms - that have been prescribed as a result of a subordinate legislation power in the 2016 Act.
- b. Modifying parts of the 2016 Act relating to the functioning of additional safeguards, such as the operation of the panels. This includes temporary modifications on timings relating to when reports can be made, the length of time an authorisation can last and requirements relating to who must be consulted before a report for short-term detention for examination can be authorised.
- c. Providing for an extension to the time limits for detaining a person in a place of safety.
- d. Modifying the period during which a person can be remanded in hospital.
- e. Modifying requirements for the medical evidence required before a court can make a remand or a healthcare disposal under Part 10 of the Act or make a determination of unfitness to plead or a direction for recording a finding that a person is not guilty by reason of insanity.
- f. Modifying timescales for a medical practitioner making an extension report for a public protection order without restrictions.
- g. Making modifications relating to medical reports required before a transfer of a prisoner or other person detained in a custodial environment to a healthcare environment can take place.
- h. Modifying timescales within which a person subject to a hospital transfer direction is admitted to hospital under Part 10 of the 2016 Act.
- i. Enabling the Department of Health in Northern Ireland to provide a modified Code of Practice.
- j. Making transitional provision where the procedures in part 2 of schedule 10 to the Bill are already underway at the end of the period for which the relevant provision of this Schedule has effect.
- k. Providing a requirement for each HSC trust to maintain certain records and to report and review how the provisions are used.

162 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland.

## **Clause 10: Indemnity for health service activity: England and Wales**

163 This clause enables the Secretary of State (in relation to the NHS in England) and the Welsh Ministers (in relation to the NHS in Wales) to provide an indemnity for clinical negligence liabilities arising from NHS activities connected to the diagnosis, care or treatment of a person

who has been diagnosed as having covid-19 or is suspected, or is at risk, of, having the disease. These powers are not exercisable where indemnity arrangements are already in place (whether under an insurance policy or otherwise) that cover the clinical negligence liability in question.

164 The clause also extends to indemnity being provided for clinical negligence arising from NHS 'business-as-usual' activities that healthcare professionals and others (including retired healthcare professionals assisting with an outbreak) may be asked to carry out in consequence of the pandemic. These are NHS activities that are routinely provided as part of the NHS for England or the NHS for Wales and may include activities undertaken by healthcare professionals and others operating outside the scope of their usual day-to-day practices. In other words, these are NHS activities not connected to the diagnosis, care or treatment of a person who has been diagnosed as having covid-19 disease, or is suspected, or is at risk, of having the disease. Once again, indemnity for such activities is not available where indemnity arrangements are already in place that cover the clinical negligence liability in question.

165 The Secretary of State and the Welsh Ministers also have powers to make arrangements authorising another person to provide such indemnity.

166 The territorial extent and application of this clause is England and Wales.

### **Clause 11: Indemnity for health service activity: Scotland**

167 The clause enables the Scottish Ministers to provide indemnity for clinical negligence and other delictual liabilities arising from the NHS activities carried out in Scotland in the same circumstances as clause 10 provides that the Secretary of State or Welsh Ministers can provide indemnities. The Scottish Ministers also have powers to make arrangements authorising another person to provide such indemnity.

168 The territorial extent and application of this clause is Scotland.

### **Clause 12: Indemnity for health and social care activity: Northern Ireland**

169 The clause enables the Department of Health in Northern Ireland (the Department) to provide indemnity for clinical negligence arising from the NHS activities carried out in Northern Ireland in the same circumstances as clause 10 provides that the Secretary of State or Welsh Ministers can provide indemnities. The Department also have powers to make arrangements authorising another person to provide such indemnity.

170 The territorial extent and application of this clause is Northern Ireland.

### **Clause 13: NHS Continuing Healthcare assessments: England**

171 This changes the procedure for discharge from an acute hospital setting for those with a social care need.

172 This clause allows NHS providers to delay undertaking the NHS NHS Continuing Healthcare (NHS CHC) Assessment and pending that assessment, the patient will continue to receive NHS care.

173 The territorial extent of this clause is England and Wales and the application of this clause is England.

### **Clause 14 and Schedule 11: Local authority care and support**

174 The effect of this clause and Schedule is that various duties on Local Authorities in Part 1 of the Care Act 2014 or Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014 (SSWWA) to assess needs for care and support, and to meet those needs, are replaced with a duty on Local

Authorities to meet needs for care and support where for England, not to do so would be a breach of an individual's human rights, and a power to meet needs in other cases. In Wales the test is aligned with the existing SSWWA provision where an adult or adult carer may be experiencing or at risk of abuse or neglect.

- 175 Local Authorities may have no duty to carry out assessments under sections 9, 10, 37, 58, 60 or 63 of the Care Act 2014, (or sections 19, 20, 24, 25, 35, 40 and 57 of the SSWWA); to make determinations of eligible needs under section 13 of the Care Act 2014 (or section 32 of the SSWWA); or to carry out financial assessments under section 14 of the Care Act 2014 (or section 63 of the SSWWA). No charge can be made under s53 of the SSWWA unless a financial assessment has been carried out.
- 176 The duties on Local Authorities to meet eligible needs under sections 18, 19 and 20 of the Care Act 2014 (or sections 35 and 40 of the SSWA) would be replaced by a duty to meet needs for care and support where failure to do so would breach an individual's human rights and Local Authorities would have a power to meet other needs. They will still be expected to meet other needs if they are able to and to prioritise provision as necessary. In Wales the test is aligned with the existing SSWWA provision where an adult or adult carer may be experiencing or at risk of abuse or neglect
- 177 The Department of Health and Social Care for England and the Welsh Government for Wales may issue guidance to support prioritisation by Local Authorities, and, if it does so, the Secretary of State for England and the Welsh Ministers for Wales has a power to direct Local Authorities to comply with that guidance.
- 178 This Local Authorities are permitted to provide urgent care to individuals without a full Care Act or SSWWA assessment, and without a financial assessment, and to prioritise the provision of care and support.
- 179 The territorial extent these provisions is England and Wales only. Part 1 of the Schedule applies to England, and Part 2 of the Schedule applies to Wales.

## **Clause 15: Duty of local authority to assess needs: Scotland**

- 180 Under this clause the duty on Local Authorities to conduct a needs assessment under the Social Work (Scotland) Act 1968 will be relaxed to allow local authorities the discretion to dispense with the requirement in order to provide services and support for those most in urgent need without delay. It provides that local authorities can dispense with the requirement if conducting an assessment would be impractical or cause undesirable delay.
- 181 The clause also amends the duties under the Carers (Scotland) Act 2016 and associated regulations, to convert the duty to prepare an adult carer support plan/young carer statement to a power to do so.
- 182 The territorial extent and application of this clause is Scotland.

## **Clause 16: Section 15: further provision**

- 183 There is further provision for issuing statutory guidance, charging and protecting authorities against legal action if there are delays in providing assessments when the normal system is switched back on again.
- 184 The territorial extent and application of this clause is Scotland.

## **Clause 17 and Schedule 12: Registration of deaths and still-births etc**

- 185 Part 1 of the schedule relates to England and Wales; Part 2 relates to Scotland and Part 3 relates

to Northern Ireland.

## Part 1 – England and Wales

- 186 The list of people who can give the necessary information to register a death under sections 16 and 17 of the Births and Deaths Registration Act 1953 (the “1953 Act”), is extended to include, where authorised by the deceased’s family, a funeral director. The requirements in the 1953 Act for a person to attend the Registrar’s office and sign the register in relation to a death (or still birth) in the presence of the Registrar is removed. Instead, information can be provided over the telephone or by any other method specified by the Registrar General in guidance.
- 187 Section 22 of the 1953 Act, which requires the medical practitioner who personally attended the deceased during their last illness to sign the medical certificate of cause of death (“MCCD”) is modified. If it is impractical for the doctor, or if they are unable to do so another doctor can state the cause of death to the best of their knowledge and belief and this certificate can be delivered to the Registrar to enable the death to be registered. Paragraph 4 also allows a doctor to sign the MCCD of a deceased person who was not attended personally during their last illness by a doctor, if the doctor can state cause of death to the best of their knowledge and belief.
- 188 The requirement for a death to be reported to the coroner if the deceased had not been seen by a doctor during their last illness is relaxed as long no other factors would require the death to be reported to the coroner and the doctor can state to the best of their knowledge and belief the cause of death. Without this provision there would be increased pressure on the coronial service arising from the modifications to section 22 of the 1953 Act.
- 189 The Notification of Deaths Regulations 2019 are also modified to limit the circumstances when a medical practitioner needs to notify a coroner of a person’s death under regulation 3(1).
- 190 The Registration of Births and Deaths Regulations 1987 (regulations 34, 42, 43 and 47) require a ‘qualified informant’ (a person allowed by the 1953 Act), normally a family member, to attend personally before a registrar to give the information to register the death (or still-birth). Paragraph 6 removes this requirement enabling registrars and members of the public to register deaths (or still-births) even if they cannot, for whatever reason, travel to a register office. This reduces the chance of cross infection in the general public and enables those who cannot travel due to their own illness, or caring responsibilities, or any other factor, to register a death.
- 191 The requirement in regulation 41(1)(b)(ii) of the 1987 Regulations that a death must be reported to the coroner if the certifying doctor has not seen the deceased after death or within 14 days from the date of death is relaxed so that the death need not be reported to the coroner if another doctor, other than the one certifying the cause of death, has seen the deceased after death or within an extended period of 28 days.

## Part 2 – Scotland

- 192 Part 2 of the Schedule contains similar provisions for Scotland to paragraphs 1 to 3, 5, 7 and 8 of Part 1 of the Schedule for England and Wales, although the provisions refer to the registration of deaths and still-births under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”) rather than the 1926 Act, the 1953 Act, and the 1987 Regulations. There are some differences in provision, in comparison with England and Wales, and Northern Ireland.
- 193 Part 2 of the Schedule provides that a funeral director who is responsible for the arrangement of the funeral may give information concerning a death, as required under section 23(1) of the 1965 Act (as a first option) if the funeral director is so authorised by a relative.
- 194 Part 2 of the Schedule provides for alternative methods by which a person who is required under the 1965 Act to give information about a death or still-birth to the district registrar may



attest the death registration form, or the register page for a still-birth, rather than attending at the registration office to manually sign the form or the page.

195 Part 3 - Northern Ireland

196 The registration of deaths and still-births in Northern Ireland is governed by the Births and Deaths Registration (Northern Ireland) Order 1976 (the "1976 Order") and the Civil Registration Regulations (Northern Ireland) 2012 (the 2012 Regulations).

197 The modifications made by Part 3 include streamlining the registration of a still birth. Part 3 requires a registered doctor or registered midwife to send a certificate of cause of stillbirth electronically to the registrar. In addition following receipt of the notification and a copy of the certificate of cause of stillbirth, the registrar can electronically issue the certificate of registration directly to the funeral director to enable the disposal of the body to proceed.

198 The requirements under regulation 25 of the 2012 Regulations that someone must attend personally before a registrar to verify and sign the registration of a death are relaxed and people can provide the particulars required for the registration of deaths or still-births either by telephone or electronically and removing the need for informants to sign the register.

199 Part 3 of the Schedule also relaxes requirements under Article 25 of the 1976 Order in relation to the signing of the Medical Certificate of Cause of Death (MCCD) by a doctor. It provides that, if the deceased died of a natural illness and no doctor attended the deceased during their last illness, the MCCD may be signed by any doctor who is able to state the cause of the deceased's death to the best of their knowledge and belief. If the deceased was seen by a doctor within 28 days prior to death another doctor can sign the MCCD if the person died as a result of natural illness, it is impracticable for the attending doctor to sign the MCCD and the signing doctor can state to the best of their knowledge and belief the case of death. The Schedule includes a consequential amendment to Form 12 of the 2012 Regulations to align with this procedure.

200 Part 3 of the Schedule removes the requirement under section 7 of the Coroners Act (Northern Ireland) 1959 that a death from natural illness or disease must be notified to the coroner if the deceased has not been seen or treated by a registered doctor within 28 days prior to the death. A doctor who signs the MCCD can send this electronically directly to the registrar.

201 Part 3 also enables the certificate of registration of death to be issued directly to the funeral director to enable the disposal of the body rather than having to be issued to the person giving the information (as provided for under Article 29 of the 1976 Order). It can be provided electronically.

202 There are transitional provisions in all three Parts of the Schedule which allow for anything that is being done in reliance on anything in the Schedule to continue to be done even after the relevant provisions no longer have effect. For example, documents relating to the registration of a death or still-birth (such as the cause of death or cause of still-birth certificate) that have been sent electronically before the provisions no longer have effect may still be processed.

203 The territorial extent and application of clause 17(1) and Part 1 of the Schedule is England and Wales, the territorial extent and application of clause 17(2) and Part 2 of the Schedule is Scotland and the territorial extent and application of clause 17(3) and Part 3 of the Schedule is Northern Ireland.

