

## Coronavirus bill

The government published the [coronavirus action plan](#) on 3 March, which set out a range of measures to respond to the COVID-19 outbreak and details on the government's strategy to delay, contain, mitigate and research to tackle the pandemic. The plan highlighted that some changes to legislation would be necessary to give public bodies across the UK the tools and powers they needed to carry out an effective response.

### Overview of the bill

The [Coronavirus bill](#) was introduced on Thursday 19<sup>th</sup> March to give public bodies the powers they need to respond to the pandemic. Safeguards have been put in place to ensure that the powers outlined in the bill are only used as necessary, for example during the peak of the COVID-19 outbreak. The aim is to balance the need for speed to the risk posed by the virus, with safeguards to ensure proper oversight and accountability.

The legislation is intended to take effect from the end of this month. However, the provisions relating to Statutory Sick Pay are intended to have retrospective effect to 13 March.

The legislation will be time-limited – for 2 years – and not all of these measures will come into force immediately. The bill allows the UK government and devolved administrations to switch on these new powers when they are needed, to switch them off again once they are no longer necessary, based on the advice of Chief Medical Officers of the four nations.

All stages of the bill will be debated by the House of Commons on Monday 23 March, with the Opposition signalling that they will support the bill. Once the bill has passed the Commons stages, it will be debated by the House of Lords on Wednesday 25 and Thursday 26 March.

### Key provisions in the bill

The bill aims to achieve the following:

- Increase the number of health and social care workers available
- Ease the burden on frontline staff, both within the NHS and beyond
- Delay and slow the virus
- Manage the deceased with respect and dignity

## Increasing the health and social care workforce

### Emergency professional registration

The bill will grant two healthcare regulators – the Nursing and Midwifery Council (NMC), and the Health and Care Professions Council (HCPC)– the ability to “carry out emergency regulation” of any professional under the purview by these bodies. The General Medical Council (GMC) already has similar powers so there was no need to include a provision for emergency regulation of doctors in this bill. Regulators will be able to use these powers as they see fit as the bill provides a wide scope for the NMC and HCPC to apply emergency registration to people who “may reasonably be considered fit, proper and suitably experienced persons to be registered as members of the profession in question.”

In practice, however, these provisions are included to enable the NMC and HCPC to do two things:

- 1 Automatically re-register professionals who have recently retired or had their registration lapsed
- 2 Allow early registration of final year healthcare students

### Impact of the provisions

These provisions are designed to increase the capacity of the health service to tackle the COVID-19 outbreak. The government has estimated that 10,600 non-medical professionals could return to the NHS, based on the assumption that 20% of NMC and HCPC registered professionals who have recently retired (in the past three years), will take up the offer to do so. There are no estimates provided for returning doctors, but the GMC would be drawing from a pool of 15,000 recently retired medics.

There are 28,100 final year students working to become nurses, midwives, paramedics and social workers, with a hope all would be interested in early registration.

The government admits that “the full costs and benefits for this option are difficult to quantify as there is currently no good estimate of how many professionals who are registered using these powers will carry through to deliver services and for how long.” However the introduction of this legislation, and practical plans to utilise these powers by regulators, are undoubtedly welcome in an environment where NHS staff capacity is greatly stretched.

### Emergency Volunteering Leave

The legislation creates a clause that will allow workers and employees across the economy to take a new form of statutory unpaid leave to volunteer in the NHS. People taking “Emergency Volunteering Leave” will have their current terms and conditions of employment protected and the bill creates an obligation for the Secretary of State to compensate eligible volunteers for “some loss of income and expenses incurred”. There are no estimates provided on the potential impact of this policy, and the clause as written does not specifically seek to engage workers who have recently lost work as a result of the COVID-19 outbreak in NHS activity.

## Pensions

The bill suspends a range of regulations in each of the NHS pension schemes (1995, 2008, 2015), with the primary aim of removing barriers “which would prevent otherwise able retired members from returning to work while continuing to receive their pension”.

More specifically, suspension of the “16-hour rule” enables staff to return immediately after retirement and work for more than 16 hours without losing pension benefits, return if they are “special class” nurse retiree between the age of 55-60 without having their pension suspended; and allow scheme members eligible for “draw down” of pension benefits to continue this practice without the need to reduce pensionable pay by 10%.

All of these provisions appear sensible changes given the need to keep NHS staff around retirement age in the service, and to encourage the return of those who have recently left.

