

## **CORONAVIRUS (RIGHTS AND SUPPORT) BILL EXPLANATORY NOTES**

What these notes do:

- These Explanatory Notes relate to the draft Coronavirus (Rights and Support) Bill.
- The measures this Bill effects are the product of extensive collaboration with civil society across multiple sectors.
- These Explanatory Notes have been prepared by Liberty in order to assist the reader of the Bill and to help inform debate on it.
- These Explanatory Notes explain what each part of the Bill means in practice; provide background information on the development of policy; and provide additional information on how the Bill affects existing legislation in this area.
- These Explanatory Notes are best 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 Coronavirus (Rights and Support) Bill (“the Bill”) is a rights-respecting legislative response to the coronavirus pandemic. It repeals the powers contained in the Coronavirus Act 2020 which put civil liberties at risk. It also establishes measures which provide people with the protections they need in a public health crisis.
2. On 25 March 2020, Parliament passed the Coronavirus Act 2020 (“the Act”) in one day. Passed in response to a quickly worsening situation, the Act imposed the greatest restrictions on civil liberties in at least a generation, while uneven support measures exacerbated inequalities, making things harder for those most in need. In contrast, the Coronavirus (Rights and Support) Bill contains effective and proportionate measures that respect civil liberties, promote accountability, and support the public to comply with public health guidance rather than prioritising coercion and control. Any provisions in the Coronavirus Act 2020 which did not impinge on human rights and civil liberties are maintained.

## **RESTRICTIONS ON PUBLIC HEALTH POWERS**

3. The Bill amends Part 2A of the Public Health (Control of Disease) Act 1984, Schedule 19 to the Coronavirus Act 2020 and the Public Health Act (Northern Ireland) 1967, as amended by Schedule 18 to the Coronavirus Act 2020. These are the powers the Government relies on to impose the restrictions on movements, gatherings and business that have formed both national and local lockdowns. These provisions have enabled the Government to establish new police powers and criminal offences, with limited Parliamentary oversight, which have been used against protesters and homeless people, and have disproportionately impacted people of colour.
4. Clauses 1-3 and Schedules 1-3 of this Bill address these deficiencies. They provide that powers under the Public Health Act 1984 may only be used to establish new criminal offences where an individual intentionally causes immediate harm to another person. This would include coughing on, standing close to, or spitting on someone with the intent to spread coronavirus. Only a fine of up to £200 (in accordance with the standard scale) can be imposed in these cases. Clause 5 provides that any person issued with a fine has a right to appeal against it to a magistrates' court in England within seven days. Clauses 6-8 make similar provision for a right of appeal in Wales, Scotland and Northern Ireland. Clauses 1-3 and Schedules 1-3 of the Bill limit the powers to make regulations available under the Public Health Act 1984 by stating they must not be used to prohibit the participation in, or organisation of, a protest, strike or other industrial action, and they must not apply to people who are homeless or rough sleeping. Weekly data on enforcement must be published, disaggregated according to age, ethnicity, gender, disability, the location of the enforcement action, the context of the enforcement (for example, if it took place while someone was engaging in a protest) and whether it was reactive, proactive or serendipitous action.<sup>1</sup>
5. All other public health restrictions are to be dealt with by way of clear and consistent public health guidance, rather than through the criminal law. This accords with the

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<sup>1</sup> <https://www.omddac.org.uk/news/mapping-the-data-driven-landscape/>

fact that the pandemic is a public health, rather than a public order, crisis. Data from the first national lockdown shows that people complied with the rules out of a sense of acting for the common good, rather than fear of punishment.<sup>2</sup> Use of coercive strategies may backfire and deter people from engaging with the health system when they need to.<sup>3</sup> Public health guidance may supplement, but must be entirely coherent with, the law. Guidance must be communicated in a clear and accessible manner.

