

SPICe Committee Briefing: LCM on the Coronavirus Bill

Introduction and purpose of paper

The UK Government has introduced an emergency bill which has a number of provisions aimed at tackling the spread of Coronavirus (COVID-19), [the Coronavirus Bill 2019-21](#). The Scottish Government has lodged [a Legislative Consent Memorandum \(LCM\) on the Bill](#).

There are several clauses which seek to legislate in devolved areas, and so the UK Parliament is seeking the consent of the Scottish Parliament.

Under an agreement known as the “Sewel Convention”, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee on the basis of a memorandum (a Legislative Consent Memorandum). More information on the process can be found [on the Parliament’s webpages](#).

This publicly available committee paper has been prepared by researchers across SPICe to aid scrutiny of the legislation, both through the Parliament’s committees and when the legislation is considered in the chamber.

The remainder of the paper covers the main subjects covered in the LCM – for ease of navigation, hyperlinks below take the reader to the main subject heading sections, and each of these sections starts on a new page. However, given the size of the UK legislation and the necessarily short timescale for scrutiny, it has not been possible to cover every aspect in this briefing.

- [Health and social care](#)
- [Education](#)
- [Disclosure](#)
- [Events and gatherings](#)
- [Suspension of port operations](#)
- [Courts and tribunals](#)
- [Requirement to provide information on food supply chains](#)

The paper concludes by looking briefly at [the human rights implications of the legislation](#).

Health and social care

Many of the provisions of the Bill will have a direct impact on the operation of Scotland's NHS and its ability to respond to the virus. However, some of these are reserved to Westminster and so the UK Parliament is not asking for Scotland's consent to legislate in these areas. These provisions include the emergency registration of nurses and other health and care professionals who have recently retired.

The following sections of this paper detail the health and social care provisions in the bill which are devolved to Scotland.

Emergency registration of nurses and other healthcare professionals

One of the key considerations in the response to the virus is ensuring the NHS is prepared for increased demand. This includes the provision of adequate numbers of staff.

The Bill seeks to permit the temporary registration of healthcare professionals, and thereby quickly boost the numbers of available qualified staff. It will do this by allowing the Nursing and Midwifery Council and the Health and Care Professions Council to temporarily register "fit, proper and suitably experienced persons". It is expected that this will include recently retired staff and those who are almost qualified.

The General Medical Council and General Pharmaceutical Council already have similar emergency powers for doctors and pharmacists.

The regulation of healthcare professionals is mainly reserved to Westminster. However, this does not include professions which became regulated after devolution. This includes Operating Department Practitioners and Practitioner Psychologists.

Emergency arrangements concerning medical practitioners: Scotland

In order to practise as an NHS GP in Scotland, a doctor must be on the 'performers list' of the relevant NHS board. The bill seeks to temporarily remove this requirement to allow recently retired GPs to quickly return to practise.

Emergency registration of social workers and social work service workers

In Scotland, social work is a registered profession. To practice as a social worker, you must have a recognised social work qualification and be registered with the [Scottish Social Services Council](#) (SSSC). Only qualified and registered social workers can use the title 'social worker'. Most social care workers are also required to register with the SSSC.

Clause 6 refers to the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#), and Subordinate legislation: the [Registration of Social Workers and Social Service Workers in Care Services \(Scotland\) Regulations 2013 \(S.S.I 2013/227\)](#). These Regulations were produced according to powers conferred by sections 78(2) and (3) and 104(1) of the Public Services Reform (Scotland) Act 2010.

Schedule 5 of the Bill provides the detail for this clause. The Explanatory Note tells us that the new provisions allow for the temporary registration of social workers by creating a new part of the Register held by the SSSC. Retired social workers, social work students and those on a career break will be able to apply to become temporary social workers. The temporary scheme would be triggered by the Scottish Ministers on advice from the Chief Medical Officer about the outbreak, and the need for more social work staff.

The other provision made in this area is to extend the period from six to twelve months that a social care worker, working in a registered care service, has to register with the SSSC. This is intended to make recruitment easier in a time where additional social care workers are required.

Mental health and mental capacity

Clause 9 of the Bill aims to amend the existing mental health and mental capacity legislation. Schedule 8 relates to the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) and the [Criminal Procedure \(Scotland\) Act 1995](#).