## Indemnity for health service activity

To mitigate the likely adverse impact of the COVID-19 outbreak on NHS staffing, some staff may be asked to undertake NHS activities, which are not part of their normal role, as well as medical students being asked to assist with delivery of NHS services. For example, dentists and GP practice nurses may assist in hospital settings administering injections and medication. An indemnity clause in the bill aims to ensure that:

- The Secretary of State for Health and Social Care can provide indemnity for clinical negligence liabilities of healthcare professionals arising from activities carried out in response to the COVID-19s outbreak.
- In exceptional circumstances that might arise, indemnity arrangements are sufficient to cover all NHS activities required to respond, including care for those who have been diagnosed with, are suspected of having, or are at risk of having COVID-19.
- It will also cover healthcare professionals and others providing ‘business-as-usual’ activities, including where this is outside of the scope of their usual practice.

## Easing the burden on frontline staff, both within the NHS and beyond

The bill contains provisions which aim to reduce the administrative burden on frontline staff, in order to do this it contains provisions to make changes to mental health and mental capacity legislation and relaxes requirements on both health services and local authorities to carry out assessments.

## Temporary modification of mental health and mental capacity legislation

The bill contains provisions to enable the existing mental health legislation powers to detain and treat patients who need urgent treatment for a mental health disorder and are a risk to themselves or others, to be implemented using just one doctor’s opinion (rather than the current two). This will ensure that those

who were a risk to themselves or others would still get the treatment they need, when fewer doctors are available to undertake this function. It will also temporarily allow extension or removal of time limits in mental health legislation to allow for greater flexibility where services are less able to respond. These temporary changes would be brought in only in the instance that staff numbers were severely adversely affected during the pandemic period and provide some flexibility to help support the continued safe running of services under the Mental Health Act.

The temporary changes proposed to mental health legislation should help to give services the support and flexibility to ensure those at risk to themselves or others still get the treatment they need in the event of extreme staffing pressures and service disruption. It is crucial these changes and how they should impact on provision are clearly communicated to trusts and they have a clear understanding of when to use these flexibilities given there is likely to be local variation in the impact of COVID-19 across the country. There is a certain amount of uncertainty about how these changes will impact on provision and the extent to which these changes, if actioned, may impact resources of the wider system, for example the police.

There is also a question about whether these temporary changes to the management of the mental health act would be sufficient during a very severe outbreak. There are further temporary changes that could be considered to ensure patients still get the treatment from services they need. For example, consultant nurses could temporarily be allowed to carry out assessments and checks and agreements made by approved mental health professionals could be allowed retrospectively. Temporarily removing the requirement for CQC to organise second opinion appointed doctors and extending time periods for hearings and tribunals, or allowing tribunal decisions to be taken on the basis of electronic documents alone, are further measures that could also be considered.

The consideration of any further temporary changes to mental health legislation, in the interest of patients being able to access treatment if needed, must continue to be balanced against the impact they have on the immediate safeguards around these processes.

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

With the aim of reducing burdens on staff working in the NHS and beyond, and in light of the increased pressure there would be on teams where staff may need time off sick or to care for loved ones, the bill temporarily relaxes requirements on both health services and local authorities to carry out assessments. The aim is to facilitate faster discharge from hospital settings into the community.

The provisions in the bill should be read alongside the newly-released COVID-19 Hospital Discharge Service Requirements, which set out the discharge to assess approach expected from all NHS trusts, community interest companies and private care providers of acute, community beds and community health services and social care staff in England from 19 March 2020. They also cover discharge for commissioners of health and social care.

For the emergency period covering the height of the COVID-19 outbreak, NHS providers will be able to delay undertaking NHS continuing healthcare assessments of patients being discharged until the outbreak has ended. The government is keen that patients who can leave hospital do so, amidst the recognition that continuing healthcare assessments can be resource-intensive and delay discharge. To mitigate the impact on patients and their finances, individuals would continue to receive NHS-funded care pending their full assessment once the emergency period was over. Also at the height of the outbreak, and for the shortest amount of time possible, local authorities will have the power to prioritise care in order to protect life without undertaking full Care Act compliant assessments. They will instead be able to prioritise their services to meet the most urgent and serious needs, even where the results do not meet everyone's assessed needs in full, or delay some assessments.

Local authorities would still be expected to do as much as they could to fulfil requirements to meet needs, and the duty of care towards an individual's risk of serious neglect or harm would remain. These powers would only be used if demand and workforce shortage were such that local authorities were at imminent risk of failing to fulfil their duties, and only while the emergency situation was ongoing. During this time the Secretary of State would have a power to direct local authorities to comply with government guidance on prioritising care, aiming to ensure that consistent principles were followed.

