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## Coronavirus Bill 2019-2021

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### Introduction

These are extraordinary times, and Amnesty International UK (AIUK) recognises the need for extraordinary measures. Indeed, appropriate, necessary and proportionate measures to prevent, treat and control epidemic disease are core to the right to health, and the positive obligation to protect life.

Such measures must, however - where they amount to restrictions or limitations on other rights enjoyed by those in the UK - **be compatible with international human rights standards. That means, among other requirements, that measures must be:**

- **of a duration strictly limited to the exigencies of the situation**
- **subject to review**
- **amount to the least restrictive options available given the legitimate aim pursued.**

Risks to rights must be mitigated. We urge members to bear these fundamental principles in mind when considering the wide-ranging powers in this Bill, and the time for which it is proposed they are in place. We warmly welcome reports that the Government has accepted an amendment to require parliamentary renewal of the Bill every six months, subject to a maximum two year period.

Further, we urge members to consider as a priority in assessing these measures – including whether in some areas the provide sufficient protection - the particular impact of this pandemic and the measures designed to combat it on those who face additional barriers in being able adequately to protect themselves or who may be disproportionately impacted by restrictions - such as those living in poverty, the homeless, those in insecure employment and who may have no choice but to continue work, women at risk of violence (particularly in the home), other groups at particular risk or those who otherwise need regular access to health care at a time of increased pressure.

Given that this Bill is going through the UK parliamentary process at great speed and on an emergency basis, the below should not be taken to be the sum of AIUK's concerns about this Bill, and members are urged to contact us for further information and/or with specific questions about any aspects not covered.

### **Proper limits to extraordinary powers: a sunset clause and a human rights safeguard.**

As originally drafted, this Bill provided a dramatic extension of the powers of government to reach into the lives of the population, and provided that for two years. Such a lengthy period of intrusive powers without any requirement for regular renewal after proper parliamentary scrutiny would raise serious questions about necessity and proportionality – a concern about these measures both individually and collectively.

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The burden of justifying such restrictions lies with the government, and all such justifications must be subject to periodic review to ensure human rights compliance.

**As such we welcome reports of the introduction of a proper sunset clause**, providing for far greater parliamentary scrutiny of the continuing need for such a wholesale reorganisation of the powers of the state. A clause requiring six monthly review and renewal, to be informed by expert evidence of the continuing public health situation, is an important safeguard.

Further to this, however, we suggest that Members consider proposing an amendment at the front of the Bill that clearly states all powers contained within should be exercised in accordance with the principles of necessity, proportionality and non-discrimination, in accordance with the European Convention on Human Rights (ECHR) and other international human rights obligations. Another potential safeguard could be the introduction of a transparency obligation, requiring government to publish its reasons for and an explanation for any measures introduced under this Bill, and requiring that to be robust and detailed.

#### **Recommendations:**

- **AIUK would welcome the introduction of a sunset clause, with periodic parliamentary review of the continuing need for and operation of the powers at six monthly intervals, in order for them to be renewed, subject to a maximum period of two years.**
- **Introduce a section on the face of the Bill which clearly states all powers contained within should be exercised in accordance with the principles of necessity, proportionality and non-discrimination, compatibly with international human rights law.**
- **Introduce a duty on the relevant Ministers to provide a statement of detailed, robust reasons for the exercise of the powers within where they impact on human rights.**

#### **Powers to detain potentially infected persons**

Part 49 and its accompanying Schedule 20 confer various powers on public health officers, constables and immigration officers. These are powers to require people to attend screening and assessment (or take them to it); powers at that screening and assessment (to keep them there and to require compliance with screening and questioning); and powers following screening and assessment (including quarantine/isolation and other social and travel restrictions and the requirement to provide personal information). Constables and immigration officers are empowered to use reasonable force to implement the lawful use of these powers.