## **Clause 18: Confirmatory medical certificate not required for cremations: England and Wales**

204 This clause modifies Regulation 16 of the Cremation (England and Wales) Regulations 2008 so that the medical referee (a registered medical practitioner engaged by the cremation authority



who authorises cremations) will be able to authorise a cremation on the basis of the medical certificate from a single registered medical practitioner without the confirmatory medical certificate from a second registered medical practitioner. Removing this additional medical practitioner oversight is aimed at simplifying the process in order to address the expected increased volume of deaths and the need to focus a reduced number of available medical practitioners on dealing with more priority cases whilst keeping a necessary level of safeguards in place.

205 The clause also makes minor and consequential amendments to the Cremation (England and Wales) Regulations 2008 to facilitate the above.

206 The territorial extent and application of this clause is England and Wales.

## **Clause 19 and Schedule 13: Review of cause of death certificates and cremations: Scotland**

207 Part 1 of the schedule enables the Scottish Ministers to suspend the review of death certificates in Scotland under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 and the Certification of Death (Scotland) Act 2011 and makes provision for reviews which have been started but not completed when the suspension takes effect.

208 Part 2 of the schedule enables the Scottish Ministers to suspend sections 53 to 55 and 87 of the Burial and Cremation (Scotland) Act 2016 and relevant associated provisions of the Cremation (Scotland) Regulations 2019. The effect of this will be to remove duties on cremation authorities, funeral directors and local authorities to trace and contact relatives of deceased persons to ascertain their wishes in respect of ashes. Instead the relevant bodies will be placed under a duty to retain the ashes and to comply with their duties under the Act once the provisions have been re-instated,

209 The territorial extent and application of the clause and schedule is Scotland.

## **Clause 20: Modifications of requirements regarding medical certificates for cremations: Northern Ireland**

210 Clause 20 provides modifies the Cremation (Belfast) Regulations (Northern Ireland) 1961 (the "1961 Regulations") to apply in relation to the death of a person:

- a. to remove the requirement for the completion of Form C (Confirmatory Medical Certificate) from Regulation 10,
- b. to make consequential modifications to the powers and duties of the Medical Referee in Regulations 12 and 13 of the 1961 Regulations, due to the removal of the requirement to complete Form C. Paragraph (4)(b)(i) of the schedule removes the reference to a person being seen and treated within twenty-eight days by a registered medical practitioner for a natural illness or disease in the case where the matter has been referred to the Coroner, and
- c. to remove the requirement in Forms A and B for a registered medical practitioner having to have attended a deceased person during their last illness and within twenty-eight days before death and also make consequential modifications to Form B due to the removal of the requirement to complete Form C.

211 The territorial extent and application of this clause is Northern Ireland.

## **Clause 21: Appointment of temporary Judicial Commissioners**

212 This clause creates a regulation making power to modify s227(4) of the Investigatory Powers Act 2016 so that at the request of the Investigatory Powers Commissioner the Secretary of State can

provide for the Investigatory Powers Commissioner to directly appoint temporary Judicial Commissioners to carry out the functions conferred on Judicial Commissioners under the Act. The temporary Judicial Commissioners will be appointed for terms not exceeding 6 months each and no more than 12 months in total.

213 The regulations must include a requirement on the Investigatory Powers Commissioner to inform the Lord Chancellor, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session, the Lord Chief Justice of Northern Ireland, the Home Secretary and the Prime Minister.

214 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland.

## **Clause 22: Time limits in relation to urgent warrants etc under Investigatory Powers Act**

215 This clause creates a regulation-making power to modify the relevant sections in the Investigatory Powers Act which specify the length of period referred to in the Act as “the relevant period” which relates to the time period for when authorisation is required by a Judicial Commissioner after a warrant has been issued.

216 Regulations made under this clause can extend the “relevant period” to no more than 12 days for Judicial Commissioner approval and for the lifespan of the warrant. The Clause requires the Regulations to be time-limited to a period of 12 months.

217 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 23: Power to require information relating to food supply chains**

218 This clause provides the appropriate authority with the power to require information from persons within, or closely connected to, a food supply chain in certain specified circumstances. The required information must relate to that person’s activities within that food supply chain.

219 The power may not be used to require an individual to provide information. This will protect individual farmers and sole traders from being subject to requirements made under the powers in this Bill.

220 Subsections (4) and (5) limit the circumstances in which a requirement may be imposed to ensure that information can only be requested:

221 if the authority considers the information is needed to establish (either alone or within other information) (i) whether the whole or part of a food supply chain is being disrupted or is at risk of disruption; or (ii) the nature of such a disruption; and

222 if the authority has previously requested the person to do so and the person has not supplied information or has willingly provided information which is misleading or false.

223 In order to allow for the power to be used at short notice, subsection (7) allows for requirements to be made in writing, as opposed to through a Statutory Instrument.

224 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 24: Authorities which may require information**

225 This clause provides for the power to be exercised by “the appropriate authority”. Subsection (1)

defines appropriate authorities for these purposes as:

- a. the Secretary of State;
- b. the Scottish Ministers, if and to the extent that an Act of the Scottish Parliament could have authorised the Scottish Ministers to impose the requirement;
- c. the Welsh Ministers, if and to the extent that an Act of the National Assembly for Wales could have authorised the Welsh Ministers to impose the requirement;
- d. the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA), if and to the extent that an Act of the Northern Ireland Assembly made without the Secretary of State's consent, could have authorised DAERA to impose the requirement.

226 Devolved Administrations' ability to exercise the power is linked to their respective Parliament or Assembly's legislative competence. Subsection (5) provides that where the Secretary of State wishes to exercise the power, if and to the extent that it could have been exercised by another of the appropriate authorities, the consent of the relevant authority will be required.

227 Subsection (6) provides that the Secretary of State is not required to seek consent from an appropriate authority in order to request information about an activity if and to the extent that the activity to which the requirement relates takes place outside of their area. Those areas are set out at subsection (8).

228 Subsection (7) requires that any information obtained in response to a requirement made with the consent of another authority, and which relates to that authority's area, must be disclosed to that authority.

229 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 25: Restrictions on use and disclosure of information**

230 This clause places restrictions on the appropriate authority as to the use in decision making and the disclosure of information received as a result of the imposition of a requirement under the clause.

231 The first pre-condition which must be met before information can be either used or disclosed is that its use or disclosure is for a permitted purpose. The permitted purposes are set out in clause subsection (1) as.

232 Subsection (2) restricts the disclosure of information to bodies which are not Government authorities to ensure that only anonymised information is shared. Disclosure of information onwards by a body which is not a Government authority may only be made in accordance with the terms on which the information was initially disclosed to that body.

233 Subsection (5) expressly limits the use and disclosure of information containing personal data under subsections (1) and (2) to that which is authorised by data protection legislation.

234 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 26 and Schedule 14: Enforcement of requirement to provide information**

235 This clause sets out the enforcement regime for the power in clause 23, with further information on the financial penalties detailed in Schedule 14.

236 The Schedule sets out the financial penalties for failing to comply with a requirement under

clause 23 or for providing information which is false or misleading. It provides for a financial penalty to be imposed, up to a maximum of 1% of qualifying turnover, after following procedure set out in the schedule.

237 Paragraph 7 provides that appeals may be made against the final notice to the First-tier Tribunal in England and Wales, to the sheriff court in Scotland, or to a county court in Northern Ireland, and the Schedule sets out the grounds of appeal at paragraph 7(2).

238 The Schedule does not make provision for the imposition of penalties on individuals as these persons are ruled out of the scope at clause 23(6) as set out above.

239 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 27: Meaning of “food supply chain” and related expressions**

240 This clause defines the term “food supply chain” and related terms.

241 It defines a food supply chain as supplying individuals with food or drink for personal consumption which have been produced to any extent through agriculture, fishing or aquaculture.

242 The definition captures both those ‘in’ and those ‘closely connected’ with a food supply chain. It is intended to catch suppliers at every point along a food supply chain before the product reaches the consumer, supplying either food products directly to industry/consumers, or critical dependencies into the food supply chain.

243 Those included in a food supply chain include producers, slaughterhouses, packaging centres, distributors and retailers. The term ‘closely connected’ with a food supply chain is intended to capture suppliers who provide critical dependencies (or inputs) into the food supply chain (i.e. not directly supplying food). This may include those who supply seeds, fertiliser, chemicals, stock, equipment or similar items for use in agriculture, fishing or aquaculture; and those who provide goods or services either to producers or further up the supply chain which relate to the safety or quality of food or drink or the welfare of animals. This would include, for example, suppliers of CO<sub>2</sub> to slaughterhouses, suppliers of food packaging materials to packaging centres or companies which provide cleaning services to food processing plants.

244 The definition also captures trade bodies which represent those in or closely connected to a food supply chain. Defra works closely with many of these bodies in the response to any food supply chain disruption through the Food Chain Emergency Liaison Group (FCELG).

245 The territorial extent and application of this clause is England, Wales, Scotland and Northern Ireland.

## **Clause 28: Suspension of requirement to hold inquest with jury: England and Wales**

246 Under section 7(2)(c) of the Coroners and Justice Act 2009, an inquest into a death must be held with a jury if the coroner has reason to suspect that the death was caused by a notifiable accident, poisoning or disease

247 Clause 28 will modify the Coroners and Justice Act 2009 so that COVID-19 is not a notifiable disease for the purposes of section 7(2)(c) and therefore the duty to hold a jury inquest in section 7 does not apply.

248 However, the coroner still retains the discretion to hold a jury inquest where they consider that there is sufficient reason to do so, under section 7(3) of the Coroners and Justice Act 2009.

249 The territorial extent and application of this clause is England and Wales

## **Clause 29: Suspension of requirement to hold inquest with jury: Northern Ireland**

250 Section 18(1)(c) of the Coroners Act (Northern Ireland) 1959 requires an inquest into a death caused by a notifiable disease (a disease, notice of which is required under any enactment to be given to a government department, or to any inspector or other officer of a government department) to be held with a jury. Clause 29 provides that COVID-19 is not a notifiable disease for the purposes of Section 18, removing the requirement for an inquest to be held with a jury where the death is from COVID-19.

251 The territorial extent and application of this clause is Northern Ireland.

## **Clause 30: Deaths in custody from natural illness: Northern Ireland**

252 Section 39 of the Prison Act (Northern Ireland) 1953 requires an inquest to be held into any death in prison and section 18 of the Coroners Act (Northern Ireland) 1959 requires an inquest into a death in prison to be held with a jury.

253 The clause enables a coroner to hold (or continue to hold) an inquest into a death in prison from natural illness without a jury. However, the inquest can still be heard with a jury if a coroner considers this desirable.

254 Section 13 of the 1959 Act enables one inquest to be held into a number of deaths resulting from the same circumstances. The clause modifies this provision to enable one inquest without a jury to be held into a number of deaths in prison from natural illness.

255 The territorial extent and application of this clause is Northern Ireland.

## **Clause 31: Disapplication etc by Welsh Ministers of DBS provisions**

256 The scope of this power is limited to the single issue of modifying or dis-applying requirements about DBS checks. The provision requires Welsh Ministers to issue a notice and to include on the notice a statement of why the notice is appropriate and proportionate.

257 The purpose of this power is to put providers in Wales in the same position as those in other parts of the UK during the period of the coronavirus emergency. For example, in England vetting requirements for similar settings allow workers to begin work before an enhanced disclosure is received. However, the wording of the regulatory requirements in the schemes under Part 2 of the Care Standards Act 2000 and the Regulation and Inspection of Social Care (Wales) Act 2016 do not permit this even in an emergency. The provision will provide equivalence for Wales, should the Welsh Ministers consider it safe and appropriate to do so, during the period of the emergency.

258 The territorial extent of this provision is England and Wales and application of this provision is Wales only.

## **Clause 32: Temporary disapplication of disclosure offences: Scotland**

259 This clause allows the Scottish Ministers to issue a direction that disapplies the offences under section 35 (organisations not to use barred individuals for regulated work) and section 36 (personnel suppliers not to supply barred individuals for regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007. This is intended to ensure that NHS boards who are employing temporarily registered healthcare workers are not inadvertently committing an offence if they have not obtained a PVG disclosure check in advance.

260 The territorial extent and application of this provision is Scotland only.

### **Clause 33: Temporary power to reclassify certain disclosure requests: Scotland**

261 This clause allows the Scottish Ministers, where they receive certain types of disclosure requests under the Protection of Vulnerable Groups (Scotland) Act 2007, to treat them as if they were a disclosure request which simply confirms whether or not the individual is in the PVG Scheme and if they are barred. This will allow Disclosure Scotland to process disclosure applications more quickly, either in the event of increased demand to deploy temporarily registered healthcare workers quickly, or as a result of staff shortages due to sickness absence.

262 The territorial extent and application of this provision is Scotland only.

### **Clause 34: Vaccination and immunisation: Scotland**

263 This clause modifies section 40 of the National Health Service (Scotland) Act 1978. The requirement in that section that vaccinations and immunisations be administered by medical practitioners or persons acting under their direction and control is removed. The modified section provides that the Scottish Ministers are to make arrangements for the provision of vaccinations and immunisations in respect of any disease.

264 The clause also consequentially modifies an existing provision which delegates the section 40 function to territorial health boards, so that boards can in practice continue to exercise this function as they do now, but without the requirement that this always be under the direction and control of a medical practitioner.

