

COVID 19 – The Coronavirus Act 2020: Powers and Offences

The Coronavirus Act 2020 ('the Act') came into force on 25th March 2020. It has been reported in the press as providing the Government with 'wide-ranging powers unlike any other recent legislation'. Some of these powers are already being utilised by different police forces in differing ways, leading to former Supreme Court Justice, Lord Sumption, to decry the shameful conduct of one force and to warn of 'a hysterical slide into a police state'.

The Act creates similar provisions for all four nations of the United Kingdom. This article provides an overview, within the context of England, of the new powers and offences contained in the Act relating to:

- persons who are 'potentially infected' with coronavirus; and
- events, gatherings and premises

Powers relating to 'potentially infectious' persons (Schedule 21)

Schedule 21 to the Act confers new powers on public health officers ('PHOs'), constables and immigration officers in relation to 'potentially infectious' persons ('PIPs'). Paragraph 2(1) provides that a person is 'potentially infectious' if:

- the person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others; Or
- the person has been in an 'infected area' within the preceding 14 days (a territory outside of the UK which the SOS has declared as there being sustained human transmission of coronavirus, or from which there is a high risk that coronavirus will be transmitted to the UK).

This is a broad definition and clearly, in the absence of widespread testing, it is currently possible for almost all individuals to be classified as a PIP.

When can the powers be used?

The powers may be used if the Secretary of State (SOS) makes a declaration that coronavirus constitutes a 'serious or imminent threat to public health' and the powers would be an 'effective means of delaying or preventing significant further transmission of coronavirus' (see para 4(1)). The powers cease upon the SOS revoking the declaration. Paragraph 5 explains that the period when these powers are in force, is referred to as a 'transmission control period'.

The Act makes provision for the declaration process to be made on more than one occasion (see para 4(4)). An indication that the Government anticipates using multiple 'transmission control periods' to effectively contain and suppress the virus through these powers.

What are the powers?

(1) Direction or removal of persons to a screening or assessment place

Paragraphs 6 and 7 provide a regime which is analogous to that of arrest, and enable PHOs, constables and immigration officers who have 'reasonable grounds' to suspect an individual of being potentially infectious, to direct or remove that person to a place suitable for screening or assessment.

The power is to be exercised only when considered 'necessary and proportionate' to do so (see paras 6(3) and 7(3)), either:

- in the interests of the person,
- for the protection of other people,
- for the maintenance of public health.

Reasons must also be provided to the individual, and they must be told that they will commit an offence should they fail to comply.

(2) Powers exercisable at a screening and assessment place

Once at a screening and assessment place, a PHO can require a PIP to produce/have taken a biological sample and answer questions or provide information about their health, or other relevant matters such as their travel history and persons they have come into contact with (see para 10(2)). A PIP can also be directed or removed to another place suitable for screening or assessing (see para 11(1)) and where this is done, the same powers apply afresh in that other place (see para 12).

Importantly, there are time constraints imposed by the Act in relation to how long a PIP can be held at a screening location. A PIP can be required to stay for up to 48 hours by a PHO (see para 9(1)). The PIP must be informed of the reason for their detention and the maximum period, along with the fact it is an offence should they fail to comply. However, if a PIP is taken to a screening location by a constable or immigration officer, rather than a PHO, they may detain them for 24 hours, and 3 hours (respectively) until a PHO can begin the screening process (see para 13(3)). If it is deemed necessary to extend this pre-screening period further, they can with the consent of a 'relative officer' for a further 24 hours in the case of a constable and 9 hours in the case of an immigration officer (see para 13(4)).

Again, the use of the powers is subject to the same test of necessity and proportionality being satisfied.

(3) Powers exercisable after an assessment

Where a PIP has been screened and assessed, and either (a) confirmed as having coronavirus, (b) the results are inconclusive, or (c) the PHO has reasonable grounds to suspect they may

be potentially infectious, a PHO may impose requirements and restrictions on that person. Again, subject to it being 'necessary and proportionate' to do so (see para 14(2)).

Requirements that may be imposed include; to remain at a specified place, and/or isolate for a specified period (see para 14(3)(d) and (e)), and restrictions on a person's movements or travel and activities (including work or business) (see para 14(4)).

