



## THE CORONAVIRUS BILL 2020: PUBLIC LAW PROJECT BRIEFING FOR HOUSE OF COMMONS SECOND READING

### Introduction

1. The Public Law Project ('PLP') is an independent national legal charity. We work through a combination of research, policy work, training and legal casework to promote the rule of law, improve public decision-making and facilitate access to justice.
2. The COVID-19 pandemic is a serious threat to the safety and wellbeing of the UK. **We accept the Government's rationale for the Bill but hope it can be properly scrutinised to enable the optimum response to the crisis.** We have three primary areas of concern.

### Timeframe of powers

3. The Coronavirus Bill 2020 gives the Government a wide array of emergency powers for two years. **A more suitable starting point would be for the Government to have these powers for six months and extend them if the powers were still required at the end of that period.**
4. The Bill allows the two-year timeframe to be shortened if a statutory instrument is laid in draft and approved by both Houses of Parliament.<sup>1</sup> The Bill allows the powers to be extended in six month increments beyond the initial two years by using the made affirmative procedure.<sup>2</sup> This procedure would bring the six month extension into effect immediately but would lapse if not debated within forty days. **PLP questions why the procedure for terminating the powers before the two-year period ends is more onerous than the procedure for extending the powers beyond the two-year period.**
5. **PLP further questions the rationale for the powers to be extended using the made affirmative procedure.** This procedure allows the powers to be in force for forty days before debate and could be continually re-laid as made, thereby ousting the potential for Parliamentary scrutiny. The draft affirmative procedure would provide ample time for Parliamentarians to extend these powers if required.

### Removal of duties on local authorities to provide adult social care

6. Part I of Schedule 11 of the Bill suspends the Care Act 2014 duties on Local Authorities to assess an adult's care and support needs and to meet their needs. It also suspends the duty on Local Authorities to support carers who provide assistance to these adults. This means that a great many elderly and disabled adults could lose services vital to their wellbeing and survival.
7. The only exception in the Bill is where a failure to provide services would result in a breach of human rights. The circumstances in which a failure to provide community care services will breach the ECHR are extremely limited (*R (MacDonald) v Kensington and Chelsea RBC* [2011] UKSC 33).

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<sup>1</sup> Coronavirus Bill, clause 76(1) and 79(1).

<sup>2</sup> Coronavirus Bill, clause 76(2) and 79(2).



8. **PLP understands that Local Authorities will be under pressure during this crisis and will need to prioritise resources. However, the solution cannot be to remove all duties on them to provide vital care for the elderly and disabled adults.**

### Online hearings

9. Provisions in the Bill enable the use of technology either in video/audio-enabled hearings in which one or more participants appear before the court using a live video or audio link, or by a wholly video/audio hearing.<sup>3</sup>
10. A direction for a person to take part in proceedings via live video or audio link may only be issued if ‘the court is satisfied that it is in the interests of justice’ and ‘the parties to the proceedings have been given the opportunity to make representations.’ Individuals without legal representation may have difficulty making effective representations on this issue. **We are concerned that there is a need for clear, published guidance for both judges and parties on how to ensure effective participation in the proceedings and which factors should be taken into account when assessing this.**
11. Open justice is a fundamental principle of the common law and the test for departure from open justice is one of necessity.<sup>4</sup> Furthermore, Article 6 of the European Convention on Human Rights guarantees that a civil litigant or criminal defendant must be able to participate effectively in a court hearing.<sup>5</sup> The provisions made to ‘enable the public to see and hear proceedings,’ via broadcasting and/or audio-visual recording of proceedings, rely heavily on technical infrastructure. **Providing broadcasting and/or recording capacity will be a significant challenge. We are concerned that if this technical challenge is not met, open justice will be compromised.**
12. Clause 85A of schedule 24 states that the court ‘may direct that proceedings are to be broadcast.’ **If all proceedings are not broadcast, open justice will be compromised and interested parties will be unable to observe proceedings. Retrospective fixes will be difficult.**
13. **Without broadcasting, it is essential that the recording of hearings is required and that HMCTS maintains a comprehensive and accurate register of which hearings have been dealt with remotely.** Without such measures, it will be extremely difficult to assess where errors have occurred retrospectively.

*If you would like to discuss points raised in this briefing, please do not hesitate to contact: Alexandra Sinclair, Research Fellow, [a.sinclair@publiclawproject.org.uk](mailto:a.sinclair@publiclawproject.org.uk)*

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<sup>3</sup> Coronavirus Bill, clauses 51-55 and Schedules 22-25.

<sup>4</sup> *Times Newspapers Ltd v Abdulaziz* [2016] EWCA Crim 887 (08 July 2016).

<sup>5</sup> *Stanford v. the United Kingdom*, 23 February 1994 and *T. and V. v. the United Kingdom*, 16 December 1999.