265 The territorial extent and application of this provision is Scotland only.

### **Clause 35 and Schedule 15: Temporary closure of educational institutions and childcare premises**

#### **Part 1 – England and Wales**

266 This clause and Part 1 of the Schedule confer on the Secretary of State and Welsh Ministers the power to direct, by “temporary closure direction”, the temporary closure of educational institutions and providers in England and Wales respectively, including maintained schools, independent schools, 16-19 Academies, further education providers, and higher education providers, as well as registered childcare providers.

267 The Schedule provides equivalent powers in relation to registered childcare providers.

268 Such temporary closure directions can apply to named educational institutions or childcare providers, all educational institutions or childcare providers (or all of them in a particular area of England or Wales respectively), or all educational institutions or childcare providers of certain descriptions.

269 A temporary closure direction in respect of an educational institution requires the responsible body of that institution to take reasonable steps to secure that persons do not attend the premises of the institution for a specified period. A temporary closure direction in respect of a registered childcare provider requires the registered childcare provider to take the same steps in relation to the attendance of persons for purposes connected with the provision of childcare.

270 Temporary disclosure directions can relate to specific steps to be taken, specified persons, specified premises or parts of premises, attendance for specified purposes, and can be framed in relation to relevant matters, or they can be general,



- 271 Before giving a temporary closure direction, the Secretary of State must have regard to any advice from the Chief Medical Officer or one of the Deputy Chief Medical Officers, and must be satisfied that the direction is a necessary and proportionate action in response to the risk of transmission of covid-19. A Welsh Minister must have regard to any advice from the Welsh Chief Medical Officer or one of the Welsh Deputy Chief Medical Officers, and must be satisfied that the direction is a necessary and proportionate action in response to the incidence of transmission of covid-19.
- 272 The provisions of a temporary closure direction are enforceable, on application by the Secretary of State or Welsh Minister respectively, by injunction.
- 273 Where a temporary closure direction has effect in relation to a school there would be no breach or failure in relation to certain specified duties on local authorities to arrange for exceptional educational provision, or of specified duties in connection with school attendance orders in the case of non-attendance, and a failure to attend school is to be disregarded when considering whether an offence has been committed, in each case to the extent that any breach or failure is attributable to the direction.
- 274 Where a temporary closure direction has effect in relation to a registered childcare provider in England, there would be no breach of the duty of a local authority to secure free early years provision under section 7 of the Childcare Act 2006, or of the Secretary of State's duty to secure 30 hours' free childcare under section 1 of the Childcare Act 2016. Her Majesty's Chief Inspector of Education, Children's Services and Skills must take the direction into account when dealing with any allegation that a registered childcare provider to which the direction applies has failed to meet any requirement specified under section 39(1)(a) or (b) of the Childcare Act 2006.
- 275 Where a temporary closure direction has effect in relation to a registered childcare provider in Wales, there is no breach of the duty of a local authority to secure sufficient provision of nursery education under section 118 of the School Standards and Framework Act 1998 nor of the duty of Welsh Ministers under section 1(1) of the Childcare Funding (Wales) Act 2019 to provide funding for childcare of working parents.
- 276 The Welsh Ministers must also, in exercising functions under Part 2 of the Children and Families (Wales) Measure 2010, take the direction into account when dealing with any allegation that a registered childcare provider to which the direction applies has failed to meet any requirement specified under section 30(3) of that Measure.
- 277 The Secretary of state or Welsh Ministers respectively may authorise that a local authority exercise their functions with regards to the making of a temporary closure direction.
- 278 Temporary closure directions must be published by the Secretary of State or Welsh Minister respectively
- 279 The territorial extent and application of Part 1 of the Schedule is England and Wales.

## Part 2 - Scotland

- 280 Clause 34(2) and Part 2 of Schedule 15 confer on the Scottish Ministers the power to direct the temporary closure of all or part of specified educational establishments in Scotland, including local authority schools, independent schools, further education institutions, higher education institutions and registered childcare providers.
- 281 Under these provisions a relevant authority must have regard to any advice relating to coronavirus from the Chief Medical Officer of the Scottish Administration. "Relevant authority" in this context means a relevant operator of an educational establishment, a relevant manager of school boarding accommodation, or a relevant manager of student accommodation. Before giving a direction under Part 2 of Schedule 15, the Scottish Ministers must also have regard to

any such advice of the Chief Medical Officer and must be satisfied that giving the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus.

- 282 Paragraph 8(1) of Schedule 15 confers a power on the Scottish Ministers to give an “educational closure direction” to the relevant operator or operators of one or more named educational establishments, all educational establishments in Scotland or any part of Scotland, or educational establishments of a particular description in Scotland or any part of Scotland, to require the relevant operator to take reasonable steps to restrict access to that establishment for a specified period.
- 283 The direction may further provide that a failure to comply with any statutory duty or time limit imposed under any enactment or rule of law relating to education be disregarded to the extent that it is attributable to an educational closure direction. Paragraph 13(3) requires that a direction in these terms will be subject to review every 21 days.
- 284 An educational closure direction may include further provision as set out in paragraph 8(4). An educational closure direction can relate to specific steps to be taken, specified persons, specified premises or parts of premises, attendance for specified purposes, be framed in relation to relevant matters, or can be general.
- 285 “Relevant operator” in relation to a school means an education authority (in the case of a public school under the management of the authority), the managers of a grant-aided school, or the proprietor of an independent school. In relation to a further education institution or a higher education institution, it means that institution’s governing body. It includes a person who provides out of school care in a school.
- 286 Where ELC, other school education or out of school care is provided by a person in premises other than a school, “relevant operator” also includes that person, and any reference to “educational establishment” also includes such premises. Where a child minder provides ELC or out of school care in premises that are mainly used as a private dwelling, any educational closure direction may only apply to the part of the premises in which such care is provided.
- 287 The Bill also includes provisions for the effect any educational closure direction given by the Scottish Ministers may have on the operation of other education legislation in Scotland.
- 288 Where an educational closure direction has effect in relation to a school, paragraph 9 of Schedule 15 provides that any failure by an education authority to discharge any duty listed there is to be disregarded to the extent such failure is attributable to an educational closure direction. This also applies to ELC in relation to the premises that they are provided in if this is outside a school. Similar provision is made in respect of duties of education authorities in relation to additional support for learning, and the mandatory amount of ELC.
- 289 The duty of parents to provide education to their children under section 30(1) of the 1980 Act school is also disapplied in respect of a child who is a pupil at a school in respect of which an educational closure direction has effect, and is unable to attend school regularly because of the direction.
- 290 Any failure of a child to attend a school in respect of which an educational closure direction has effect is to be disregarded for the purposes of section 35 of the 1980 Act, to the extent the failure is attributable to the direction.
- 291 Power is conferred on Scottish Ministers under paragraph 10 of Schedule 15 to give a “boarding accommodation closure direction” to the relevant manager or managers of one or more named school boarding establishments, all school boarding establishments in Scotland or any part of Scotland, or school boarding establishments of a particular description in Scotland or any part of Scotland.



- 292 A boarding accommodation closure direction given in respect of a school boarding establishment can require a relevant manager to take reasonable steps to restrict access to that establishment for a specified period; or to provide for pupils for whom boarding accommodation is provided to be confined there for a specified period.
- 293 Under paragraph 10(3), a boarding accommodation closure direction may provide that a failure to comply with any statutory duty or time limit imposed under any enactment or rule of law relating to education be disregarded to the extent that it is attributable to a boarding accommodation closure direction. Paragraph 13(3) specifies that a direction in these terms must be reviewed every 21 days.
- 294 A boarding accommodation closure direction can make further provision in terms of paragraph 10(4). A boarding accommodation closure direction can relate to specific steps to be taken, specified persons, specified premises or parts of premises, attendance for specified purposes, be framed in relation to relevant matters, or can be general,
- 295 Paragraph 11(1) confers a power on the Scottish Ministers to give a “student accommodation closure direction” to the relevant manager or managers of one or more named student accommodation premises, all student accommodation premises in Scotland or any part of Scotland, or student accommodation premises of a particular description in Scotland or any part of Scotland.
- 296 A student accommodation closure direction given in respect of student accommodation premises can require a relevant manager of student accommodation premises to take reasonable steps to restrict access to those premises for a specified period; or can provide for students for whom student accommodation is provided to be confined there for a specified period.
- 297 Under paragraph 11(3), a student accommodation closure direction may further provide that a failure to comply with any statutory duty or time limit imposed under any enactment or rule of law relating to education be disregarded to the extent that it is attributable to a student accommodation closure direction. A direction in these terms must be reviewed every 21 days, under paragraph 13(3).
- 298 A student accommodation closure direction can relate to specific steps to be taken, specified persons, specified premises or parts of premises, attendance for specified purposes, be framed in relation to relevant matters, or can be general.
- 299 Paragraph 12(1) requires a relevant authority to comply with a direction under Part 2 of Schedule 15. A relevant authority must also have regard to any guidance given by the Scottish Ministers about how to comply with a direction. If a relevant authority fails to comply with a direction, paragraph 12(3) allows the Scottish Ministers to enforce the direction by an application for a court order for interdict or specific implement. The Scottish Ministers do not need to give notice to the relevant authority before applying for a court order.
- 300 Paragraph 13(1) requires the Scottish Ministers to publish a direction under Part 2 of Schedule 15. A direction remains in force until the end of the period specified in the direction or until revoked by a further direction (whichever is the earlier).
- 301 The extent and application of Part 2 of the Schedule is Scotland only.

### Part 3 – Northern Ireland

- 302 These provisions give the Department of Education in Northern Ireland (‘the Department’) the power to direct the managers of particular schools, or schools in general, to close during a covid-19 outbreak.
- 303 A duty is placed on the managers of a school, which is subject to a temporary closure direction,

- to have regard to any guidance issued by the Department about how to comply with a temporary closure direction. Temporary closure directions must be published.
- 304 A temporary closure direction can be enforced, on application by the Department, by injunction. No notice needs to be given to the managers of a school of such an application.
- 305 The following duties are relaxed for the period of the temporary closure direction: the current duty on parents to secure education of their children; the duty on managers of schools to provide milk and meals; the duty on the managers of schools to admit a child who is the subject of an attendance order; the duty on parents to ensure their children regularly attend school; and the duty on the Education Authority to make exceptional education provision for children who require it.
- 306 These provisions also give a power to the Department for the Economy in Northern Ireland ('the Department') to direct further education colleges and higher education institutions ('relevant institutions') in Northern Ireland to close.
- 307 The Department is given the power to direct all relevant institutions in Northern Ireland, or particular relevant institutions, to close in the event of an outbreak of covid-19. The Department must consult with the Chief Medical Officer in Northern Ireland or, in the CMO's absence, the Deputy Chief Medical Officer before making such a direction.
- 308 Under a temporary closure direction, the governing bodies of relevant institutions must take all reasonable steps to ensure that no persons are in attendance at premises of the institution for the duration of a temporary closure direction.
- 309 The provisions also give the Department the power to issue temporary closure directions to registered day care providers and childminders (childcare providers) in the event of a covid-19 pandemic. This requires the affected childcare providers to take reasonable steps to ensure that persons do not attend their premises for any purpose relating to childcare for the period of time set out in the direction.
- 310 The provisions allow the Department to specify, in any temporary closure direction: any steps required to be taken by the childcare provider; the persons affected by restrictions in attendance at the premises; and the purposes for which attendance is restricted.
- 311 The Department is required to publish any temporary closure direction and a temporary closure direction would apply until either the end of the period specified in the direction, or the revocation of the direction by a further Departmental direction issued before that date.
- 312 Registered childcare providers are required to have regard to any guidance issued by the Department in relation to compliance with temporary closure directions.
- 313 The Department has a power to enforce a temporary closure direction by way of an injunction. An application for an injunction may be made without notice.
- 314 Provision is made, where a temporary closure direction is in place, for duties which an authority is required to discharge in respect of children in need by Article 19(2) or (5) of the Children (Northern Ireland) Order 1995 to be disregarded for the duration of the application of the temporary closure direction.
- 315 The extent and application of these Part 3 of the Schedule is Northern Ireland only.
- 316 The extent and application of the clause is England and Wales, Scotland and Northern Ireland.