These powers may be activated following a formal declaration by the Secretary of State (or relevant devolved equivalent) that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health. This declaration creates a 'transmission control period' during which the subsequent powers are in effect. When the Secretary of State ceases to believe this to be the case, the declaration must be revoked and the transmission control period comes to an end. The powers to compel attendance for screening or ongoing restrictions can only be used if the person is reasonably believed to be potentially infectious and only if it is considered reasonable and necessary in the person's interests, or for the protection of others, or public health. People can be held for screening for a maximum of 48 hours by a

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public health officers; 48 hours by constables (24 +24 with permission); and 12 hours by immigration officers (3 + 9 with permission).

Further restrictions and requirements can only be imposed by a public health officer, and only if the person is found to be infected or testing is inconclusive. These requirements and restrictions can last for a maximum of 28 days (14 days + 14 days extension if the person is believed to still be possibly infectious). They must be reviewed after 48 hours and must be revoked if the person is no longer believed to be infectious. If the original restriction time has been extended, the restriction must be reassessed every 24 hours. There is a right of appeal to magistrates against restriction conditions. Magistrates have the power to quash or vary the restrictions.

These are broad, serious and potentially invasive powers being granted to public health officials and, to a lesser extent, constables and immigration officers. The use of such powers must be governed by strict necessity and proportionality tests and it is to be welcomed that this is to a certain extent recognised in the text of the bill. Other welcome features include the system of ongoing review of restrictions once imposed, and the right of appeal to independent magistrates. However, the protection of the human rights of individuals put through this process cannot be fully guaranteed by the procedural safeguards contained within it if the wider context is not also properly addressed. Of particular concern in this regard are the provisions of the Section directed towards requiring compliance with conditions and the divulging of information, under threat of criminal penalty. For example, imposing legally enforceable isolation/quarantine restrictions on a person living in an abusive or otherwise dangerous domestic environment would place them in an impossible position. Likewise, a person living in the UK with precarious immigration status may under this section be compelled to divulge a wide range of personal information and history to officials (including the names and addresses of loved ones) – there does not appear to be any restriction on the use of such information for immigration purposes. It is important therefore that attention is given to such concerns, given that there may otherwise be disproportionately serious impacts on particular groups. As such, the exercise and operation of such measures must be explicitly subject to the requirements of necessity, proportionality and non-discrimination, in accordance with international human rights law.

#### **Recommendations:**

- **Introduce a clause which clearly states all powers under this schedule should be exercised in accordance with the principles of necessity, proportionality and non-discrimination, compatibly with international human rights law.**

#### **Restrictions on events and gatherings**

Further powers in section 50 and schedule 21 would permit the Secretary of State, if of the view that there is a serious and imminent threat to public health from coronavirus and the measures therein will be effective to control that or facilitate deployment of medical or emergency personnel, to make a declaration to that effect. That declaration lasts until they cease to be of that view, when it must be revoked, which ends the '*public health response period*'. Before making such a declaration, they must consult with key medical officers. Under that declaration, they may make directions prohibiting or imposing requirements on holding events or gatherings (described in any way, including by reference to the number of attendees),

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either in relation to a specified event or ones of a specified description. That binds the owner of the relevant premises, the organiser or any other person involved in holding it (not mere attendees). The Secretary of State may also impose information requirements. They may also issue directions imposing restrictions or prohibitions on entering into or departing from premises – again of a general description, or specific. This can include closing premises and securing restrictions on the location of persons within premises. Throughout the schedule, ‘premises’ means any place, including a tent or transport vehicle. Failure to comply without reasonable excuse is an offence, with violation liable to a fine on summary conviction.

These powers will inevitably interfere with fundamental rights - including those of freedom of assembly, and potentially the right to private and family life. It is difficult at this point in time to envisage all the uses to which this extremely broadly defined power could be used, but easier to imagine that such use could potentially be disproportionate or discriminatory, given its reach. At present, of course, such overbroad usage would be unlawful given section 6 of the Human Rights Act 1998, and it is to be hoped it would never be wielded in such a way. However, AIUK urges Members to be alive to the question of whether such measures should be subject to an overriding requirement (as proposed above), on the face of the Bill, that their use be in accordance with the requirements of necessity, proportionality and non-discrimination. That could include a specific requirement that authorities seek viable alternatives that are less restrictive of the rights in issue. Moreover, we propose that there be a mechanism for specific periodic review of the necessity for the powers, to ensure the public health response period is kept to the absolute necessary minimum.