When imposing a requirement to remain at a specified place and/or isolate, regard must be had to the person's wellbeing and personal circumstances (see para 14(6)), the requirements must not exceed a period of 14 days, the person must be reassessed within 48 hours and in light of this reassessment the requirements must be reconsidered (see para 15). If, before the end of a period of 14 days, the person is still deemed to be infectious and it is necessary and proportionate, the period can be further extended. However, the further period specified must not exceed a further 14 days (see para 15(6)) and the restriction must be reviewed at least once in every 24 hour period (see para 15(7)).

The Act enables the requirement to isolate or remain at a specified place to be enforced by the individual being brought into custody and being returned to that place (see para 16(c)).

Additionally, paragraph 18 of the Schedule makes provision for those with responsibility for children (those under the age of 18), imposing a requirement, so far as reasonably practicable to ensure the child complies with any direction, instruction, requirement or restriction.

Importantly, a right of appeal to the Magistrates' Court is provided in relation to the imposition of requirements, including their variation and extension (see para 17). On appeal, the court has the power to quash, modify, or confirm the requirements imposed. Where a child has a right of appeal, this may be exercised by an individual who has responsibility for them (see para 18(6)).

Offences

Paragraph 23 provides that it is an offence punishable by way of level 3 fine (£1000), if a person:

- fails without reasonable excuse to comply with any direction, reasonable instruction, requirement or restriction given or imposed,
- fails without reasonable excuse to comply with a duty under paragraph 18(1) or (2) (duties of individuals who have responsibility for a child),
- absconds or attempts to abscond while being removed to or kept at a screening or assessment place,
- knowingly provides false or misleading information in response to a requirement to provide information or otherwise in connection with the exercise of any power,
- obstructs a person who is exercising or attempting to exercise a power conferred

Powers relating to events, gatherings and premises (Schedule 22)

What are the powers?

Schedule 22 to the Act empowers the SOS to issue directions in relation to the holding of an event or gathering, including the ability to prohibit, or impose requirements or restrictions (see para 5(1)). Such directions may be issued to a particular event, or events of a specified description.

In addition, powers are provided for the SOS to issue directions in relation to premises (see para 6(1)) including, but not limited, to:

- closing the premises;
- restricting entry into the premises;
- restricting the number of persons in the premises;
- restricting the purpose for which a person is in the premises;
- restricting the facilities in the premises; (see para 6(5) and para 6(6))

Who can they be imposed on?

In the case of events and gatherings, directions may be imposed on

- the owner or occupier of premises for an event or gathering to which the direction relates;
- the organiser of such an event or gathering;
- any other person involved in holding such an event or gathering (see para 5(3))

Importantly, this does not include a person whose only involvement in the event or gathering is, or would be, as an attendee (see para 5(7)).

In the case of premises, a direction may be imposed on:

- the owner or occupier of premises;
- any other person involved in managing entry into, or departure from, such premises or the location of persons in them (see para 6(3)).

When can the powers be used?

Similarly to PIPs, the powers may be used following the declaration of a statement by the SOS and cease upon its revocation. However, in relation to these powers, the period is referred to as 'public health response period' (see para 4).

Offences

The Act makes it an offence for a person to fail, without 'reasonable excuse', to comply with any of these requirements of Schedule 22 (see para 9(1)). Notably, if an offence committed by a body corporate is proved to have been committed with the 'consent or connivance' of an officer of the body (a director, manager, secretary or other similar officer), or to be attributable to any neglect on the part of such an officer, the officer, as well as the body corporate, is guilty of an offence and liable to be prosecuted (see para 10(1)). This provision mirrors recent legislative changes seen in other regimes, such as data protection (see the Data Protection Act 2018 and PECR Amendment Regulations 2018) and financial services (see the Financial Services and Markets Act 2000) and means that individuals will not be able to hide behind the 'corporate veil' to avoid criminal liability.

Conclusion

The powers within the Act are inherently restrictive and those who are subject to them will face severe disruption to both their family and working lives. There are clear issues engaged by the new powers, including interferences with the right to liberty (ECHR Article 5) and rights to freedom of assembly and association (ECHR Article 11). It is critical, therefore, that the powers are only exercised where necessary and proportionate to do so, and that the safeguards provided within the Act are complied with.

The Act is time-limited to a period of 2 years (see Section 89). However, this may be extended if required. Given that these provisions represent inroads into the private lives of individuals, unprecedented in times of peace, any overzealous application of the provisions or deviation from the framework set out in the Act ought to be rigorously challenged.

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