## **Clause 36 and Schedule 16: Temporary continuity: education, training and childcare**

## Part 1 - England and Wales

- 317 The clause and Schedule allow the Secretary of State and Welsh Ministers the power to make directions in connection with the running of the education and registered childcare systems in England and Wales.
- 318 It allows the Secretary of State and Welsh Ministers to direct that relevant institutions, which include registered childcare providers, schools, 16-19 academies and further and higher education providers stay open or re-open and admit specified persons for the purposes of the receipt of education, training, childcare or ancillary services or facilities. It also allows a direction that other reasonable steps are taken for those purposes.
- 319 The Secretary of State may authorise a local authority to issue a temporary continuity direction in relation to a registered childcare provider, a school or 16-19 academy in its area, in England, and may authorise the Office for Students to issue a temporary continuity direction in relation to a higher education provider in England
- 320 The clause further allows the Secretary of State, by notice, to disapply and modify, for a maximum period of one month, certain specified legislative requirements or restrictions relating to education or childcare, and any similar provision found in academy arrangements. Any such notice must be published, and other reasonable steps must be taken to bring the notice to the attention of those affected by it.
- 321 The territorial extent and application of this clause and Part 1 of the Schedule is England and Wales

## Part 2 - Scotland

- 322 Clause 36(2) and Part 2 of Schedule 16 confer on the Scottish Ministers powers to make directions in connection with the running of educational establishments in Scotland. Part 2 applies to Scotland only.
- 323 Under paragraph 10(1), a relevant operator of an educational establishment is under a duty to have regard to any advice relating to coronavirus from the Chief Medical Officer of the Scottish Administration. Before issuing a direction under paragraph 11, the Scottish Ministers must also have regard to such advice and must be satisfied that the giving of the direction is a necessary and proportionate action for or in connection with the continued provision of education.
- 324 Paragraph 11(1) provides that the Scottish Ministers may give an educational continuity direction to one or more named educational establishments in Scotland, to all educational establishments in Scotland or any part of Scotland, or to educational establishments in Scotland of a particular description.
- 325 Paragraph 11(2) defines an educational continuity direction as a direction relating to the continuing operation of an educational establishment for a specified period.
- 326 Paragraph 11(3) provides that an educational continuity direction may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded where an educational continuity direction is in force. A direction in these terms must be reviewed every 21 days (under paragraph 13(4)).
- 327 Paragraph 11(4) provides that an educational continuity direction may confer additional functions on a relevant operator relating to the provision of early learning and childcare, schools education, further education or higher education; the provision of related services (for example, out of school care); or the use of the operator's premises for the purpose of protecting public health. Further provision on the types of matters that may be specified in an educational continuity direction are set out in subparagraph (4)(b) to (m). This includes requiring an

educational establishment to open, stay open or re-open; requiring a relevant operator to allow people (who would not otherwise attend) to attend an establishment under that operator's management; requiring measures to ensure hygiene standards be put in place; and requiring the alteration of term dates, holiday dates or exam dates.

328 Paragraph 11(5) defines "relevant operator", "relevant premises" and "specified" for the purposes of Part 2 of Schedule 15.

329 Paragraph 12(1) provides that a relevant operator must comply with an educational continuity direction. Enforcement of compliance is by way of an application by the Scottish Ministers for an interdict or specific implement.

330 Paragraph 12(2) provides that the Scottish Ministers may issue guidance in relation to compliance with their functions under this Part, and a relevant authority must have regard to any such guidance.

331 Paragraph 13(1) requires Ministers to publish an educational continuity direction. A direction has effect for the period specified in it, or until revoked by a further direction.

332 The extent and application of these provisions is Scotland only.

### Part 3 –Northern Ireland

333 The provisions give the Department of Education (DE) the power to issue a direction to the Education Authority or schools. This direction is called a Temporary Continuity Direction.

334 A temporary continuity direction is one which insists that the body (or bodies) named in the direction should take such action as DE considers appropriate in connection with the provision of education or any services that DE specifies are in relation to educational services.

335 DE must have regard to advice from the Chief Medical Officer (or his deputies) prior to the issue of a direction under this provision. DE must also be satisfied that the direction must be necessary and proportionate and lead to action that allows the continuation of education in NI at the time of a covid-19 outbreak.

336 Schedule 16 describes the kind of information that can be included in a Temporary Continuity Direction.

337 The body named in a direction must consider DE advice on how to meet the terms of the direction.

338 DE has a duty to publish all directions.

339 Should the body named in a direction (be that the EA or a school or schools) not comply, in the opinion of DE, with the terms of a direction then DE has the power to apply to a court for an injunction to enforce the direction.

340 Should DE apply for an injunction against any body it does not have to inform the body prior to the application.

341 Should a direction include an alteration of term dates or holiday dates, this clause allows for a relaxation of schools' duties in relation to these dates.

342 The provisions also give the Department for the Economy ("the Department") the power to issue a Temporary Continuity Direction to further education colleges or higher education institutions.

343 A temporary continuity direction is one which requires the institutions named in the direction to take such action as the Department considers appropriate in connection with the provision of further and higher education or any services that the Department specifies are in relation to

educational services.

344 The Department must have regard to advice from the Chief Medical Officer (or his deputies) prior to the issue of a direction under this provision. The Department must also be satisfied that the direction must be necessary and proportionate and lead to action that allows the continuation of education in NI at the time of a covid-19 outbreak.

345 The Department has a duty to publish all directions. Should the institutions named in a direction not comply with the terms of a direction then the Department has the power to apply to a court for an injunction to enforce the direction. Should the Department apply for an injunction against any body it does not have to inform the body prior to the application.

346 The extent and application of these provisions is Northern Ireland only.

347 The extent and application of the clause is England and Wales, Scotland and Northern Ireland.

### **Clause 37: Statutory Sick Pay: Funding of employers' liabilities**

348 This clause inserts a new section 159B in the Social Security Contributions and Benefits Act 1992, providing for a power in relation to the funding of additional employer liabilities for Statutory Sick Pay ("SSP") incurred as a result of the Covid-19 outbreak. Qualifying employers would therefore receive a specified rebate for SSP payments made for a specified period. It will allow the Secretary of State to make regulations regarding the recovery from HMRC of additional payments of SSP by qualifying employers for absences related to covid-19. The regulations may in particular control the levels of rebate, to whom the rebate is paid, and the period for which the rebate will be available. As the situation changes with regard to the virus, it might be considered appropriate to extend the rebate to larger businesses. Also, it might become necessary to increase, or decrease, the amount of the rebate payable. This will be achievable using the new regulation making power.

349 The territorial extent and application of this clause is England and Wales and Scotland.

### **Clause 38: Statutory sick pay: power to disapply waiting period limitation**

350 This clause enables the Secretary of State to make regulations which can disapply section 155(1) of the Social Security Contributions and Benefits Act 1992 in relation to an employee whose incapacity for work is related to covid-19. This means that the regulations can be used to temporarily suspend waiting days for those employees who are absent from work due to covid-19.

351 The territorial extent and application of this clause is England and Wales and Scotland.

### **Clause 39: Statutory sick pay: modification of regulation making powers**

352 This clause amends section 151 of the Social Security Contributions and Benefits Act 1992 to include a provision that the Secretary of State may make regulations referring to guidance issued by Public Health England, National Health Services Scotland and Public Health Wales in determining whether an employee should be deemed to be incapable of work by reason of covid-19, for example because the employee is self-isolating.

353 The territorial extent and application of this clause is England and Wales and Scotland.

### **Clause 40: Statutory sick pay: funding of employers' liabilities: Northern Ireland**

354 This clause inserts a new section 154B in the Social Security Contributions and Benefits (Northern Ireland) Act 1992. It provides for a power in relation to the funding of additional employer liabilities for SSP incurred as a result of the Covid-19 outbreak. Qualifying employers would therefore receive a specified rebate for SSP payments made for a specified period. It will allow the Secretary of State to make regulations regarding the recovery from HMRC of additional payments of SSP by qualifying employers for absences related to covid-19. The regulations may in particular control the levels of rebate, to whom the rebate is paid, and the period for which the rebate will be available. As the situation changes with regard to the virus, it might be considered appropriate to extend the rebate to larger businesses. Also, it might become necessary to increase, or decrease, the amount of the rebate payable. This will be achievable using the new regulation making power.

355 The territorial extent and application of this clause is Northern Ireland.

### **Clause 41: Statutory sick pay: power to disapply waiting period limitation: Northern Ireland**

356 This clause enables the Secretary of State to make regulations which can disapply section 151(1) of the Social Security Contributions and Benefits Act (Northern Ireland) Act 1992 in relation to an employee whose incapacity for work is related to covid-19. This means that the regulations can be used to temporarily suspend waiting days for those employees who are absent from work due to covid-19.

357 The territorial extent and application of this clause is Northern Ireland.

### **Clause 42: Statutory sick pay: modification of regulation making power: Northern Ireland**

358 This clause amends section 147 of the Social Security Contributions and Benefits Act (Northern Ireland) Act 1992 to include a provision that the Secretary of State may make regulations referring to guidance issued by the Regional Agency for Public Health and Social Well-being, Public Health England, National Health Services Scotland and Public Health Wales in determining whether an employee should be deemed to be incapable of work by reason of covid-19, for example because the employee is self-isolating.

359 The territorial extent and application of this clause is Northern Ireland.

### **Clause 43: NHS Pension Schemes: suspension of restrictions on return to work: England and Wales**

360 This clause omits certain regulations that provide for pension abatement and suspension so as to enable individuals already in receipt of their NHS pension to return to work, or increase their working capacity if they have already returned, without facing either suspension or abatement of their pension.

361 Regulation S1 of the National Health Service Pension Scheme Regulations 1995 (S.I 1995/300) (“the 1995 NHS Pension Regulations”) requires a member’s pension benefits to be suspended if they return to NHS employment and commit to more than 16 hours per week within one month of the pension becoming payable.

362 Subsection (1)(a) omits regulation S1 so that a member who has recently retired from the NHS and elects to immediately return at a capacity of above 16 hours per week will not have their pension suspended.

363 Subsection ((1)(b) omits the reference to Regulation S2(1A)(c) in paragraph (3) of regulation S2 of the 1995 NHS Pension Regulations. Regulation S2(1A)(c) applies to members who are “special



class officers". Special class officers are able to access their pension benefits at age 55 rather than 60. If a special class officer in receipt of benefits returns to work before the age of 60, they will have their pension abated in accordance with regulation S2(3) of the 1995 NHS Pension Regulations. Removing the reference to Regulation S2(1A)(c) in regulation S2(3) will allow special class officer members to return to NHS work, or increase their working commitment if they have already returned without having their pension abated.

364 The National Health Service Pension Regulations 2008 (S.I. 2008/653) ("the 2008 NHS Pension Regulations") and the National Health Service Pension Regulations 2015 (S.I. 2015/94) ("the 2015 NHS Pension Regulations") make provision for the partial retirement of members. Members exercising this option are able to draw down a portion of their pension on the condition that they reduce their pensionable pay (or level of commitment to the NHS) by at least 10%.

365 Subsection (2) omits regulation 2.D.6(2)(a) (abatement of pension following increase in pensionable pay) and regulation 3.D.6(2)(a) (abatement of pension following increase in engagement in employment) of the 2008 NHS Pension Regulations and subsection (3) omits regulation 86(3) of the 2015 NHS Pension Regulations. Those regulations provide that a member will have their pension abated in full if the terms of the member's employment change and their level of pay increases within 12 months of the member electing to draw down their pension.

366 The clause amends the 1995 NHS Pensions Regulations, the 2008 NHS Pensions Regulations and the 2015 NHS Pensions Regulations, all of which extend to England and Wales and so the clause similarly extends and applies to England and Wales

## **Clause 44: NHS pension schemes: suspension of restrictions on return to work: Scotland**

367 This clause omits in respect of Scotland certain regulations that provide for pension abatement and suspension so as to enable individuals already in receipt of their NHS pension to return to work, or increase their working capacity if they have already returned without facing either suspension or abatement of their pension. The regulations omitted are the nearest Scottish equivalent regulations to those omitted as regards England and Wales by clause 43.

368 The extent and application of the clause is Scotland.

## **Clause 45 Health and social care pension schemes: suspension of restrictions on return to work: Northern Ireland**

369 The extent and application of the clause is Northern Ireland.

## **Clause 46 and Schedule 17: Powers to act for the protection of public health: Northern Ireland**

370 This Schedule inserts various provisions as Part 1A into the Public Health Act (Northern Ireland) 1967. It provides a power for the Department of Health in Northern Ireland to make regulations to allow for measures to be introduced to help delay or prevent further transmission of covid-19, which presents or could present significant harm to human health. References below to "sections" are to the sections of the inserted Part 1A.

371 The Schedule provides powers that enable the Department of Health in Northern Ireland to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of covid-19 by conveyances leaving any place. It also provides a power for regulations to give effect to international agreements or arrangements, for example World Health Organisation recommendations. There is also a power to make regulations to prevent, protect against, control

- or provide a public health response to the incidence or spread of covid-19 in Northern Ireland.
- 372 Compulsory medical treatment, including vaccination is excluded from the ambit of the regulation-making powers.
- 373 Powers are also given to magistrates' courts to order health measures in relation to people, things and premises. Provision is made in relation to the evidence the Department of Health must make available to the court.
- 374 Only the Public Health Agency may apply for an order but an affected person, in addition to the Public Health Agency or any other authority with the function of executing or enforcing the order in question, can apply for the order to be varied or revoked.
- 375 It is an offence to fail to comply, without reasonable excuse, with a restriction or requirement imposed by or under an order of a magistrates' court or to wilfully obstruct anyone executing the order.
- 376 The Assembly procedures for making regulations under this Part in different circumstances are set out. Regulations of a kind to which draft affirmative procedure would normally apply may be made and brought into effect immediately if they contain a declaration that the Department of Health in Northern Ireland is of the opinion that it is necessary by reason of urgency for them to be made without a draft being approved under that procedure.
- 377 There are powers of entry for a person authorised by the Public Health Agency to carry out functions and it is an offence to wilfully obstruct an authorised officer in execution of such powers.
- 378 Offences are also created for bodies corporate. There is a special extended time limit of up to 3 years for prosecutions for these new offences when certain conditions are met.
- 379 The territorial extent and application of the clause and the schedule is Northern Ireland.