## **POWERS TO RESTRICT TRAVEL**

6. The Bill amends Section 50 and Schedule 20 of the Act, which empowers the Secretary of State for Health to direct the operator of any airport, port, hoverport or channel tunnel port to suspend operations wholly or in part where there is a real and significant risk that there are insufficient resources to adequately secure the border as a result of coronavirus. Borders can be closed for six hours in the first instance, and then on a renewable basis with no upper time limit. Failure to comply with a port direction or supplementary direction without reasonable cause would constitute a criminal offence. Before using this measure, clause 4 of the Bill requires the Secretary of State to publish an impact assessment on the suspension of the relevant port operations which has regard to the impact for people's right to private and family life, the Government's duties under the Refugee Convention and the impact on provision of humanitarian aid.

## **OVERSIGHT AND SAFEGUARDS**

### **Human rights and equality assessments**

7. Schedule 1 (3) provides that before making regulations under any of the powers in this Bill, the Secretary of State must have particular regard for their obligations under human rights and equality legislation. For example, if the Secretary of State seeks to make regulations restricting freedom of movement as part of the Government's public health response to the coronavirus, they must have particular regard to the needs of disabled people, including those in institutionalised settings, and how their rights will be protected. The same consideration will need to be given to people with other protected characteristics. This supplements existing duties under the Human Rights Act 1998 and Equality Act 2010. Evidencing compliance with this duty may necessitate the publication of a detailed impact assessment.

### **Parliamentary oversight**

8. Schedule 1 (7) requires that both Houses of Parliament approve any regulations made under this Act before they come into force. At the time of writing, the Government has laid 378 coronavirus-related statutory instruments before Parliament, with only 20 of them subject to the 'draft affirmative' procedure requiring the approval of Parliament before they can become law. In many cases, debate has been delayed until

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<sup>2</sup> <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms/>

<sup>3</sup> Carter, Holly, Drury, John, Rubin, G James, Williams, Richard and Amlot, Richard (2013) *Communication during mass casualty decontamination: highlighting the gaps*. International Journal of Emergency Services, 2 (1). pp. 29-48. ISSN 2047-0894

several weeks after measures enter into force.<sup>4</sup> This provision empowers Parliament to properly scrutinise new regulations before they become law, rather than after the fact.

### **Sunset clause**

9. Clause 60 provides that this Bill will expire after six months. If the Government wishes to extend any of the provisions contained in this Bill, they must introduce new primary legislation in sufficient time for it to be subject to rigorous parliamentary scrutiny. The scrutiny mechanisms in the Coronavirus Act 2020 are an inadequate check on exceptional emergency powers. Although it was widely reported that the legislation will lapse after two years, the government may extend any part of the Coronavirus Act for a further six months and make further renewals beyond this period, without prior Parliamentary approval.<sup>5</sup> Instating a firm six-month sunset clause is an essential safeguard which will increase the ability of Parliament to scrutinise and hold Government to account in its handling of the pandemic.

### **Parliamentary Committee**

10. Clause 9 and Schedule 6 create a new Joint Committee on Coronavirus to provide targeted scrutiny of the Government's coronavirus response. The Committee will consist of six members of the House of Commons and six members of the House of Lords. The Committee will consider and report on the evidence base for any regulations made under public health powers, the exercise of powers provided for by regulations made under public health powers, the equality and human rights impact of the coronavirus pandemic, and any primary legislation relating to the coronavirus pandemic. The Committee has power to send for persons, papers and records, and appoint specialist advisers.

## **JUSTICE**

### **Access to justice**

11. The pandemic has resulted in significant and rapid changes in the operation of the justice system. Clause 10 of the Bill requires the Secretary of State for Justice to undertake a human rights impact assessment to consider the impact of remote proceedings on the effectiveness of justice, the experience of participants, the availability of legal representation, and in relation to criminal proceedings, plea outcomes, conviction rates, and detention and sentencing rates. This assessment must also consider the extent to which remote proceedings enable open and transparent justice and effective participation, as well as uphold the health and safety of court users. To give effect to this clause, the Government must collect and publish data on the impact of virtual hearings.

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<sup>4</sup> <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

<sup>5</sup> Coronavirus Act 2020, Section 90.