## Delaying and slowing the virus

The government's objective is to slow the spread of the virus through restrictions on social contacts, which may mean preventing gatherings of people, postponing electoral events over the course of the year, closing schools, further or high education premises or childcare providers. This will help mitigate the risk to public health arising from such mass gatherings. The measures would only be put in place for the period of time required to mitigate the effects of the COVID-19 pandemic.

### Temporary closure of educational institutions and childcare premises

The government has announced the closure of all educational institutions and childcare providers, however there are exceptions to provide childcare for the children of key workers; these include:

NHS staff

social and care workers

nursery and teaching staff

food distribution staff

police/fire/prisons/border officers

workers at banks/building societies

More detail on who is eligible can be found on the [government website](#).

### Powers relating to potentially infectious persons: constables and immigration officers

The police will have the power to detain people suspected of having COVID-19 and to send them for screening or assessment. Individuals with the virus could be ordered to go into isolation for 14 days. In

addition, immigration officers will be able to direct or remove a person who is, or may be, infectious to a suitable place for screening and assessment. Obstructing an immigration officer or constable exercising these powers would constitute a criminal offence, and could be subject to a fine of £1,000.

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

The government may restrict or prohibit gatherings or events and to close premises during the COVID-19 outbreak period. The government will have the discretion – but not an obligation – to provide compensation to those affected by mandatory closures or restrictions.

## **Postponement of elections, referendums, recall petitions and canvass**

The government has advised that local, mayoral and Police and Crime Commissioner elections due to take place in England in May should be delayed until May 2021. Provision will also be made to postpone other electoral events over the course of the year (such as by-elections).

We have approached NHS England and Improvement for official guidance on trust governor elections and will share that once it is received. In the meantime if you have any questions on this, please get in touch.

## **Managing the deceased with respect and dignity**

### **Inquests**

The bill suspends the normal requirement for any inquest into a death caused by a notifiable disease (such as COVID-19) to have a jury, to avoid the significant impact on coroners' workload, local authority coroner service resources and taking into account the level of sickness rates among the general population during such an outbreak. The provision applies only to COVID-19 deaths, during the emergency period. Coroners will maintain discretion to hold a jury inquest where appropriate.

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

Presently, deaths and still births which occur in England and Wales must be registered in person at the register office in the presence of a registrar. Clause 17 in the bill outlines that deaths and still births will be able to be registered by other means, including by telephone, rather than face-to-face interview. Civil registration officials may register deaths from home.

## **Protecting and supporting people**

### **Statutory sick pay**

The bill introduces a clause to reimburse employers for statutory sick pay owing to the effects of COVID-19, given the potential for a significantly higher than normal rate of absence across the economy at any given time. It also introduces a provision to waive the three "waiting days" which apply before an employee is entitled to statutory sick pay.

The later provision is introduced only for COVID-19-related absences: the waiting days will continue to apply to staff with other absences, and the period will be restored for all at the conclusion of the pandemic. This clause seeks to ensure staff do not come into work when affected by the symptoms of COVID-19 in order not to lose “waiting days” wages, as the government’s reimbursement of statutory sick pay applies.

Some specifics around these provisions remain unclear, including a potential cost impact for the NHS, as the government’s supporting materials indicate reimbursement may only apply to “small and medium enterprises”. While some staff in NHS trusts may have preferential contractual sick pay that already voids “waiting days” (therefore already covering the cost of COVID-19-related sick pay on the first three days of absence,) it is unclear if this provision will to apply to all NHS employment contracts.

## NHS Providers press statement

### Financial support for the NHS and social care is welcome

Responding to the publication of the Government’s decision to allocate £2.9bn funding to strengthen care for the vulnerable and the Coronavirus Bill, the chief executive of NHS Providers, Chris Hopson said:

The NHS is facing the biggest challenge in a generation. We welcome today’s announcement by the Government as it provides much needed financial support to the health and care system in these difficult times. We now have clarity on how the Chancellor’s £5bn emergency funding for coronavirus will be divided, with £2.9bn going to the NHS and social care.

It is good to see that the Government has listened to concerns that there needs to be a clear and quick path out of hospitals into social care or back home for those patients who are medically fit, to ensure that capacity is cleared where appropriate. This is helpful when combined with the announcement that elective operations will be postponed to free up beds, space and staff so that those with the virus can be prioritised. The NHS is doing everything it can to prepare to handle an increase in demand due to the virus.

## Useful documents

[The full text of the bill.](#)

[Summary of impacts of the bill.](#)

[What the bill will do.](#)

[Guidance for schools, colleges and local authorities on maintaining educational provision.](#)