## **Clause 47 and Schedule 18: Health Protection Regulations: Scotland**

- 380 The Schedule provides Scottish Ministers with a power 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. The threat can come from inside or outside Scotland.
- 381 Paragraph 1(3) gives examples of particular provisions which might be made. For example, the regulations could impose restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. This includes "special requirements", which are defined at paragraph 4 and include (amongst other things) requiring a person to submit to medical examination, be detained to a hospital or other suitable establishment and be kept in isolation or quarantine. The ability to make provision in relation to these types of measures is considered necessary in the context of a widespread covid-19 outbreak. Special requirements also include requirements relating to seizure and disinfection of things and the closing and disinfecting of premises.
- 382 The following measures are not regarded as special restrictions or requirements: a requirement to keep a child away from school; a restriction on the holding of an event; or a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains.
- 383 Paragraphs 2 and 3 restrict how the power under paragraph 1 can be used. Paragraph 2 puts in place restrictions to ensure that any restrictions or requirements authorised by the regulations will be used proportionately. In particular, paragraph 2(3) prohibits regulations from enabling

the imposition of a special restriction or requirement unless certain conditions are met. Those conditions are that there is a serious and imminent threat to public health when the regulations are made or the decision to impose the restrictions or requirements is expressed in the regulations to be contingent on there being such a threat at the time the decision to impose them is made. Paragraph 3 makes clear that the regulations could not be used to make a person undergo medical treatment (including vaccination).

384 Paragraph 5 makes further provision about the regulations. For example, it provides that the regulations can create offences and can provide for appeals and reviews of decisions taken under the regulations. It also sets out the maximum penalties which can be imposed if offences are created. Paragraphs 5(5) and 5(6) also set out particular requirements in relation to appeals and reviews of a decision which imposes a special restriction or requirement.

385 Paragraph 6 provides that the procedure for regulations made under paragraph 1 will be the affirmative procedure, unless Scottish Ministers consider that the regulations need to be made urgently. If they do, an emergency procedure applies. This is considered necessary to ensure that Scottish Ministers can make regulations quickly in response to a covid-19 outbreak.

386 The territorial extent and application of the clause and the schedule is Scotland.

## **Clause 48 and Schedule 19: Power to suspend port operations**

387 These provisions give a power to the Secretary of State to give a direction to a person responsible for the management of an airport, seaport or an international rail terminal in the UK requiring them to suspend such operations that are specified in the direction.

388 In order to give such a direction, the Secretary of State must consider that there is real and significant risk that, due to the incidence or transmission of covid-19, there are, or will be, insufficient Border Force officers available to maintain adequate border security. The Secretary of State can only use this power if they have already taken all reasonably practicable measures to mitigate the risk.

389 There is a high threshold for the use of the power. This clause establishes the conditions which must exist before the Secretary of State may give a direction, namely that the Secretary of State must consider that there is real and significant risk that, due to the incidence or transmission of coronavirus disease, there is, or will be, insufficient Border Force resources available to maintain sufficient border control functions and that, before making a direction, the Secretary of State must have taken all reasonably practicable measures to mitigate the risk. This clause sets out the details which must be specified in any direction, namely the operator, the specific port operations which are to be suspended, the time at which the direction comes into effect and the duration of the suspension period and any incidental arrangements.

390 The initial suspension period may last for no longer than six hours. This can be extended by notice for 6 hours in the first instance, and for further periods of up to 12 hours each after this.

391 Where a suspension direction has been given, the Secretary of State may also give written direction to any person (specified in the direction) to make arrangements or take steps, which the Secretary of State considers appropriate in consequence of the primary direction. This could include requiring a person to take action to secure the safe arrival of a vessel, aircraft or train at an alternative port.

392 The Secretary of State must notify the Devolved Administrations when a suspension direction or notice is issued.

393 The schedule establishes a summary-only offence of failing to comply with a direction under this schedule without reasonable excuse. There are different maximum sentences established in each

jurisdiction.

394 The provisions of the schedule bind the Crown.

395 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland.

## **Clause 49 and Schedule 20: Powers relating to potentially infectious persons**

396 The clause and Schedule confer certain powers on public health officers, constables and immigration officers for the purposes of protecting the public from the health risks associated with the covid-19.

397 The provisions will apply in relation to England, Scotland, Wales and Northern Ireland, respectively, where the relevant authority for that territory is of the view that there is a serious and imminent threat to public health due to the incidence or transmission of the covid-19, and that the exercise of the powers will be an effective means of delaying or preventing significant further transmission of the virus; and has made a declaration to that effect. The relevant authorities are: for England, the Secretary of State; for Scotland, the Scottish Ministers; for Wales, the Welsh Ministers; and for Northern Ireland, the Department of Health.

398 The provisions confer powers on public health officers to require persons to go to suitable place to undergo screening and assessment where they reasonably suspect the person has or may have covid-19, or has been in an infected area within the 14 days preceding that time. Such persons are referred to in the provisions as “potentially infectious” persons. There are additional powers for public health officers to impose other appropriate restrictions and requirements upon potentially infectious persons where they are necessary and proportionate, such as a requirement to remain in isolation, restrictions on travel, activities and contact with other people. The provisions also confer powers on public health officers and constables to enforce the restrictions and requirements imposed under the schedule.

399 The clause and schedule also confer certain powers on immigration officers and constables in relation to persons whom they have reasonable grounds to suspect as being potentially infectious. An immigration officer or a constable may direct such a person to go to a place suitable for screening and assessment, or may remove a person to such a place to undergo screening and assessment, or to keep that person there for a time-limited period to be handed over to a public health officer for the same purpose. In exercising their powers under these provisions, immigration officers and constables will be obliged to consult a public health officer, so far as practicable to do so.

400 The Bill will revoke The Health Protection (Coronavirus) Regulations 2020.

401 The territorial extent of these provisions is England and Wales, Scotland and Northern Ireland. The application of Part 1 of the schedule is England and Wales, Scotland and Northern Ireland. The application of Part 2 of the schedule is England. The application of Part 3 of the schedule is Scotland. The application of Part 4 of the schedule is Wales. The application of Part 5 of the schedule is Northern Ireland.

## **Clause 50 and Schedule 21: Powers to issue directions relating to events, gatherings and premises**

402 The clause and Schedule enables the Secretary of State, Scottish Ministers, Welsh Ministers and Executive Office in Northern Ireland to restrict or prohibit gatherings or events and to close and restrict access to premises during a public health response period (which is determined by Ministers based on criteria defined in the Schedule).

- 403 The Secretary of State, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland should respectively consult: the Chief Medical Officer or a Deputy Chief Medical Officer; the Chief Medical Officer of the Scottish Administration; the Chief Medical Officer or one of the Deputy Chief Medical Officers for Wales; and the Chief Medical Officer or any of the Deputy Chief Medical Officers of the Department of Health in Northern Ireland before making a declaration that starts a public health response period (or revoking any such declaration).
- 404 Part 2 of the Schedule makes provision for England. The rest of the Schedule makes similar provisions for Scotland, Wales and Northern Ireland.
- 405 The power to restrict or prohibit gatherings or events may be directed towards the owner or occupier of the premises or anyone involved in holding such an event or gathering. The power to close or restrict access to premises may be directed towards the owner or occupier of the premises, or anyone involved in managing access to and within the premises.
- 406 The Schedule provides that the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland should respectively have regard to: the advice of the Chief Medical Officer or one of the Deputy Chief Medical Officers; the Chief Medical Officer of the Scottish Administration; the Chief Medical Officer or one of the Deputy Chief Medical Officers for Wales; and the Chief Medical Officer or any of the Deputy Chief Medical Officers of the Department of Health in Northern Ireland, before issuing a direction under this power. The Executive Office in Northern Ireland is also required to consult with one of the specified persons before issuing a direction.
- 407 The territorial extent and application of the clause and part 1 of the Schedule is the UK, the territorial extent of part 2 of the Schedule is England and Wales and applies in England, the territorial extent and application of part 3 of the Schedule is Scotland, the territorial extent of part 4 of the Schedule is England and Wales and applies in Wales and the territorial extent and application of part 5 of the Schedule is Northern Ireland.

## **Clause 51 and Schedule 22 Expansion of availability of live links in criminal proceedings**

- 408 The Schedule amends the Criminal Justice Act 2003 (“CJA 2003”) in order to extend the circumstances in which a criminal court can use audio and live links during hearings.
- 409 It expands the courts’ powers to use technology across a wider range of hearings, and participants. The court may direct that a person (but not a jury member) take part in eligible criminal proceedings through the use of a live audio link or a live video link. The court must be satisfied that a live link direction is in the interests of justice before making one. By way of an additional safeguard, it also provides for the parties, and the relevant youth offending team in youth cases, to be given the opportunity to make representations to the court before the court determines whether to make a live link direction.
- 410 The amendments made by paragraph 2(5) of the schedule provide that the court may direct the use of live link to multiple, or all persons participating in particular proceedings, and may also give a direction which only applies to certain aspects of the proceedings, for example the giving of evidence. A person directed to give evidence in proceedings by live link must only give evidence in accordance with the direction. Persons outside of England and Wales may participate through a live link if the court so directs. These powers are subject to the restrictions set out in new Schedule 3A to the CJA 2003.
- 411 The court may rescind a live link direction at any time, but only if this is in the interests of justice, and only after having considered representations from the parties or relevant youth



offending team in youth cases.

- 412 The schedule amends section 53 of the CJA 2003 (magistrates' courts permitted to sit at other locations) to accommodate any participation through live link, rather than just the giving of evidence.
- 413 Participation in eligible criminal proceedings through a live audio or video link as directed by the court will be treated as complying with any requirement to attend or appear before court, or to surrender to the custody of the court, and such persons will be treated as present in court for the purposes of the proceedings.
- 414 The schedule also amends section 54 of the CJA 2003 (warning to jury) in accordance with the expanded power to use live links and section 55 of the CJA 2003 (rules of court) in accordance with the expanded power to use live links, and to enable the Criminal Procedure Rules to provide for contested as well as uncontested live link applications to be determined without a hearing. Paragraph 8 of the schedule creates a new Schedule 3A to the CJA 2003, which introduces additional prohibitions and limitations on use of live links in certain circumstances.
- 415 Part 2 of the schedule amends the Criminal Appeal Act 1968 in accordance with the expanded powers to use live links under section 51 of the CJA 2003 in relation to appeals to the criminal division of the Court of Appeal. It also provides for a single judge of the Court of Appeal and the Registrar of Criminal Appeals to be able to exercise these powers.
- 416 The territorial extent and application of this clause and schedule is England and Wales.

## **Clause 52 and Schedule 23: Expansion of availability of live links in other criminal hearings**

- 417 Part 1 of the schedule expands the use of live links in Part 3A of the Crime and Disorder Act 1998 ("CDA 1998") beyond the attendance of the accused at certain preliminary, sentencing and enforcement hearings to all participants in preliminary, sentencing and enforcement hearings.
- 418 Paragraph 3 of the schedule amends section 57B of the CDA 1998 to expand the availability of live links at preliminary hearings in a magistrates' court or the Crown Court to include live video and audio links and all persons participating in the hearing, not solely live video links for the accused when in custody. Safeguards are introduced such that the court in making any live link direction in a preliminary hearing must be satisfied that it is in the interests of justice to do so. The parties or the relevant youth offending team must also have been given the opportunity to make representations.
- 419 The schedule makes similar provision in relation to live links in preliminary hearings as paragraph 2(5) of Schedule 22 does in relation to live links in 'eligible criminal proceedings'. The amendments sets out the factors that the court must consider when deciding whether to give, vary or rescind a live link direction.
- 420 The schedule allows for the expansion of the use of live links in sentencing hearings and enforcement hearings in a similar way to preliminary hearings.
- 421 A court may not impose imprisonment or detention in default of payment of a sum at an enforcement hearing where proceedings are being conducted with participation via live audio link (other than for the purpose of giving evidence).
- 422 Paragraph 6 inserts new section 57G of the CDA 1998 (requirement to attend court, perjury) which makes identical provision in relation to hearings conducted in accordance with a direction under section 57B, 57E or 57F as paragraph 4 of Schedule 22 does in relation to "eligible criminal proceedings" conducted in accordance with a live link direction.



423 The schedule creates a new Schedule 3A to the CDA 1998, which introduces additional prohibitions and limitations on use of live links.

424 Part 2 of the schedule makes amendments to the Police and Criminal Evidence Act 1984 in accordance with the expanded powers to use live links under section 57B of the CDA 1998. It also amends section 22 of the Prosecution of Offences Act 1985 to reflect the fact that a jury no longer determines whether a defendant is unfit to plead. It omits section 32 of the Criminal Justice Act 1988 (evidence given by persons abroad through television links) as it is no longer required.