## **Immediate reduction of numbers within prisons**

12. Clause 11 and Schedule 4 make provision for reducing numbers of incarcerated people. They require the appropriate Minister to implement measures that will immediately reduce the numbers of people in prisons and youth offender institutions across the UK.<sup>6</sup> The appropriate Minister must implement measures to release prisoners who are clinically vulnerable, provided they do not pose a risk to the public. Additionally, all charges paid by persons in criminal justice accommodation relating to telephone calls, email services, and writing materials will be suspended throughout the coronavirus response, and if visits are not permitted to such accommodation, a secure video calling facility will be made available to those who remain incarcerated. The Government should also ensure that no one is released from prison into conditions of destitution, including through increasing funding to community-based services, such as women's centres, to cope with the pressures of the pandemic.

## **IMMIGRATION**

### **The 'Hostile Environment'**

13. Chapter 3 provides for the suspension of aspects of the Hostile Environment. Clauses 12 and 14 suspend aspects of existing immigration legislation that restrict certain migrants from renting property, opening bank accounts, and accessing driving licenses. These measures prevent migrants from accessing essential services. Some have already come under legal challenge.<sup>7</sup> This will create the conditions for all migrants to access safe housing, including rented accommodation, so that they are able to safely self-isolate, access a secure place to store their money, and access a driver's license so that they are able to avoid taking public transportation if they so choose.
14. Clause 13 suspends immigration offences in relation to overstaying, failing to observe a condition of leave, remaining in the UK without leave, breach of an immigration bail condition, driving while unlawfully in the UK, and a sponsor's failure to comply, without reasonable excuse, with an undertaking they have made to be responsible for maintaining or accommodating a person. Given that migrant workers experience heightened vulnerability to coronavirus,<sup>8</sup> clause 15 also suspends provisions criminalising illegal working and the employment of a worker disqualified from work by reason of their immigration status. This serves to ensure that all migrant workers can access essential health services, as well as speak out about and organise around workplace conditions without fear of being arrested, detained, and/or deported as a result.<sup>9</sup>

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<sup>6</sup> <https://www.inquest.org.uk/covid-19-letter>

<sup>7</sup> *R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department* [2019] EWHC 452 (Admin).

<sup>8</sup> <https://www.independent.co.uk/news/uk/home-news/undocumented-migrants-coronavirus-uk-lockdown-a9601616.html>

<sup>9</sup> <https://www.independent.co.uk/news/uk/home-news/coronavirus-undocumented-migrants-deaths-cases-nhs-matt-hancock-a9470581.html>

## **Deportations and removals**

15. Clause 19 suspends existing provisions in immigration legislation that permit removal and deportation. Throughout the pandemic, the Government has proceeded with forced removals of migrants in spite of the public health risk that such actions can have. The United Nations Network on Migration has previously warned that proceeding with forced returns can “intensify serious public health risks” for migrants, public officials, health workers, and social workers in both host countries and countries of return.

## **Immigration detention**

16. Clause 20 suspends provisions that permit detention of persons liable to removal, and requires that the Secretary of State for the Home Department must implement the immediate release of all persons detained under immigration powers in immigration removal centres (IRCs), short-term holding facilities, prisons, and any other place in which they are detained. Multiple migrants’ rights organisations have highlighted the risks inherent in immigration detention in the context of the pandemic, including inadequate access to healthcare and overcrowding.<sup>10</sup> There have been numerous reports of coronavirus cases arising within immigration detention centres, and one centre has been forced to close because the outbreak grew out of control.<sup>11</sup> Immigration detainees kept in prisons have reported being locked in their cells for at least 23 hours a day, resulting in deteriorating mental health.<sup>12</sup>

## **No Recourse to Public Funds conditions and healthcare charges**

17. The Bill ensures that everyone is able access social support in order to meet their basic needs and to safely self-isolate, regardless of their immigration status. Clause 18 provides for the suspension of the No Recourse to Public Funds (NRPF) condition for all migrants, which will enable them to access benefits and housing accommodation support among other services. The Secretary of State may give effect to these provisions by providing funding to local authorities to meet migrant communities’ needs, and by allocating ringfenced funding to specialist organisations such as those providing support to migrant women. Clauses 16-17 suspend all immigration health surcharges and NHS charges, to ensure that people are able to access healthcare services regardless of immigration status.<sup>13</sup>