Mental Health (Care and Treatment) (Scotland) Act 2003

The Bill seeks to change how long a person can be detained under an [emergency detention certificate](#). Under the current legislation a person can be held in hospital for up to 72 hours while their condition is assessed. The Bill aims to extend this to 120 hours.

It also seeks to make changes to [short-term detention certificates](#). Short-term detention certificates allow for a person to be held in hospital, or transferred to a different hospital, and their detention for up to 28 days for assessment and/or treatment. Currently short-term detention certificates can only be granted by an Approved Medical Practitioner (AMP) and a Mental Health Officer must be consulted. The Bill would allow an AMP to grant a short-term detention certificate without consulting an MHO if that would be “impractical or would involve undesirable delay”. It also allows for an AMP to apply for a second short-term detention certificate rather than a compulsory treatment order.

[Compulsory treatment orders](#) (CTOs) allow for a person to be treated for their mental illness. A CTO is granted by a Tribunal and authorises detention and treatment in hospital or the community for an initial period of six months. It is then reviewed annually. Currently, a CTO requires two medical reports, a report by the MHO making the application, and a proposed care plan. The Bill seeks to allow the CTO to be made by an MHO with one, rather than two, medical reports if seeking two reports would be “impractical or would involve undesirable delay”.

The Bill would also suspend the requirement to review compulsory treatment orders, compulsion orders, compulsion and restriction orders, hospital directions and transfer for treatment directions.

Currently certain nurses (mental health or learning disability registered nurse) can detain a patient who is not subject to a CTO for three hours to enable an examination to be carried out by a responsible medical officer (RMO). Under the Bill

nurses would be given an extra three hours to detain someone before they have a medical examination. This would be increased from three hours to six hours. Prior to 2015 a nurse could only detain a person for two hours.

The Bill would allow a person to be given medicine, without their consent or if they are unable to consent, without a certificate being issued by a medical practitioner if the certificate has been requested even if it has not yet been issued.

The [Mental Health Tribunal for Scotland](#) considers and determine applications for compulsory treatment orders under the 2003 Act and to consider appeals against compulsory measures made under the 2003 Act. The Tribunal also plays a monitoring role by periodic review of compulsory measures. It is currently made up of three people (a legal member, a psychiatrist and general member – such as a nurse, clinical psychologist or person with experience of using mental health services). (Mental Health Tribunal online). The Bill would enable the Tribunal to be made up of the President or a single member selected by the President or the convener and a member selected by the President from the panel.

Further information can be found in the SPICe briefing [Mental Health \(Scotland\) Bill](#) and from the [Mental Welfare Commission for Scotland](#).

Criminal Procedure (Scotland) Act 1995

The Bill also seeks to amend the [Criminal Procedure \(Scotland\) Act 1995](#), which relates to how a case or proceeding is completed in the criminal courts for people with mental disorders. The [Explanatory Notes](#) state that the Bill:

“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”.

Ways in which the Bill seeks to relax time limits include extending the period of assessment orders, which authorise detention in hospital and are used as the starting point into investigation into mental disorder, from 14 days to 12 weeks.

It also allows a number of orders to be made on the evidence of one medical practitioner rather than two. This would apply to:

- Treatment orders, which authorise detention and treatment in hospital until certain conditions have been met. It is used to facilitate treatment whilst the patient is undergoing court process.
- Interim compulsion orders, which are used when an individual is convicted of an offence and the punishment is prison but instead is admitted to hospital for examination.
- Temporary compulsion orders, which are used when a court decides that a person’s trial cannot start or must stop because of their mental disorder.
- Compulsion orders, which authorise detention and treatment in a hospital or community setting. This is an equivalent of the compulsory treatment order.

- Hospital directions, which authorise the detention of a patient in hospital until they are well enough to be transferred to prison to complete their sentence.
- Acquitted persons: detention for medical examination.

The Bill also seeks to allow the Tribunal to decide cases without a hearing if it considers that it would be impractical to hold a hearing.

It would also modify the [Mental Health \(Conflict of Interest\) \(Scotland\) Regulations 2017](#) to take out references to a conflict of interest for medical practitioners employed by independent healthcare services where the person will be detained.