425 The territorial extent and application of this clause and schedule is England and Wales.

## **Clause 53 and Schedule 24: Public participation in proceedings conducted by video or audio**

426 The Schedule inserts new sections 85A, 85B, 85C and 85D to the Courts Act 2003, making provisions for the live streaming of wholly audio or video hearings.

427 The new sections of the Act provide that proceedings which are conducted as wholly video proceedings or wholly audio proceedings (a ‘fully virtual’ hearing) can be broadcast so members of the public can observe proceedings or to be made for record-keeping purposes (section 85A). It is an offence to make, or attempt to make, an unauthorised recording or transmission which relates to the broadcasting of such proceedings. The maximum penalty for being found guilty of such an offence is a fine not exceeding level 3 on the standard scale (currently £1000) (section 85B). It is also an offence to make, or attempt to make an unauthorised recording or transmission of an image or sound which is being transmitted through a live audio or video link including in relation to a person’s participation in court proceedings through a live link. This includes a recording or transmission of the person’s own participation. The maximum penalty for being found guilty of such an offence is a fine not exceeding level 3 on the standard scale (currently £1000) (section 85C).

428 The Schedule also inserts new sections 29A, 29B, 29C and 29D to the Tribunals Courts and Enforcement Act 2007, making provisions for the live streaming of wholly audio or wholly video hearings. New sections 29A to 29D to that Act make identical provision as that in s85A to 85D of the Courts Act 2003 for wholly video or wholly audio proceedings in First-tier Tribunals and Upper Tribunals.

429 The provisions extend and apply to England and Wales only in relation to court proceedings; but to the United Kingdom in so far as proceedings in the First-tier Tribunal and Upper Tribunal are concerned. Paragraph 2 of Schedule 24 amends the Tribunals, Courts and Enforcement Act 2007 and so extends and applies to the United Kingdom.

## **Clause 54 and Schedule 25: Live links in magistrates’ court appeals against requirements or restrictions imposed on a potentially infectious person**

430 The Schedule inserts sections 57ZA to 57ZF into the Magistrates’ Courts Act 1980.

431 It provides that appeals against decisions by the Secretary of State or an authorised public health official to impose restrictions under clause 49, be heard by telephone or video in civil proceedings in the Magistrates Court, subject to the court’s power to direct different arrangement be made. The court may, if it is in the interests of justice, direct that one or more persons should not participate in the appeal by video; or that they should participate by telephone. Such a direction may be made by a single justice or authorised court officer (as defined in subsection (5)).

432 Sections 57ZD and 57ZE create new criminal offences in relation to (i) the unauthorised recording or transmission of a broadcast of a live video or audio hearing and (ii) the unauthorised recording and transmission in relation to a person's participation in proceedings through live video or audio links. These sections create the same criminal offences and make identical provisions to those in clause 53 and Schedule 24.

433 These provisions extend and apply to England and Wales.

### **Clause 55 and Schedule 26: Use of live links in legal proceedings: Northern Ireland**

434 The clause and Schedule ensures all courts and devolved tribunals in Northern Ireland can require some or all of the participants in a case to take part in proceedings via audio or video live link. The Schedule also makes provisions for the live streaming of wholly audio or wholly video hearings by courts and devolved tribunals in Northern Ireland. Provision is also made for offences of recording or transmission in relation to broadcasts and in relation to participation through live link. Specific provision is also made for public health applications via live links to the Magistrates' Courts.

435 The territorial extent and application of this clause and schedule is Northern Ireland.

### **Clause 56 and Schedule 27: Powers in relation to transportation, storage and disposal of dead bodies etc.**

436 Part 1 ensures that local authorities and national authorities have the powers to require persons (and in the case of national authorities, to require local authorities) to provide information to enable local and national authorities to ascertain capacity in areas to effectively manage the transportation, storage and disposal of dead bodies and other human remains. This may include information from private companies (such as private funeral homes or crematoria) on their capacity and operational status. They may direct that this information is shared with other actors who require this information (for example neighbouring local authorities who are searching for spare capacity in the region).

437 Paragraph 1 outlines that information shared under these information-sharing powers must be used only for the purpose of ascertaining capacity to manage the transportation, storage and disposal of dead bodies and other human remains.

438 This information sharing provision is needed to inform decisions to designate a local authority so that directions can be made to enable changes in the death management system where there is or is likely to be insufficient capacity in that area as a result of excess deaths from Covid-19. It will give visibility of the system and help to prevent the system from becoming overwhelmed. The death management system is highly fragmented, involving many different organisations in the public and private sector as well as faith and other groups.

439 Restrictions are placed on use and disclosure of the information provided and offences are created in relation to failing to comply with a requirement to provide information, using or disclosing information in contravention of provisions, or knowingly or recklessly providing false information. These provisions are there to ensure compliance with the information sharing provisions.

440 Part 2 allows national authorities to designate a local authority area where, as a result of coronavirus disease, there is likely to be insufficient capacity within that area to transport, store or dispose of dead bodies or other human remains. Once an area is designated a local authority can give directions to companies or corporations. In addition a national authority can give the same directions where a regional or national response is more appropriate. The trigger point of

this will be a ministerial decision in the relevant nation. The flexibility to direct locally, regionally or nationally provides that powers are only used where necessary, but also used most effectively and in a proportionate way.

- 441 The directions that can be given are broadly defined, as flexibility as to what may be required to deal with the situation is necessary. However it is expected the following directions may be required: direction to a private company to, for example, extend crematoria operating hours or use their vehicle to transport deceased bodies. The power to direct also includes a power to make directions in relation to a body within an area to be moved to another area.
- 442 Personal choice for body disposal will be respected as far as possible, however, only where there is no suitable alternative (for example if safe storage limits were likely to be breached and out of area alternatives were not available), the power to direct may be used to direct whether a body is buried or cremated. In this respect it has been necessary to disapply section 46(3) of the Public Health (Control of Disease) Act 1984 which prohibits cremation against the wishes of the deceased. Similar provisions are disapplied in Northern Ireland. Scotland's legislation only requires due regard to be had to the deceased's wishes so no equivalent dis-application is needed.
- 443 There is a step in power for the appropriate national authority to make a direction in place of a local authority where the local authority has failed to exercise its functions properly.
- 444 To the extent that any local authority directions conflict with a national authority direction, the national authority direction prevails.
- 445 Part 3 confers powers on national authorities to give directions to local authorities as to the exercise of their functions where they have failed to exercise functions in relation to dead bodies generally. This allows for central government to intervene if the local authority is not effectively managing the excess deaths in their area.
- 446 The Schedule comes into effect on Royal Assent, meaning the information powers are available immediately; however, the Direction making powers in Part 2 only are exercisable on designation by a national authority.
- 447 A devolved minister can activate the powers in their country without needing the approval of the other nations.
- 448 The territorial extent and application of this provision is England, Wales, Scotland and Northern Ireland. The powers will be activated within each nation by their respective Ministers if required. The ministers who can activate the powers in the provision are set out in paragraph 14.

## **Clause 57: Postponement of elections due to be held on 7 May 2020**

- 449 This clause postpones a series of scheduled elections due to take place on 7 May 2020 by a year - until "the ordinary day of election" in 2021, which is Thursday 6 May. The polls covered by this clause are:
- a. Polls for the election of councillors for any local government area in England;
  - b. The poll for the election of the Mayor of London and London Assembly;
  - c. Polls for the election of mayors of local or combined authorities; and
  - d. Polls for the election of Police and Crime Commissioners.
- 450 This clause extends the term of office for local government councillors who were due to retire after the scheduled elections in 2020 until after the postponed election in 2021. This clause then reduces the term of office for councillors returned at the postponed election in 2021 to three years, with a retirement date after the election in 2024. This is to ensure that their term aligns with the local government existing election cycle of electing by thirds and for two tier

authorities. Maintaining the previous electoral rhythm provides for an election in each year in many two-tier areas, with clarity in each year over the proportion of local government being elected.

451 This clause provides for an exclusion from provisions in the Local Government Act 1972 that determine how councillors are selected for retirement (for example, those who have been councillors for the longest period since re-election). This subsection states that where a councillor has had their term extended until after the postponed election in 2021, these provisions should not apply.

452 This clause ensures that the subsequent term for 7 May 2020 elections for the Mayor of London/London Assembly, elected mayors of local authorities, elected mayors of combined authorities and Police and Crime Commissioners will be three years. This is to maintain the existing elections cycle, as above, and to ensure that the future cycle does not conflict with borough elections in London.

453 The territorial extent and application of this clause is England and Wales.

## **Clause 58: Power to postpone certain other elections and referendums**

454 This clause provides a power for the Secretary of State or Minister for the Cabinet Office to postpone, by regulations, other “relevant” elections and referendums (not covered in clause 57) that cannot currently be anticipated. Such elections would include, for example, by-elections which are required by statute to be held within a specified period after the triggering event.

455 The Prime Minister has taken the decision that the scheduled elections due to take place on 7 May 2020 should be postponed by a year. It follows that it may be desirable and necessary to postpone other elections (such as by-elections and local referendums) that arise during the Covid-19 outbreak. This clause provides the necessary power to enable this.

456 This clause sets out that the Secretary of State or Minister for the Cabinet Office may make regulations to postpone the date of a “relevant” election or referendum, so long as the election or referendum is held on the date or within the period specified in the regulations (and is not later than 6 May 2021). Where appropriate, this power can be exercised more than once. This clause also confers power by regulations to delay the holding of any relevant election or referendum that falls within a period specified in the regulations until a later date or period specified in the regulations (which again cannot be or end later than 6 May 2021).

457 This clause states that a “relevant” election or referendum is one for which the poll falls in the period between the day on which this Act is passed and ending with 5 May 2021 and which is within one of the categories of election or referendum set out in the clause. These categories include elections to fill a “casual vacancy” (by-elections) in local government in either England or Northern Ireland; the Greater London Assembly; in the office of the London Mayor or in the office of an elected mayor; or in the office of a police and crime commission in England. They also include referendums under section 9MC of the Local Government Act 2000 (referendums following petition); under section 52ZN of the Local Government Finance Act 1992 (in relation to council tax); and referendums under Schedule 4B to the Town and Country Planning Act 1990 (on neighbourhood development plans).

458 This clause makes clear that the power can be applied to specified descriptions of elections or referendums. So, for example, regulations under subsection made under this clause could make provision by reference to a group of elections in a specific area, of a specific nature, or falling within a specific time period.

459 This clause allows regulations under this clause to amend legislation e.g. where a date set out in

primary or secondary legislation needs to be amended

460 This clause provides for regulations under the power to be subject to the negative procedure. This is to enable the elections set out above to be postponed in situations where either Parliament is not sitting or is unavailable.

461 The territorial extent and application of this clause is England and Wales and Northern Ireland.

## **Clause 59: Power to postpone a recall petition under the Recall of MPs Act 2015**

462 A recall procedure for Members of Parliament is set out in the Recall of MPs Act 2015. MPs can be recalled in certain circumstances, for example, if they are convicted in the UK of an offence, or if they are suspended from the House of Commons for a specified period. The recall procedure includes a petition being made available for signing for 6 weeks for registered electors to sign. To be successful, 10% of eligible registered voters need to sign the petition. If the 10% threshold is reached, the Speaker of the House of Commons is notified, the MP's seat becomes vacant and a by-election is required.

463 This clause does two things. First, it relaxes the duty on the petition officer under section 7(4) of the 2015 Act in relation to the designation of the first day of the 6-week petition period. Instead of being required to designate the 10th working day after the day on which the officer receives a Speaker's notice that one of the recall conditions has been met, or the nearest reasonably practicable working day after that day, the petition officer is required to designate a working day falling no later than 6 May 2021 (or, if that is not reasonably practicable, the nearest reasonably practicable working day after that day). This therefore relaxes the timetable for cases where a Speaker's notice has been given but the beginning of the 6-week petition period has not yet been designated.

464 Secondly, this clause then deals with the case of a recall petition where the petition officer has designated a day for the beginning of the petition period, and that day falls between Royal Assent of this Act and 5 May 2021. In such a case, the Secretary of State or the Minister for the Cabinet Office may by regulations provide that the designated day is postponed until a date specified in the regulations (falling no later than 6 May 2021).

465 This clause provides that the Secretary of State or the Minister for the Cabinet Office's power may be exercised more than once in respect of a single recall petition. This clause also provides that a statutory instrument containing such regulations is subject to negative procedure in Parliament.

466 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland.

## **Clause 60: Power to make supplementary etc provision**

467 This clause provides the Secretary of State or the Minister for the Cabinet Office with the power to make, by regulations, supplementary provision in connection with the postponement of polls under either clause 57 or 58. Such regulations would be subject to the negative procedure.

468 Regulations made under this clause could deal with a variety of matters, including, for example:

- a. the handling of nominations of candidates
- b. the handling of postal ballots
- c. the terms of office of incumbent office holders, which might need to be extended in the event of an election being postponed
- d. the handling of expenses of persons other than local authorities (e.g. candidate expenses)



- e. compensation of local authorities or candidates incurring additional expenditure as a result of the Act.