## **Safe and secure accommodation**

18. Clause 21 requires the Secretary of State to provide for adequate accommodation and financial support for asylum seekers, dependants of asylum seekers, failed asylum seekers, dependants of failed asylum seekers, and persons released from immigration detention on immigration bail or otherwise who appear to be destitute or likely to become destitute. The Bill also requires that any provided accommodation must be

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<sup>10</sup> <https://www.biduk.org/posts/621-bid-joins-10-organisations-calling-for-release-of-immigration-detainees-due-to-coronavirus-threat>

<sup>11</sup> <https://twitter.com/BIDdetention/status/1347513258421473280>

<sup>12</sup> <https://www.opendemocracy.net/en/openjustice/prisons-are-not-place-immigration-detainees-during-coronavirus-crisis/>

<sup>13</sup> <https://www.jcwi.org.uk/migrants-deterred-from-healthcare-in-the-covid19-pandemic>



safe and secure. The Secretary of State may give effect to this duty by providing ringfenced funding to specialist organisations and local councils to provide the necessary support.<sup>14</sup> People may not be evicted from such accommodation for the duration of the pandemic. Additionally, they will not be punished for failing to meet reporting requirements.<sup>15</sup>

### **Data-sharing firewall**

19. Many migrants have expressed concerns over accessing health services and other social support as a result of fears that they will be reported to immigration enforcement.<sup>16</sup> Clause 22 of the Bill suspends the immigration exemption in the Data Protection Act 2018 and requires that the Secretary of State make regulations providing for a firewall—a prohibition on the sharing of personal data belonging to persons subject to immigration control—between public authorities and immigration enforcement.

### **Continuation of leave during the pandemic**

20. Clause 23 of the Bill provides that migrants whose leave to remain expires during the coronavirus pandemic will have their leave automatically extended. Clause 24 provides that migrants will not be found to be in breach of their conditions of leave to enter or remain during the coronavirus period if they are unable to work or attend studies due to illness, have a medical condition which makes them or a member of their household at higher risk from coronavirus, are required to self-isolate, or are furloughed. Further, the Bill provides that a person whose leave has been extended by the Bill will not be considered to have a “precarious” status for the purposes of future human rights claims.

## **DATA PROTECTION**

### **General privacy duty**

21. Clause 32 of the Bill creates a general duty on the part of public authorities to have due regard to the need to protect people’s privacy in its response to the coronavirus.

### **Information Commissioner’s Office**

22. Clauses 25-26 of the Bill create additional duties on the part of the Information Commissioner’s Office to advise Parliament, the Government, and other institutions and bodies on the human rights and data protection implications of any measures and policies that collect data in connection with the Government’s response to coronavirus, as has been done by data regulators in other countries.<sup>17</sup> The ICO must also monitor the processing of personal data for contact-tracing and publish assessments relating to the Government’s processing of contact-tracing data. The Information Commissioner’s assessment must include description of any breaches of data law committed by a public authority or relevant person.

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<sup>14</sup> <https://naccom.org.uk/new-report-on-nrpf-highlights-damaging-impact-of-policy-during-pandemic/>

<sup>15</sup> <https://www.migrantsorganise.org/?p=28987>

<sup>16</sup> Liberty, Care Don’t Share, available at <https://www.libertyhumanrights.org.uk/issue/care-dont-share/>

<sup>17</sup> <https://www.openrightsgroup.org/blog/fighting-and-winning-for-privacy-where-was-the-ico/>