Indemnity for pandemic-related health service activity

The Bill includes powers to provide indemnity cover against clinical negligence for health care workers and others carrying out activities connected to care and treatment in response to the pandemic.

This is intended to act as additional protection for instances of clinical negligence not already covered under pre-existing indemnity arrangements. There are already a number of sources of indemnity cover for professionals, including state indemnity schemes, commercial insurance policies or through membership of a professional body.

The Scottish NHS operates the [Clinical Negligence and Other Risks Indemnity Scheme](#) (CNORIS) on behalf of NHS Boards for claims made against their employees. However, the associated regulations prevent pay-outs for anyone not employed or engaged by the health board. As a result, it is envisaged that the provisions of the bill may create some gaps, so Ministers should have a discretionary power to indemnify cases not covered. This may arise through health and care staff taking on additional roles in response to the pandemic.

Social Care – the assessment of needs

Clauses 15 and 16 of the Bill cover the processes entailed in someone accessing social care and support under the [Social Work \(Scotland\) Act 1968](#). These clauses apply to adults and children's services and are about assessing the need for care and support, preparing support plans for carers, children leaving care. They also cover charging for services provided under these emergency provisions and provide some protection in any court proceedings if there is a backlog of assessments and caseload once they are no longer in force.

The LCM tells us that the provisions will increase the flexibility for local authorities in providing support more quickly, by not having to comply with assessment duties, under section 12A of the 1968 Act if they would cause delay or not be practicable. The local authority still has to provide support and meet needs however. The aim is to allow for rapid prioritisation when there will be more discharges from hospital and a reduction in available care staff. What is not clear is how these services will be delivered and by whom in these circumstances. However, this is partly covered in other provisions that allow for the temporary relaxation of normal registration procedures for social care and health staff outlined above.

Sub-clauses (12) and (13) extend the ability of local authorities to relax the assessment duties for people who were already waiting for an assessment before the provisions were switched on.

Sub-clauses (3) and (4) amend *duties* under the Carers (Scotland) Act 2016, to 'powers'. This means that local authorities can choose not to prepare an adult care support plan, or to prepare young carer statements or have a conversation to identify the young carer's needs. However, the duty to provide carer support remains in place, but is not defined through dialogue with the carer.

In sub-clause (7), once again, we see a duty to assess need amended to a power, which is intended to prevent delay in providing support. In this case it is in relation to disability needs of a child or family member.

In relation to children who have left care, the duty to carry out an assessment of needs for after-care, such as guidance and assistance, has also been amended to a power.

The government can issue guidance to cover these new provisions, which allows authorities to disregard any pre-existing guidance if there is any conflict.

In relation to charging for services where an assessment hasn't been done, or not done as per previous practice, authorities are not able to charge for services, because it would not be deemed fair under an emergency situation, where little engagement with the person had been undertaken, and could be open to later challenge. Charges could be made retrospectively, if the person becomes a permanent care home resident, or if the local authority does conduct a full needs and financial assessment after the services are in place.

Finally, if the backlog of assessments and cases has built up during the time the emergency provisions and they are taking time to clear, in any court proceedings, the court has to take account of the impact of the emergency provisions on the local authority's ability to function normally in its restored duties.

Vaccination and immunisations

The National Health Service (Scotland) Act 1978 requires that vaccinations and immunisations must be administered by a doctor, or under their direction. The Bill seeks to remove this requirement to allow a wider range of professionals to administer vaccines and immunisations. This would apply to the existing national programme as well as any new vaccines and is primarily intended to free health service capacity to deal with the pandemic.

Health Protection Regulations: Scotland

This part of the bill gives Scottish Ministers powers to create 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".

Scottish Ministers already have regulation making powers under the Public Health etc. (Scotland) Act 2008. However, this part of the bill is intended to give them

powers to create regulations which mirror those available in England and Wales, and thereby create consistency across the UK.

The power is broad and could include imposing restrictions or requirements on or in relation to persons, things or premises. There are some safeguards built into the bill, for example, regulations cannot force someone to receive medical treatment. However, the schedule contains a list of possible restrictions on people, premises and things, including that someone could be removed and detained in a hospital or other suitable establishment. In relation to premises, restrictions or requirements could include closing premises.