469 Regulations made under this clause will be able to make retrospective provision, to deal with situations where an election timetable has automatically been triggered. This would, for example, enable provision to be made disapplying (after the event) certain statutory steps that should have been taken in the run-up to the original poll date.

470 This clause allows regulations under this clause to amend, repeal or revoke statutory provisions (including primary legislation).

471 This clause provides for regulations under the power to be subject to the negative procedure.

472 The territorial extent and application of this clause is England and Wales and Northern Ireland.

## **Clause 61: Northern Ireland: timing of the canvass and Assembly by-elections**

473 This clause amends the timing of the canvass in Northern Ireland, moving it from 2020 to 2021.

474 The electoral register lists the names and addresses of everyone who is registered to vote in public elections. The register is used for electoral purposes, such as making sure only eligible people can vote, and other limited purposes (such as calling people for jury service). The canvass is one method of gathering information on potential additions to, changes to, and deletions from, the register.

475 In Northern Ireland the register is maintained through a process of continuous registration and cross matching of data with the addition of a canvass which must take place at least every ten years from 2010. It was last conducted in 2013. There are 1.3 million individuals on the 2019 register and the canvass exercise is hugely resource intensive, requiring postal delivery of significant amounts of printed material and large numbers of processing staff. Covid-19 presents significant risks to canvass being completed successfully in Northern Ireland in 2020 and as a result of this clause, the canvass will be moved from 2020 to 2021.

476 With the exception of delaying the 2020 canvass by a year, the clause retains the timing of the previously established schedule of statutory canvass years, specifying 2030 and every tenth year thereafter as years on which canvass must be conducted.

477 The clause also provides that if, at any time during the relevant period, the Chief Electoral Officer for Northern Ireland is required to set a date for a by-election for the Northern Ireland Assembly, the Chief Electoral Officer must consult the Secretary of State before setting the date. For this purpose the “relevant period” is the period beginning with the day on which this Act is passed and ending with 1 February 2021.

478 The territorial extent and application of this clause is Northern Ireland.

## **Clause 62: Postponement of National Assembly for Wales elections for constituency vacancies**

479 This clause provides that where, before 6 May 2021 an election under section 10 of the Government of Wales Act 2006 to fill a vacant constituency seat would otherwise be required to be held the Presiding Officer of the National Assembly for Wales may fix a later date for that poll. This power may be exercised more than once but before the Presiding Officer exercises it, the Presiding Officer must consult with the Welsh Ministers and the Electoral Commission.

480 The territorial extent of this clause is England and Wales and the application is to Wales only.



## **Clause 63: Power to postpone local authority elections in Wales for casual vacancies**

481 This clause will enable any casual vacancies which may arise in local authorities in Wales (also known as by-elections) where the date of the poll for the election would otherwise fall between the period beginning with the day on which this Act is passed and ending with 5 May 2021, to be postponed by regulations made by the Welsh Ministers.

482 The territorial extent of this clause is England and Wales and the application is to Wales only.

## **Clause 64: Power to make supplementary etc provision**

483 Regulations under this clause will enable the Welsh Ministers to make by regulations consequential, supplementary, incidental, transitional or saving provision in connection with clauses 62 and 63. The provision which may be made includes provision about electoral activity prior to the postponement of a poll, the conduct of elections, the manner of voting in elections that have been postponed, the terms of office of incumbent officer holders, nominations of candidates, expenses incurred in relation to the election by those other than local authorities, and compensation for local authorities or candidates as a result of the provisions within the Act.

484 The territorial extent of this clause is England and Wales and the application is to Wales only.

## **Clause 65: Postponement of Scottish Parliament elections for constituency vacancies**

485 This clause enables the Presiding Officer (“PO”) of the Scottish Parliament to postpone constituency by-elections. The power enables the PO to fix a later date for the poll where a date has been fixed or, where no date has been fixed, to fix a date that is outside the period required by section 9(3) of the Scotland Act 1998. The PO must fix a new date as soon as reasonably practicable. This power can be exercised more than once and this clause specifies who the PO must consult before exercising the power. The power cannot be exercised to fix a by-election after 6 May 2021

486 The territorial extent and application of this clause is Scotland.

## **Clause 66: Postponement of local authority elections for casual vacancies**

487 This clause enables the relevant Returning Officer (“RO”) to postpone a by-election to fill a councillor vacancy in a local authority. The power enables the RO to fix a later date for the poll where a date has been fixed or, where no date has been fixed, to fix a date which is outside the period required by section 37(1) of the Local Government (Scotland) Act 1973. The RO must fix a new date as soon as reasonably practicable. This power can be exercised more than once and this clause specifies who the RO must consult before exercising the power. The power cannot be exercised to fix a by-election after 6 May 2021.

488 The territorial extent and application of this clause is Scotland.

## **Clause 67: Signatures of Treasury Commissioners**

489 This clause modifies section 1 of the Treasury Instruments (Signature) Act 1849 so that, during a covid-19 outbreak, 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. “Minister of the Crown” for these purposes means the holder of an office in Her Majesty’s Government in the United Kingdom.

490 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland.

## **Clause 68: Exercise of section 143 of the Social Security Administration Act 1992**

491 This clause modifies the operation of section 143 of the Act by temporarily altering the procedure for making orders under it.

492 The clause applies to an order made under section 143 of the Social Security

493 Administration Act 1992 made on or after the day the bill is introduced but within 2 years of the Act having passed.

494 But it only applies to an order if that order doesn't increase contribution rates above the level of those rates on 6 April 2020.

495 Subsection (2) modifies section 143(1) of that Act in order that the level of the National Insurance Fund, and the sums expected to be paid from it, does not have to be taken into account in relation to orders made under this section for a temporary period.

496 Subsection (3) provides that the limit on increases to the rates of NICs of 0.25% in section 143(4) of the Act does not apply to orders made under the Act. This will enable rates to return to their 6 April 2020 baseline once any reduction is no longer needed.

497 Subsection (4) provides that Section 144 of the Act does not apply to an order made under section 143 of the Act. This removes the requirement to lay a report by the Government Actuary when changing rates, and provides greater flexibility to determine the period for which rates are to apply.

498 Subsection (5) provides that the affirmative procedure does not apply to orders made under section 143 of the Act. The negative procedure will apply.

499 The territorial extent and application of this clause is England and Wales and Scotland.

## **Clause 69: Exercise of section 145 of the Social Security Administration Act 1992**

500 This clause modifies the operation of section 145 of the Social Security Administration Act by temporarily altering the procedure for making orders under it.

501 Subsection (1) provides that the clause only applies to an order made between introduction of the bill and 2 years after the passing of the Act, if that order does not increase rates above the 6 April 2020 baseline.

502 Subsection (2) provides that the limit on increases to the rates of NICs of 0.25% in section 145(3) of the Act does not apply to orders made under the Act (but increases above the 6 April 2020 baseline are not allowed).

503 Subsection (3) provides subsections (2) to (5) of section 147 of the Act does not apply to an order made under section 145 of the Act. This will allow greater flexibility on the application of rate changes, and removes the requirement to lay a report by the Government Actuary.

504 Subsection (4) provides that the affirmative procedure does not apply to orders made under section 145 of the Act. The negative procedure will apply.

505 The territorial extent and application of this clause is England and Wales and Scotland.

## **Clause 70: Exercise of section 5 of the National Insurance Contributions Act 2014**

506 This clause modifies the operation of section 5 of the National Insurance Act 2014 by temporarily altering the Parliamentary procedure for making regulations under it.

507 Subsection (1) provides for the modifications to apply to regulations made on or after the day the bill is introduced and before the end of the period of two years from the date the act is passed.

508 Subsection (2) provides for the negative Parliamentary procedure will apply to regulations made under section 5 during that period instead of the affirmative procedures specified in that section.

509 Subsection (3) provides that subsection (2) does not apply to regulations which decrease the value of the Employment Allowance below £4,000 (so the affirmative Parliamentary procedure will continue to apply).

510 The territorial extent and application of this clause is England and Wales, Scotland and Northern Ireland

## **Part 2: Final Provisions**

### **Clause 71: Interpretation**

511 This provision is self-explanatory.

### **Clause 72: Financial provision**

512 This clause is necessary to enable expenditure to be incurred properly under and by virtue of the Bill, and for purposes related to the covid-19 outbreak, in accordance with established conventions.

513 Subsection (1) provides that there is to be paid out of money provided by Parliament expenditure falling into three categories-

- a. expenditure by a Minister of the Crown, government department or other public authority (including the devolved administrations) which is incurred by virtue of the bill;
- b. any increase in sums payable under other legislation which it attributable to the bill' and
- c. any other expenditure which a Minister of the Crown, government department or other public authority (including the devolved administrations) in connection with making payments or giving financial assistance (directly or indirectly) to a person (including an individual or a business) as a result of coronavirus or coronavirus disease.

514 Subsection (2) provides that the above references to expenditure include expenditure incurred whether before or after the passage of the bill; and defines "financial assistance" for the above purposes to include grants, loans, guarantees, indemnities, and any other kind of financial assistance, whether actual or contingent.

### **Clause 73: Commencement**

515 Subsection (1) sets out the provisions of the Bill - other than those listed in subsection (2) will commence on Royal Assent.

516 Subsection (2) sets out the provisions which will instead come into force using regulations made by a Minister of the UK Government. The Minister may do so in relation to devolved matters only with the consent of the relevant Devolved Administration. The devolved administrations can exercise the power in so far as the provision being commenced is within the legislative competence of the relevant devolved legislature.

517 Subsection (10) allows these provisions to be commenced on different days in different areas. The course of the outbreak is unpredictable and the response must be accordingly flexible.

518 Subsection (11) is a power to allow Ministers to make transitional provisions in relation to provisions in the Bill coming into force. Subsections (12), (13), (14) and (15) relate to how this power can be used in respect of devolved areas.

## **Clause 74: Power to suspend and revive provisions of this Act**

519 This clause allows measures in the Bill to be suspended if no longer needed. It also allows for measures to be revived if needed again. The method of achieving suspension and revival will be by way of a regulation made by a Minister. Subsection 2 provides that a “suspension” of a provision should be treated in the same way as a repeal for the purposes of applying the general savings provisions that apply to repeals contained in section 16(1) of the Interpretation Act 1978. Suspension and revival can be done more than once (subsection 4). To provide for flexibility subsection 5 allows Ministers to make the regulations for different purposes, on different days in different areas; and to make technical transitional, transitory and savings provisions in regulations made under the clause.

520 There are some provisions in the Bill where it would not be appropriate to suspend/revive and so subsection 6 sets out the provisions that the power to suspend/revive will not apply to. As with other clauses within in the Final Provision section of the Bill, the clause includes provisions which deal with how the powers should operate in respect of devolved matters. In particular, consent of the relevant devolved administration is required where a Minister of the Crown exercises the power in relation to devolved matters. The devolved administrations are also given the same powers in so far as the provision being suspended or revived is within the legislative competence of the relevant devolved legislature.

## **Clause 75: Expiry**

521 This Bill has been introduced to support public bodies, and wider society, in responding to the covid-19 outbreak and so is time limited. This clause provides that the Act expires at the end of the period of 2 years beginning with the day on which it is passed. Two qualifications to that basic principle are set out in Subsection 2 (which lists the provisions that will not expire) and clause 76 which allows for the period to be extended (or shortened) in relation to all other provisions).

522 Subsection 3 allows Ministers to make technical transitional, transitory and savings provisions in regulations made under this clause. Subsection 4 specifies when consent of the relevant devolved administration is required in respect of this regulation-making power. The clause also provides the same powers to the relevant devolved administration in so far as the provision relates to an area within the relevant devolved legislature’s legislative competence.

## **Clause 76: Power to alter expiry date**

523 The Bill provisions should apply when they are needed. Therefore, subsections 1 and 2 enable Ministers to extend or terminate a particular provision through regulations. Subsection 3 stipulates that an extension may not be for more than six months at a time. To provide flexibility these regulations can be made for different purposes, on different days in different areas. Subsection 5 enables a Minister of the UK Government to exercise these powers. Consent of the relevant devolved administration will be required in relation to devolved matters. The clause also provides powers to the devolved administrations in so far as the relevant provision for which the expiry date is being altered is within the legislative competence of the devolved legislature.

524 The draft affirmative procedure must be followed when the power is being used to sunset a

provision early, where the power is being used to delay the sunset of a provisions either the made affirmative or the draft affirmative procedure can be used (this is set out in clauses 79(Procedure for certain regulations made by a Minister of the Crown – 82 (Procedure for certain orders made by a Northern Ireland Department)).

## **Clause 77: Power to amend Act in consequence of amendments to subordinate legislation**

525 Many of the provisions in this Bill operate by modifying the effect of pieces of secondary legislation. If underlying secondary legislation that the Bill modifies changes during the life of the Bill the modifications would no longer work properly. This clause therefore allows for the update of the modifications contained in the Bill in the event that the underlying legislation is changed. This ensure the measures in the Bill will still have the intended effect.