## **NHS Test and Trace**

23. Clause 28 of the Bill provides that the appropriate national authority may by regulation make provision for the decentralisation of contact-tracing and associated data. In relation to the NHS Covid-19 app, clause 29 of the Bill requires the Secretary of State to publish guidelines for the processing of personal data, including the purposes for which data may be processed, the maximum period for which data can be retained, and the measures needed to ensure the security of the personal data collected. Additionally, the Secretary of State must publish regular reviews of the NHS COVID-19 App's systems, considering among other issues the efficacy of the app and its impact on people's privacy and information rights. Use of the app must be wholly voluntary and non-discriminatory. Similar assessments must take place in relation to NHS Test and Trace and the NHS Covid-19 Data Store, as provided in clauses 30 and 31 of the Bill respectively.
24. Clause 33 of the Bill provides that the Information Commissioner must regularly carry out a data protection impact assessment (DPIA) and equality impact assessment (EIA) on all systems used in connection with the processing of personal data for the purposes of contact-tracing and connected purposes.<sup>18</sup> Previously, the Government admitted that the Test and Trace programme had been operating unlawfully due to its failure to complete a data safety assessment following a successful legal challenge by Open Rights Group.<sup>19</sup> Clause 30 provides that any personal data collected for the purposes of contact tracing and connected purposes must be deleted within three months of the date on which the data was collected.

## **Data-sharing firewall**

25. Clause 34 of the Bill provides that any personal data collected by or in connection with contact-tracing shall not, for any reason, be provided to the police or to immigration enforcement. Establishing a clear data-sharing 'firewall' will ensure that migrants and other marginalised communities will be able to feel safe complying with the Government's coronavirus-related measures.<sup>20</sup>

## **HEALTH AND SOCIAL CARE**

### **Accessible public broadcasts**

26. The Bill ensures information concerning the pandemic is widely accessible, including to disabled people. Schedule 1 provides that the relevant authorities in England and Wales must publish information on restrictions or requirements in an accessible format to ensure that disabled people can access it. This means, for example, allowing people to be able to change colours, contrast levels and fonts, zoom in without the text spilling off the page, navigate the publication, use speech recognition software, listen to the publication using a screen reader; and providing Easy Read versions. British Sign Language interpretation for all public broadcasts must also be provided.

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<sup>18</sup> <https://www.openrightsgroup.org/press-releases/government-admits-test-and-trace-unlawful/>

<sup>19</sup> <https://www.openrightsgroup.org/press-releases/government-admits-test-and-trace-unlawful/>

<sup>20</sup> <https://www.openrightsgroup.org/blog/data-trust-will-migrants-use-the-nhs-app/>

Schedule 2 and Schedule 3 imposes the same duty on the relevant authorities in Scotland Northern Ireland respectively.

## **SOCIAL WELFARE**

### **Duty to secure an adequate standard of living**

27. Clauses 36-37, which apply to England, Scotland, and Wales, establish a duty on the Secretary of State for Work and Pensions to ensure that everyone's right to an adequate standard of living is met, with reference to international human rights standards. This is so that everyone can safely follow public health guidance. The Secretary of State must also ensure that people who are self-isolating are able to access sufficient social welfare entitlements. The Secretary of State may give effect to the above by making regulations to end the Universal Credit five-week waiting period, making provision for an equivalent uplift to legacy benefits as has been made for Universal Credit, and taking action to suspend the benefit cap to reflect these changes. Clauses 38-39 impose the same duties on the relevant authority in Northern Ireland.

## **EDUCATION**

### **Free school meals**

28. Clause 40 of this Bill empowers the Secretary of State for Education to make regulations to provide for direct cash transfers, or other non-voucher systems, for free meal replacement during school closures. This seeks to address problems with the current electronic voucher system, which was set up as schools closed so that families of children who normally receive free school meals could buy food in selected shops. Flaws in the programme have meant schools and charities have had to distribute food directly to plug the gap.

29. Clause 41 requires the Secretary of State for Education to implement measures to provide children with free school meals during the school holidays. Families with children who rely on schools for their main meal of the day may struggle to ensure they have adequate, nutritious food for their children during the school holidays. These families are likely to disproportionately bear the economic impacts of the pandemic.<sup>21</sup>

### **Closure of educational facilities**

30. Section 42 of the Coronavirus Act 2020 empowers the Secretary of State for Health to give an order to temporarily close educational institutions and childcare facilities. Closing schools may be a necessary and proportionate measure to protect public health and children's rights, as well as the rights of their families, education staff and wider communities. It also interferes with a wide range of children's human rights.