The regulations could create offences and the bill sets out maximum penalties for such offences, including imprisonment of up to two years.

The Bill would allow these restrictions and requirements to be imposed where it is considered proportionate.

Powers relating to potentially infectious persons

In February, England introduced the Health Protection (Coronavirus) Regulations 2020 which allow (amongst other things) for the detention, isolation and screening of people who have, or may have, coronavirus. This part of the bill revokes these regulations and creates similar provisions which would apply to the whole of the UK.

Provisions for Scotland are set out in Schedule 20 and detail the powers afforded to public health officers, the police and immigration officers. These powers include directing or removing people for screening and assessment, requiring them to stay there for up to 48 hours and restricting the movements of those who test positive.

It would be an offence to not comply with any directions, restrictions or requirements imposed under the bill. Penalties for offences include imprisonment for up to 12 months or a fine.

The bill would allow Scottish Ministers to pay compensation to those subject to restrictions under the legislation.

Powers in relation to bodies

These powers aim to extend capacity within the death management process in the event of very high levels of deaths related to covid-19. They are straightforward, aimed at preparedness and, given the aims and compensation provisions, unlikely to be controversial.

The explanatory note sets out that –

“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.”

LCM

The relevant provisions are Clause 56 and schedule 27: powers in relation to transport, storage and disposal of dead bodies etc.

These provisions allow local authorities to gather information about the capacity among local death-management providers to deal with transportation, storage and disposal of deceased bodies or human remains. Scottish Ministers will also have the power to request this from local authorities. They also allow for local authorities to direct providers to “do anything calculated to facilitate the effective management of excess deaths caused by COVID-19”, and for Ministers to direct local authorities likewise. These powers will only be enacted if Scottish Ministers determined that there is likely to be insufficient capacity in a local authority’s area to manage dead bodies and human remains, and allows for affected providers directed under these measures to be compensated.

Registration of deaths and still births etc. and review of cause of death certifications and cremations

These powers aim to streamline the registration of deaths and still-births for a period so as to avoid the system becoming overwhelmed. These measures are temporary, take in to account the nuances of existing Scottish legislation, and are unlikely to be controversial.

The explanatory note sets out that –

“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.

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.

In Scotland, the Registration of Births, Deaths and Marriages (Scotland) Act 1965 is the main legislation governing the registration of births and deaths in Scotland.

[The Burial and Cremation \(Scotland\) Act 2016](#) places duties place 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.”

LCM

The relevant provisions are Clause 17 and schedule 12: registration of deaths and still births etc., and Clause 19 and schedule 13: review of cause of death certifications and cremations: Scotland.

These provisions allow for funeral directors to act as informants for the purposes of death registration, and for notifications and documents relating to deaths to be conveyed by telephone and by electronic means. It also sets out provision for a transitional period to allow the completion of any death or still-birth process begun before these measures take effect.

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. Clause 19(1) and schedule 13, Part 1 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.

Education

The Bill would provide for Scottish Ministers to make directions with regard to the temporary closure of educational institutions and childcare premises. Clause 35 introduces Schedule 15 of the Bill which provides for Ministers to make directions to close educational establishments or childcare establishments. Clause 36 introduces Schedule 16 which provides Ministers to make directions requiring the continuation of provision of education and childcare.

The Bill provides for similar powers to those that could be exercised under the [Civil Contingencies Act 2004](#). One substantial change is that the Bill provides for directions to cover private or third sector providers (e.g. colleges, independent schools etc.).

Schedule 15 - Temporary closure of educational institutions and childcare premises

For the purposes of this schedule, an education establishment may be:

- a school (including grant aided or independent schools)
- a college
- a higher education institution (e.g. university)
- an education and training establishment which is accredited by the SQA.

Paragraph 7 of Part 2, Schedule 15 of the Bill provides that operators of an educational establishment, managers of school boarding accommodation and managers of student accommodation must have regard to “any advice relating to the incidence or transmission of coronavirus from the Chief Medical Officer of the Scottish Administration”.