526 Subsections 1 and 2 set out that parts of the Bill that modify secondary legislation may be updated in consequence of other amendments to secondary legislation.

527 Regulations may be made by a UK Government Minister. Consent of the relevant devolved administration will be required in relation to devolved matters. The clause also provides the same power to the devolved administrations so far as amendments would be within the legislative competence of the relevant devolved legislature.

528 A choice of made affirmative or draft affirmative procedure can be used to make regulations under this power (this is set out in clauses 79 (Procedure for certain regulations made by a Minister of the Crown – 82 (Procedure for certain orders made by a Northern Ireland Department)).

## **Clause 78: Power to make consequential modifications**

529 This clause provides a power to make consequential modifications to other legislation so that it aligns with this Bill. The power can also be used to revoke the consequential modification regulations made under this power when the relevant provisions of the Bill which the consequential modifications relate to are sunset or suspended. Ministers may make technical transitional, transitory and savings provisions in relation to the consequential modifications made under this section.

530 The regulations may be made by a UK Government Minister though consent of the relevant devolved administration will be required if the regulations contain modifications that would be within devolved legislative competence. The clause also provides the same power to the devolved administrations in respect of consequential modifications which are within their legislative competence.

531 Where consequential modifications only modify secondary legislation regulations can be made under the negative procedure, where consequential modifications modify primary legislation either the made affirmative or draft affirmative procedures can be used (this is set out in clauses 79(Procedure for certain regulations made by a Minister of the Crown – 82 Procedure for certain orders made by a Northern Ireland Department)).

## **Clause 79: Procedure for certain regulations made by a Minister of the Crown**

532 This clause sets out how the procedures for regulations made under the powers to alter the expiry date, the power to amend the Act in consequence of amendment to secondary legislation and the power to make consequential modifications.

## **Clause 80: Procedure for certain regulations made by the Welsh Ministers**

533 This Clause mirrors the provisions made in clause 79 for regulations made by Ministers of the Crown but for equivalent procedures in the Welsh Assembly.

## **Clause 81: Procedure for certain regulations made by the Scottish Ministers**

534 This Clause mirrors the provisions made in clause 79 for regulations made by Ministers of the Crown but for equivalent procedures in the Scottish Parliament.

## **Clause 82: Procedure for certain orders made by a Northern Ireland department**

535 This Clause mirrors the provisions made in clause 79 for regulations made by Ministers of the Crown but for equivalent procedures in the Northern Ireland Assembly.

## **Clause 83: Report by Secretary of State on status of non-devolved provisions of this Act**

536 This clause sets out the procedure for the Secretary of State to report to Parliament every 8 weeks on the use of the powers in this Bill. If Parliament is not sitting on the day a report is due, then the Secretary of State can publish it (on the Department of Health and Social Care's website, for example) and lay it before Parliament on the next sitting day. Subsection 5 of the clause obliges the Secretary of State to present the report to Parliament, and if the Secretary of State does not do so then subsection 6 obliges the Secretary of State to explain why.

## **Clause 84: Parliamentary consideration of status of non-devolved provisions of this Act**

537 This clause requires a debate to be held in both houses about the status report that will be produced in accordance with clause 83 one-year after Royal Assent. This debate will need to be held if the substantive operational period of this Act which is defined in clause 82 is on-going. This means that if any of the non-devolved clauses that are due to be sunset under clause 75 are still in force after one-year the debate will go ahead.

538 This will provide both Houses the opportunity to scrutinise the matters covered in the status report including whether the Houses think that measures in the Bill have been suspended or sunset appropriately in response to changing events.

539 In the event that Parliament is not sitting for any reason at the time of the one year report the debates will have to be scheduled within 14 sitting days from Parliament returning.

## **Clause 85: Extent**

540 This clause sets out the bill provisions which extend to the legal jurisdictions of England and Wales, Scotland and Northern Ireland, the provisions which extend to the legal jurisdictions of England and Wales and Scotland only, the provisions which extend to the legal jurisdiction of England and Wales only, the provisions which extend to the legal jurisdiction of Scotland only, the provisions which extend to the legal jurisdiction of Northern Ireland and the provisions which have the same extent as the enactments they amend.

## **Clause 86: Extension to the Isle of Man**

541 This provision is self-explanatory.



## **Clause 87: Short title**

542 This provision is self-explanatory.

## **Commencement**

543 Clause 73(1) sets out that the provisions of the Bill - other than those listed in Clause 73(2) - will commence on Royal Assent. Clause 73(2) sets out the provisions which will instead commence on the day or days appointed by regulations. The clause ensures that the provisions are commenced in a way that conforms with the devolution settlements.

## **Financial Implications of the Bill**

544 Definitive financial implications of the measures put forward in the Coronavirus Bill are, by their very nature, dependent on the severity of the pandemic as well as the timing and geography of its developments.

545 As such, it is not possible to provide exact estimates of expenditure at this stage. However, Government is committed to ensuring that the provisions in this Bill are sufficiently funded to ensure our public services, people and business are equipped to manage the effects of the pandemic.

## **Parliamentary approval for financial costs or for charges imposed**

546 A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). This Bill requires a money resolution because Ministers of the Crown, government departments and other public authorities will incur significant expenditure as a result of the Bill

## **Compatibility with the European Convention on Human Rights**

547 The Secretary of State [for Health and Social Care] has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.]

548 The Government will publish a separate ECHR memorandum which explains its assessment of the compatibility of the Bill's provisions with the Convention rights.

## **Annex A - Territorial extent and application**

549 The entries in this table summarise the position for the clauses in the Bill. The entries do not necessarily represent the position for all sub-clauses and it may be that only part of a clause (as opposed to the entire clause) engages the legislative consent process in one or more of the devolved legislatures.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion engaged?
Clause 1 (Meaning of “coronavirus” and related terminology)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 2 (Emergency registration of nurses and other health and care professionals)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S, NI)
Clause 3 (Emergency arrangements concerning medical practitioners: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 4 (Emergency registration of and extension of prescribing powers for pharmaceutical chemists: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 5 (Emergency registration of social workers)	Y	Y	N	N	Y	Y	Y	Y (W)
Clause 6 (Emergency registration of social workers: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 7 (Emergency volunteering leave)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S, NI)
Clause 8 (Compensation for emergency volunteers)	Y	Y	Y	Y	N/A	N/A	N/A	Y (NI)
Clause 9 (Temporary modification of mental health and mental capacity legislation)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 10 (Indemnity for health service activity: England and Wales)	Y	Y	N	N	Y	Y	Y	Y (W)

Clause 11 (Indemnity for pandemic-related health service activity: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 12 (Indemnity for health and social care activity: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 13 (NHS Continuing Healthcare assessments: England)	Y	N	N	N	Y	Y	Y	N
Clause 14 (Local authority care and support)	Y	Y	N	N	Y	Y	Y	Y (W)
Clause 15 (Duty of local authority to assess needs: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 16 (Section 15: further provision)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 17 (Registration of deaths and still-births etc)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S, NI)
Clause 18 (Confirmatory medical certificate not required for cremations: England and Wales)	Y	Y	N	N	N	Y	Y	N
Clause 19 (Review of cause of death certificates and cremations: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 20 (Modifications of requirements regarding medical certificates for cremations: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 21 (Appointment of temporary Judicial Commissioners)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S)
Clause 22 (Time limits in relation to urgent warrants etc under Investigatory Powers Act)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S)

*These Explanatory Notes relate to the Coronavirus Bill as introduced in the House of Commons on 19 March 2020 (Bill 122)*

Clause 23 (Power to require information relating to food supply chains)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 24 (Authorities which may require information)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 25 (Restrictions on use and disclosure of information)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 26 (Enforcement of requirement to provide information)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 27 (Meaning of “food supply chain” and related expressions)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 28 (Suspension of requirement to hold inquest with jury: England and Wales)	Y	Y	N	N	N	Y	Y	N
Clause 29 (Suspension of requirement to hold inquest with jury: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 30 (Deaths in custody from natural illness: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 31 (Disapplication etc by Welsh Ministers of DBS provisions)	N	Y	N	N	N/A	N/A	N/A	Y (W)
Clause 32 (Temporary disapplication of disclosure offences: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 33 (Power to reclassify certain disclosure requests: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 34 (Vaccination and Immunisation: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)

Clause 35 (Temporary closure of educational institutions and childcare premises)	In part	In part	In part	In part	N/A	N/A	N/A	Y (W, S, NI)
Clause 36 (Temporary continuity: education, training and childcare)	In part	In part	in part	In part	N/A	N/A	N/A	Y (W, S, NI)
Clause 37 (Statutory sick pay: funding of employers' liabilities)	Y	Y	Y	N	N/A	N/A	N/A	N
Clause 38 (Statutory sick pay: power to disapply waiting period limitation)	Y	Y	Y	N	N/A	N/A	N/A	N
Clause 39 (Statutory sick pay: modification of regulation making powers)	Y	Y	Y	N	N/A	N/A	N/A	N
Clause 40 (Statutory sick pay: funding of employers' liabilities: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 41 (Statutory sick pay: power to disapply waiting period limitation: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 42 (Statutory sick pay: modification of regulation making powers: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 43 (NHS pension schemes: suspension of restrictions on return to work: England and Wales)	Y	Y	N	N	N	Y	Y	N
Clause 44 (NHS pension schemes: suspension of restrictions on return to work: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 45 (Health and social care pension schemes: suspension of restrictions on return to work: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 46 (Powers to act for the protection of public health: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)

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Clause 47 (Health Protection Regulations: Scotland)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 48 (Power to direct suspension of port operations)	Y	Y	Y	Y	N/A	N/A	N/A	N
Clause 49 (Powers relating to potentially infectious persons)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 50 (Powers to give directions relating to events, gatherings and premises)	Y	Y	Y	Y	N/A	N/A	N/A	Y (S, NI)
Clause 51 (Expansion of availability of live links in criminal proceedings)	Y	Y	N	N	N	Y	Y	N
Clause 52 (Expansion of availability of live links in other criminal hearings)	Y	Y	N	N	N	Y	Y	N
Clause 53 (Public participation in proceedings conducted by video or audio)	Y	Y	In part	In part	N/A	N/A	N/A	N
Clause 54 (Live links in magistrates' court appeals against requirements or restrictions imposed on a potentially infectious person)	Y	Y	N	N	N/A	N/A	N/A	N
Clause 55 (Use of live links in legal proceedings: Northern Ireland)	N	N	N	Y	N/A	N/A	N/A	Y (NI)
Clause 56 (Powers in relation to transport, storage and disposal of dead bodies etc)	Y	Y	Y	Y	N/A	N/A	N/A	Y (W, S, NI)
Clause 57 (Postponement of elections [and referendums] due to be held on 7 May 2020)	Y	In part	N	N	N/A	N/A	N/A	N
Clause 58 (Power to postpone certain other elections and referendums)	In part	In part	N	In part	N/A	N/A	N/A	N

*These Explanatory Notes relate to the Coronavirus Bill as introduced in the House of Commons on 19 March 2020 (Bill 122)*



Clause 59 (Power to postpone a recall petition under the Recall of MPs Act 2015)	Y	Y	Y	Y	N/A	N/A	N/A	N
Clause 60 (Power to make further supplementary etc provision)	In part	In part	N	In part	N/A	N/A	N/A	N
Clause 61 (Northern Ireland: timing of canvass and Assembly by-elections)	N	N	N	Y	N/A	N/A	N/A	N
Clause 62 (Postponement of National Assembly for Wales elections for constituency vacancies)	N	Y	N	N	N/A	N/A	N/A	Y (W)
Clause 63 (Power to postpone local authority elections in Wales for casual vacancies)	N	Y	N	N	N/A	N/A	N/A	Y (W)
Clause 64 (Power to make supplementary etc provision)	N	Y	N	N	N/A	N/A	N/A	Y (W)
Clause 65 (Postponement of Scottish Parliament elections for constituency vacancies)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 66 (Postponement of local authority elections for casual vacancies)	N	N	Y	N	N/A	N/A	N/A	Y (S)
Clause 67 (Signatures of Treasury Commissioners)	Y	Y	Y	Y	N/A	N/A	N/A	N
Clause 68 (Exercise of section 143 of Social Security Administration Act 1992)	Y	Y	Y	N	N/A	N/A	N/A	N
Clause 69 (Exercise of section 145 of Social Security Administration Act 1992)	Y	Y	Y	N	N/A	N/A	N/A	N
Clause 70 (Exercise of section 5 of National Insurance Contributions Act 2014)	Y	Y	Y	Y	N/A	N/A	N/A	N

*These Explanatory Notes relate to the Coronavirus Bill as introduced in the House of Commons on 19 March 2020 (Bill 122)*

Part 2*	Y	Y	Y	Y	N/A	N/A	N/A	Y (S, W, NI)
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\*These entries summarise the position for Part 2 and do not necessarily represent the position for all clauses in that Part.

# CORONAVIRUS BILL EXPLANATORY NOTES

These Explanatory Notes relate to the Coronavirus Bill as introduced in the House of Commons on 19 March 2020 (Bill 122).

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