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<sup>21</sup><https://www.hrw.org/news/2020/07/23/submission-uk-parliament-education-committee>

31. Clause 42 of this Bill places a duty on the Secretary of State to publish a human rights and equality impact assessment before ordering school closures in England and Wales. This assessment should detail the evidence base for the decision and what alternatives that have been considered. It should also include full details of the measures that have been taken to mitigate, to the greatest extent possible, the decision's human rights and equality implications, with particular regard for the socio-economic position of pupils, the best interests of pupils, the rights of disabled pupils, including those with special educational needs, the rights of clinically vulnerable pupils, the potential impact on pupils' mental health and wellbeing, and digitally excluded pupils. Groups experiencing high rates of digital exclusion include pupils from low-income, disabled and Gypsy, Roma and Traveller communities.<sup>22</sup> The impact assessment will also consider the impact on employees of schools, as well as pupils' families and wider communities. Clauses 43 and 44 impose the same duty on the relevant authority in Scotland and Northern Ireland respectively.

### **Remote learning**

32. In the event that a temporary closure order is issued for educational institutions, clause 45 of the Bill creates a duty on the Secretary of State to publish statutory guidance on the provision of remote education in England and Wales. In issuing this guidance, the Secretary of State must pay due regard to every child's right to an inclusive education. For example, the guidance should set out who is responsible for making various aspects of remote education inclusive of disabled children and young people,<sup>23</sup> how Government and educational institution provided technology will be adapted to meet disabled children and young people's needs, and how disabled children and young people, and their families, will be supported at home in respect of the transition to virtual learning.<sup>24</sup> Clauses 46 and 47 impose the same duty on the relevant authority in Scotland and Northern Ireland respectively.

## **HOUSING AND ACCOMMODATION PROTECTIONS**

### **Eviction ban**

33. Clause 51 and Schedule 5 (5) provide that there should be a ban on all eviction notices for the duration of the pandemic to protect public health.<sup>25</sup> The Secretary of State may give effect to this by further ordering a stay on eviction proceedings. In addition, Schedule 5 (4) provides for a rent waiver for the duration of the crisis, meaning that any arrears accrued as a result of the crisis cannot be expected or included in any future grounds for eviction.

### **Housing support for all vulnerable people**

34. Clause 49 and Schedule 5 (1) provides that the appropriate national authority must by regulation make provision for the allocation of housing and accommodation support

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<sup>22</sup> <https://travellermovement.org.uk/news-news/149-grt-stakeholder-forum-writes-to-gavin-williamson>

<sup>23</sup> <https://www.allfie.org.uk/news/briefing/coronavirus-vital-education-training-and-childcare-provisions-remote-education/>

<sup>24</sup> <https://www.allfie.org.uk/inclusion-resources/allfie-survey-report-coronavirus-impact-on-disabled-peoples-education/>

<sup>25</sup> [https://www.acorntheunion.org.uk/housing\\_is\\_health](https://www.acorntheunion.org.uk/housing_is_health)

to vulnerable persons, including all homeless people and rough sleepers, people living in overcrowded accommodation, and people at risk of domestic abuse. Schedule 5 (2) provides that migrants with no recourse to public funds will be eligible for housing assistance. The Bill also explicitly designates the coronavirus pandemic as one of the events that will enable local councils to use their emergency powers to accommodate people with no recourse to public funds under the Local Government Act 1972.<sup>26</sup>

### **Gypsy, Roma, and Traveller rights**

35. The Bill protects Gypsy, Roma, and Traveller communities' rights during the pandemic by empowering the Government to shift from an enforcement-based approach to a provision-based approach in regard to encampments.<sup>27</sup> Clause 49 and Schedule 5 (6)–(7) of the Bill suspends all enforcement action taken against GRT communities in connection with the residential usage of moveable structures, vehicles, or vessels designed or adapted for human habitation. Further, the ban on evictions provided within the Bill extends to Gypsy, Roma, and Traveller communities, including everyone residing in encampments. The Government must also ensure that GRT communities are able to meet their accommodation needs, including having access to water and sanitation facilities, by making regulations to this effect.