Paragraph 8 of Part 2, Schedule 15 of the Bill gives Scottish Ministers the power to make an “education closure directive” (“ECD”). An ECD would require an operator of an educational establishment to “take reasonable steps to restrict access to the establishment for a specified period”. An ECD could apply to early learning establishments and out-of-school care providers, including childminders. An ECD is enforceable through Ministers applying to make an order.

An ECD can be very broadly drafted. It can cover all educational establishments in Scotland or a part of Scotland, one or more named establishment, or types of educational establishments in all or part of Scotland.

The ECD can be made in a way to distinguish between different types of individuals attending educational establishments, it may prohibit access to part or all of an educational establishment, it may prohibit all or some activities. Scottish Ministers can frame their directions in any way they see fit, and can also “make such other

provision [as they] consider appropriate in connections with the giving of the direction.”

Ministers would also have similar powers to make an ECD in respect to school boarding accommodation and student accommodation. An ECD in respect to boarding accommodation and student accommodation may also provide for those pupils or students to be “confined” to that accommodation for a period. The Bill provides for similar powers to the Northern Ireland Executive in relation to boarding; other than that, these powers do not appear to be replicated for the other three nations in the Bill.

An ECD may disapply any duty or statutory time limit in relation to education. Paragraph 9 provides that particular duties are disapplied where an ECD has effect. These include the overarching duties on local authorities to:

- [secure adequate and efficient school education for children their area;](#)
- [make adequate and efficient provision for children who have additional support needs;](#)
- [secure early learning and childcare provision.](#)

These are the key functions of a local authority acting as an education authority. In addition, the Bill would disapply parents and carers’ duties to [“provide efficient education”](#) for their children, which is normally fulfilled by sending the child to a school.

On 18 March 2020, the Scottish Government announced that schools would close on Friday 20 March 2020. The Cabinet Secretary for Education and Skills told the Parliament on Thursday 19 March 2020:

“Teaching, learning and support will continue, albeit in different ways for different groups of children. For the majority, that will be through distance learning and online learning, with different forms of on-going contact with teachers rather than in-school, face-to-face teaching.” (OR [19 March 2020, Col 34](#))

The Cabinet Secretary also noted that schools and ELC settings would still be open for the children of key workers (e.g. workers in health and social care), young people who still have coursework for national qualifications, and vulnerable children.

The provision of school education through online learning has long been planned for in response to a pandemic. [Guidance to local authorities, dating from 2006, on possible influenza pandemics stated:](#)

“Local authorities have a power to provide education other than at a school, for pupils unable to attend school “by reason of extraordinary circumstances”. Therefore, while it might well not be possible to provide the usual full service, local authorities will wish to provide a reasonable level of education for **all** children in their area if pupils are unable to attend schools due to school

premises being closed to pupils during term time. This presents practical challenges. One way to meet this challenge may be for all teachers to continue to provide support remotely for pupils working from home. We therefore recommend that local authorities make preliminary plans now, and more detailed preparations when we issue more detailed advice, and that they discuss with independent and grant-aided schools the extent to which those schools will be able to fulfil this commitment to their respective pupils. We envisage that these plans will include on-line material [...] where pupils have internet access. Working with key agencies as appropriate we will explore the scope to provide more curricular support at a national level in the event of school closures, and will provide further advice in due course.

Similar guidance from 2009 for colleges and universities noted that “successful use of e-learning requires planning and [...] are unlikely to be successfully introduced at the time of a pandemic without preparation.”

Schedule 16 - Temporary continuity directions etc: education, training and childcare

While Schedule 15 provides for Ministers to close educational establishments, Schedule 16 provides for Ministers to ensure those establishments remain open by making an Education Continuity Direction (“EConD”). An EConD has similar scope to an ECD in that it could apply to specific institutions or generally. Again an EConD can disapply educational duties and there is wide discretion as to what it contains. An EConD could:

- Confer additional education functions on an establishment or require the use of premises for the purposes of public health;
- Require an educational establishment to stay open or open for longer periods;
- Require an establishment to provide education for specific people or types of people;
- Require specific people or types of people to attend premises for the purpose of being educated there;
- Restrict access to part or parts of an establishment;
- Restrict the carrying out of certain activities;
- Require measures to ensure safe standards of hygiene, and other measures to protect health, to be put in place;
- Require the alteration of term dates, holiday dates or examination dates.