## **EMPLOYMENT**

### **Self-isolation support and sick pay**

36. Clause 50 of the Bill, which applies to England, Scotland, and Wales, requires the Secretary of State to make regulations that will support all employees and workers required to self-isolate due to coronavirus. The Secretary of State may by regulation guarantee full pay during sickness and self-isolation, and a minimum level of earnings at the living wage, to protect all workers. Clause 51 requires the relevant national authority to do the same in Northern Ireland.
37. Clauses 53-54 of the Bill remove the lower cap for statutory sick pay and expand the definition of 'employee', so that a broader range of workers are able to access statutory sick pay in England, Scotland, and Wales. Clauses 55-56 require the relevant authority to do the same in Northern Ireland.

### **Labour inspections**

38. Clause 52 of the Bill ensures no one will be forced to work in unsafe conditions. The Government must make regulations implementing measures ensuring that employers provide safety equipment, including but not limited to hand sanitiser, protective gloves, and masks, to those working in high-risk industries and workplaces such as the garment industry and warehouses. The Government may also by regulation require employers to carry out appropriate risk assessments and issue health and safety guidelines for staff, in line with existing regulations, classify labour inspection

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<sup>26</sup> <https://www.theguardian.com/uk-news/2020/jul/08/london-councils-government-suspend-nrpf-immigration-status-coronavirus>

<sup>27</sup> <https://www.gypsy-traveller.org/health/covid-19-uk-government-must-lay-out-clear-plan-to-support-gypsies-travellers-and-boaters/>

as “essential work”, provide labour inspectors with adequate protective equipment, and ensure that workplace inspections are carried out in high-risk sectors where workplaces remain open to reduce the risk of exploitation.<sup>28</sup>

## **ELECTIONS**

39. Sections 59-62 of the Act postponed for a year the local, Policing and Crime Commissioner and mayoral elections that were due to be held in May 2020. It also vested in the Minister for the Cabinet Office the power to make further changes to the timing and “manner” of an election by statutory instrument.<sup>29</sup> Clause 60 of this Bill amends these sections to require that a human rights impact assessment be carried out before these powers can be used.

## **REPEAL OF CORONAVIRUS ACT 2020 PROVISIONS**

40. Clause 64 and Schedule 7 of the Bill repeal provisions of the Coronavirus Act 2020 that put human rights and civil liberties at risk.

### **Mental health and mental capacity**

41. The Bill repeals Section 10 and Schedules 8–11 of the Coronavirus Act 2020. These provisions allow for significant changes to be made to the Mental Health Act 1983, rescinding a number of safeguards for people experiencing mental health problems. This includes allowing a single doctor, rather than two, to authorise detention; suspending reviews of detention, and extending the period for which people may be detained, and even indefinitely in the cases of people accused of crimes who are detained pending an assessment or on remand.

### **Local authority care and support**

42. The Bill repeals Section 15 and Schedule 12 of the Coronavirus Act 2020. These provisions allow local authorities to apply “easements” under the Care Act 2014, diluting protections for those in need of care during the pandemic. This means that local authorities have reduced the standard of care they provide for people who are disproportionately impacted by the virus, such as disabled and older people, at a time when informal social support has been restricted by the need for social distancing. Assessments of care and support needs have also been paused or significantly delayed and local authorities have been disincentivised from taking steps to ensure people get the critical care they need. Schedule 7 also repeals provisions in Schedule 17 of the Coronavirus Act 2020 which give the Secretary of State for Education the power to issue notices to temporarily relax local authorities’ duty under the Children and Families Act 2014 to assess children and young people’s needs for an Education, Health and Care (EHC) plan.<sup>30</sup>

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<sup>28</sup> <https://www.labourexploitation.org/publications/no-worker-left-behind-protecting-vulnerable-workers-exploitation-during-and-after-covid>

<sup>29</sup> Coronavirus Act 2020, Sections 61 and 63

<sup>30</sup> <https://www.allfie.org.uk/inclusion-resources/allfie-survey-report-coronavirus-impact-on-disabled-peoples-education/>

## Investigatory powers

43. The Bill repeals Sections 22 and 23 of the Coronavirus Act. Section 22 allows for temporary Judicial Commissioners to be appointed where it is the Investigatory Powers Commissioner’s opinion that such a power needs to be exercised in order to deal with a shortage of persons able to carry out functions conferred on Judicial Commissioners. Section 23 amends the Investigatory Powers Act 2016 to extend the time limit in relation to urgent warrants for a range of surveillance powers, including, for example, the interception of communications, retention of data and examination of information.