As with an ECD, an EConD could be enforceable through the courts.

Disclosure

The Bill would provide for two general powers to amend the Disclosure scheme in Scotland.

Clause 32 says that the Scottish Ministers could modify or effectively ignore two sections of the 2007 Act to protect vulnerable groups (Protection of Vulnerable Groups (Scotland) Act 2007), the Act that is associated with the PVG scheme. The Ministers will be able to specify a range of circumstances and time period for any changes. The sections in the 2007 Act are about offences related to offering positions in regulated work to individuals who have been barred from doing that work. Importantly, despite the very general powers contained in clause 32 to change or disapply these sections, it would still be an offence for a barred person to seek work in a regulated profession or regulated work, because any new direction would not affect the relevant section (34) of the 2007 Act.

Clause 33 allows for Ministers to confirm, through Disclosure Scotland, that an individual is a member of a PVG scheme, but not provide information about convictions. A safeguard remains in place, because an individual cannot be a member of a PVG scheme for protected adults or children if they are barred from regulated work with those groups. This could streamline the recruitment of staff if Disclosure Scotland's capacity to process checks is compromised by the infection.'

Events and Gatherings

Clause 50 of the Bill introduces Schedule 21 which provides powers to Scottish Ministers to prohibit a number of activities. Ministers would have the power to prohibit specific or general types of gathering or events. Ministers would also have the power to close place restrictions on specific or types of premises. Restrictions on premises could include requirements to restrict entry to premises or place restrictions on the location of individuals in premises.

Schedule 21 provides for these directions to be able to be enforced by the police or other persons. It also provides for offences in relation to non-compliance with such directions made by Scottish Ministers. Offences under this schedule could attract a summary conviction a fine of £10,000 or on an indictment, an unlimited fine. The Schedule provides for Ministers to pay compensation in connection to issuing directions that limits or prohibits events, gatherings or premises.

Suspension of port operations

The following sections of this briefing highlight the amount of people and goods that pass through Scotland's port and airports, describe the work of the UK Border Force and summarise the port related provisions in the Coronavirus Bill and related Legislative Consent Memorandum.

In summary, the Bill would allow a UK Secretary of State to require the temporary suspension of operations at a port or airport where the operational strength of the border force had been depleted by the coronavirus to the extent that border security could be compromised.

Airports: Scotland has four main international airports (Edinburgh, Glasgow, Aberdeen and Prestwick), 11 airports managed by Highlands and Islands Airports Limited and a number of smaller airports/air fields that generally serve remote rural and island communities.

29.4m passengers passed through Scotland's airports during 2018 (the most recent year for which full figures are available), of which 49% travelled through Edinburgh Airport and 33% through Glasgow Airport. During the same year, 62,000 tonnes of air freight passed through Scotland's airports. These passengers and freight were carried on a total of 481,000 aircraft journeys.

Sea ports: Scotland has 11 major ports, defined as regularly handling more than 1m tonnes of freight per year. These major ports handle 95% of all Scottish port freight traffic. In total, Scotland's ports handled 65m tonnes of freight in 2018 (the most recent year for which full figures are available).

8.5m passengers and 3m vehicles were carried on internal Scottish ferry routes in 2018. In addition, 1.8m passengers and 0.4m vehicles were carried on ferry services between Scotland and Northern Ireland. There are no scheduled passenger or freight ferry sailings between Scotland and anywhere in the EU.

The Border Force: The [Border Force](#) is a "law enforcement command" within the UK Home Office. It is responsible for:

- checking the immigration status of people arriving in and departing the UK
- searching baggage, vehicles and cargo for illicit goods or illegal immigrants
- patrolling the UK coastline and searching vessels
- gathering intelligence
- alerting the police and security services to people of interest.

Border force officers work at 140 UK and overseas ports and airports, including major international airports and ports in Scotland.

Proposed power to suspend port operations

Clause 48 and Schedule 19 of the Coronavirus Bill would give the Secretary of State powers to suspend port operations.

The Secretary of State could issue a written direction to the operator of a seaport, hoverport, airport or railway station/goods yard directly served by trains travelling through the channel tunnel, directing them to suspend relevant port operations (which includes actions to facilitate the arrival or departure of people, goods, aircraft, vessels or trains). Such a direction could only be issued when:

- There is a real and significant risk that, due to the effect of coronavirus, there would be insufficient border force officers to maintain border security; and
- The Secretary of State has already taken reasonably practicable action to mitigate that risk.

A period of suspension would initially be limited to a maximum of six hours. This could be extended by a further six hours if the risk to border security remained. The suspension can then be further extended as necessary, with each subsequent extension being up to 12 hours long.

The Secretary of State would also have the power to issue directions to any person requiring them to assist aircraft, vessels and trains to arrive at alternative ports or stations.

The Secretary of State would have to notify Scottish Ministers of any direction or notice issued under these provisions.

It would be an offence for any person to fail to comply with any direction or notice issued under these provisions, unless they had a reasonable excuse for failing to comply.

Legislative Consent Memorandum: Immigration, customs and border matters are reserved to the UK Parliament. No legislative consent is required.

Courts and tribunals

The Bill includes provisions aimed at supporting the continued operation of courts and tribunals (clauses 51-55 and schedules 22-26). The explanatory notes state that:

“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.” (para 92)

Proposed amendments to existing legislation seek to reduce the impact by facilitating greater use of video and audio technology – thereby reducing the need for people to physically attend court.

However, most of the Bill’s provisions on this topic do not extend to Scotland. The only ones which do are those in paragraph 2 of schedule 24. These deal with proceedings in certain tribunals being conducted by audio or video link. In the Scottish context this means reserved tribunals only (e.g. employment tribunals). The relevant provisions of the Bill do not apply to Scottish courts or devolved tribunals.

The Scottish Government’s legislative consent memorandum does not refer to the above provisions of the Bill.

Although most of the provisions in this area do not extend to Scotland, significant changes to court and tribunal business are happening. The [Scottish Courts & Tribunals Service](#) (SCTS) has announced a range of changes to business, noting that:

“The Lord President and Lord Advocate have agreed to a programme of changes to criminal court business, which together with changes to civil court business, tribunal hearings and the work of the Office of the Public Guardian will provide a sustainable response during this outbreak.

The arrangements will support the public health response by reducing the requirement for physical attendance at courts or hearings whenever possible, reducing the risk to staff, judiciary and all court users. These arrangements prioritise essential or exceptional business and have been made with intent to support a managed recovery when that is possible.”

Specific information is provided in relation to the [criminal courts](#), [civil courts](#), [tribunals](#) and [the Office of the Public Guardian](#). For example, in relation to the criminal courts in notes that:

- jury trials (solemn procedure) – “Trials which are currently being heard will continue to their conclusion where possible. No new trials will commence. This situation will be reviewed on an ongoing basis and, when appropriate, citation of jurors will recommence, but, at this time, this is not expected to be before June 2020.”
- non-jury trials (summary procedure) – “Trials which are currently being heard will continue to their conclusion where possible. Trials where the accused is in

custody will be heard where possible. Other trials will only proceed in exceptional circumstances where there are minimal witnesses with known availability and we have the ability to maintain social distancing at courts.”

In addition to highlighting such restrictions, it notes that the criminal courts will continue to encourage the early resolution of cases without the need for trial and that:

“Working with COPFS, Police Scotland, Prisons, Scottish Legal Aid Board and the Scottish Government we are also exploring ways to increase the opportunities to pre-record evidence, enable evidence to be given from other locations and expand the use of technology, allowing those in police custody or prison to engage in a wider range of court hearings.”

Various time limits apply to legal proceedings. In relation to criminal cases, these include a requirement that an accused prosecuted under summary procedure is not remanded in custody for more than 40 days without the case being brought to trial. The court may extend this period on cause shown. The equivalent requirement for cases prosecuted under solemn procedure sets a 140-day time limit on remand prior to trial. Again, this can be extended by the court.

The SCTS information on civil cases indicates that business without witnesses will continue where possible, but that hearings where witnesses are required will be adjourned.