## Fingerprints and DNA profiles

44. The Bill repeals Section 24 of the Coronavirus Act, which empowers the Secretary of State to extend the periods for which fingerprints and DNA profiles may be retained for the purposes of national security.

## Powers relating to potentially infectious persons

45. The Bill repeals Section 51 and Schedule 21 of the Coronavirus Act 2020, which confer significant powers on police and immigration officials to detain people they deem “potentially infectious” for testing, with “potentially infectious” being so broadly defined as to capture large parts of the population at any given moment.<sup>31</sup> This Schedule also allows public health officers to demand that people provide biological samples<sup>32</sup> and other personal data relating to their health, personal relationships, and travel history.<sup>33</sup> It further allows a public health officer to require a person remain indefinitely in isolation in a specified place, without a firm upper time limit.<sup>34</sup>
46. The arbitrary and unlawful use of these powers has been well documented. In May 2020, following concerns about the misuse of Schedule 21 powers the Crown Prosecution Service took the unprecedented step of launching a monthly review of every charge under those provisions. Every review published to date has concluded that every single charge under Schedule 21 has been unlawful.<sup>35</sup> There is also a specific risk of racially uneven enforcement of Schedule 21, as has been the case in police use of sweeping powers handed to them under the lockdown regulations.<sup>36</sup>

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<sup>31</sup> Coronavirus Act 2020, Schedule 21, Part 1, paragraph 2

<sup>32</sup> Coronavirus Act 2020, Schedule 21, Part 1, paragraph 10(2)

<sup>33</sup> Coronavirus Act 2020, Schedule 21, Part 1, paragraph 14(3)

<sup>34</sup> Coronavirus Act 2020, Schedule 21, *ibid.*

<sup>35</sup> CPS monthly review of coronavirus charges, March / April: <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws> May: <https://www.cps.gov.uk/cps/news/cps-review-finds-improvements-coronavirus-charging-compliance> June: <https://www.cps.gov.uk/cps/news/latest-findings-cps-coronavirus-review> and July: <https://www.cps.gov.uk/cps/news/julys-coronavirus-review-findings>

<sup>36</sup> From 27 March– 11 May, people of colour were 54% more likely to be fined under lockdown regulations than white people. Busby, M. and Gidda, M., *BAME people fined more than white population under coronavirus laws*, May 2020: <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

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

47. The Bill repeals Section 52 and Schedule 22 of the Coronavirus Act 2020. These provisions empower the Secretary of State for Health to prohibit either specific events or gatherings, or those of a specified description. They contain no explicit protections for the fundamental rights to freedom of expression, and freedom of assembly and association. The Civil Contingencies Act 2004 – which established wide-ranging powers to make emergency laws in a situation which threatens serious damage to human welfare – makes an allowance for strikes.<sup>37</sup> While necessary and proportionate restrictions on protest and assemblies are permissible under human rights law, failing to provide explicit protections for protest risks seeing people criminalised *en masse* for voicing opposition to State practices.

## **Residential tenancies: protection from eviction**

48. The Bill repeals Section 81 and Schedule 29 of the Coronavirus Act 2020, which extends notice periods a landlord must give to a tenant in relation to possession proceedings in respect of certain residential tenancies. The clauses in Chapter 7 and Schedule 5 provide improved safeguards for tenants.

## **Final provisions**

49. The Bill repeals Sections 85-99 of the Coronavirus Act 2020, which relate to commencement, expiry, and powers to amend secondary legislation. Similar powers, with significantly improved safeguards, are contained in this Bill.

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<sup>37</sup> Civil Contingencies Act 2004, Section 23(3)(b)