In relation to tribunals supported by the SCTS (devolved tribunals only), it states that non-critical work is being stopped, and that those hearings that need to continue will generally be dealt with by way of telephone conference call.

Requirement to provide information on food supply chains

Central to the UK and Scottish Governments' response to Covid-19 is to ensure that the supply of food to all parts of the country is maintained.

To be able to monitor the food supply chain and be alerted to any disruption, clauses 23 to 27 and Schedule 14 of the Bill make provision to require people within food supply chains to provide information.

Why have they included these provisions?

The [Explanatory Notes](#) state:

“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 [Food Chain Emergency Liaison Group] 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.

“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.”

What does the Bill say?

The Bill makes provision for the appropriate authority to require a person within the food supply chain to provide information if:

- The authority considers that the provision of information is necessary to establish whether the whole or part of a food supply chain is disrupted or at risk of being disrupted, and to ascertain the nature of the disruption; and
- Information has previously been requested, but the person has failed to provide the information or has provided information which is false or misleading “to a material extent”.

Requirements may be imposed on any person in the food supply chain, including producers (agriculture, fisheries, aquaculture), and anyone between the producer and the person who is provided with the food or drink for personal consumption (“intermediaries”). People who are connected with the supply chain may also be required to provide information. This includes those supplying seeds, stock, feed, equipment, fertiliser, pesticides for use in agriculture, aquaculture or fisheries; anyone providing goods or services to producers or intermediaries (e.g. related to

safety or quality of food or drink or welfare of animals); or anyone representing actors within or connected to the supply chain.

In Scottish terms, the appropriate authority is the Scottish Ministers, who may impose requirements if they would otherwise have been able to do so by an Act of the Scottish Parliament, e.g. in an area of devolved competence.

The UK Secretary of State may also exercise this power in relation to Scotland, but only with the consent of Scottish Ministers, if the information provided relates to a devolved competence.

If the UK Secretary of State makes a requirement to provide information with the consent of Scottish Ministers, the UK Secretary of State must disclose the information provided with Scottish Ministers, and any other relevant information for Scotland in relation to the activity for which information is required.

Penalties

If a relevant person fails to comply with a requirement to provide information without a reasonable excuse, or if they have provided false or misleading information, they may face penalties. The maximum amount of financial penalty is 1% of the qualifying turnover of that person.

The Bill specifies the notices that must be given, the representations that the person may make in the event of a penalty, and outlines what will happen if the person fails to pay, as well as information on appeals and enforcement.

Human Rights

The European Convention on Human Rights (the Convention) protects a wide range of rights such as the right to liberty and security (Article 5), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), the right to freedom of expression (Article 10), and the right to freedom of assembly (article 11).

Most of the rights in the Convention are not absolute, but can be subject to restrictions provided these are proportionate and in the public interest.

The Convention also contains a general derogation (Article 15) which applies “in time of war or other public emergency threatening the life of the nation.” It is, however, also subject to a proportionality test.

Proportionality involves assessing whether the scope of a restriction is necessary given the circumstances (this can include an assessment of whether the duration of a restriction is justified).

Further details on the UK framework can be found in [this SPICe briefing](#).

Without taking a view, various aspects of the Bill raise human rights issues. For example:

- the powers to remove, detain, isolate and screen people who have, or may have, coronavirus
- the powers to prohibit specific types of gathering
- the new rules on detention in mental health settings
- the reduced duties in social care settings
- the suspension of duties on cremation authorities, funeral directors and local authorities to take steps to trace and contact relatives of deceased persons.

One of the key questions is whether the restrictions are proportionate and also the extent to which they are necessary under the rules in Article 15.

During the [debate in the Chamber last week](#), the Cabinet Secretary for the Constitution, Europe and External Affairs, Mike Russell, stated that he did not want to give a definitive answer on the application of Article 15, but that

“There is no doubt that there is a balancing act to be had but also that the power to derogate exists. I hope that we are always conscious of the need to respect human rights, and to do so in the best way possible, commensurate with the emergency that we face.”

Anna Brand, Lizzy Burgess, Ailsa Burn-Murdoch, Allan Campbell, Angus Evans, Anne Jepson, Frazer McCallum, Alan Rehfisch, Kathleen Robson, Ned Sharratt
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