According to the UN International Covenant on Civil and Political Rights (ICCPR), and ECHR, for example, restrictions imposed on the freedom of movement and assembly (which these would likely amount to) are permissible if they are provided by law, and necessary to protect certain specified legitimate aims, one of which is public health – but must also be “*consistent with the other rights recognized in the [ICCPR].*” The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR (“Siracusa Principles”), an expert interpretation of the ICCPR, provide further guidance on when and how restrictions to human rights may be implemented. In the context of limitations on rights to protect public health, the Siracusa Principles reiterate that any individual “*measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured*”, as well as fulfilling the usual requirements of legitimate aim, non-discrimination, strict necessity and proportionality (the least restrictive approach), being limited in duration, and being subject to challenge and remedy against any abusive use.

Further, new criminal sanctions should always be a measure of last resort, with fair trial rights upheld.

#### **Recommendations:**

- **Introduce a clause which clearly states all powers under this schedule should be exercised in accordance with the principles of necessity, proportionality and non-discrimination, compatibly with international human rights law.**
- **Amend Schedule 21 s.3(2) to read: Having made a declaration under this paragraph, the Secretary of State must keep the need for such a declaration under continual review, including the provision of a statement of detailed reasons at formal reviews every 14 days. If at any time he**

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**ceases on review to be of the view mentioned in sub-paragraph (1), the Secretary of State must revoke the declaration.**

### **Use of military in front line policing**

AIUK suggests that Members consider at this time any concerns as to the use of the military to exercise any of the powers in this Bill, or otherwise in front line policing during this public health crisis. Members may wish to introduce amendments to ensure such steps, if later taken, have had the benefit of democratic scrutiny and appropriate limits introduced.

Public confidence in policing within the UK is intended to meet a complex balance of policing by consent backed up with a stringent set of professional standards to ensure that it follows strict rules of necessity and proportionality, in accordance with relevant international human rights law and standards. In short, any police action should only be taken where strictly necessary to achieve a lawful objective. In order to maintain the integrity of the police service, all such functions are then overseen by a stringent body of safeguards that range from authorised professional practice guidance, to internal police management procedures, incident reporting requirements, data collection on use of force, officer training and oversight systems. These also include independent and external scrutiny through - for example - the Independent Office of Police Conduct. (IOPC)

It is accepted that under pre-existing emergency powers, police capacity can be increased by using the military to support police functions. However, where those functions have been expanded greatly under this Bill, and military personnel might conceivably be called upon to support front line police activity, it will be very important to ensure that military personnel are bound by the same set of independent professional standards and procedures that apply to other full time police officers, and that specific guidance and protocols are developed on these points.

### **Recommendation:**

#### **Members may wish to consider introducing appropriate clauses providing that**

- **Military personnel used in policing operations must be subject to the same safeguards as govern all police conduct. Police chiefs must ensure that military personnel operating under their jurisdiction or command are bound by all relevant authorised Professional Practice including the National Decision-Making model.**
- **Military personnel undertaking police work must follow the Use of Force and incident reporting requirements.**
- **Military personnel should be subject to the same post incident procedures as regular Police officers, including ensuring that the Independent office of Police Conduct has jurisdiction over all military personnel undertaking police functions for the duration of the Coronavirus crisis.**

### **Immigration powers**

A significant omission in the Bill is any provision for mitigating the impact of the immigration system on the country's response to the coronavirus. It is vital for the health and wellbeing of everyone in the UK that the means adopted to tackle this pandemic are properly directed to keeping everyone safe. The virus does not

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care about citizenship or immigration status and measures that make people who are subject to immigration controls more vulnerable to it put everyone at increased risk. Whereas some steps can be taken without the need for legislation, there has been too little action and clarity from the Home Office concerning how the immigration system will be managed and modified to ensure everyone's safety. Moreover, several of the ways by which the existing system prevents people accessing safe healthcare, accommodation and the means to support themselves and their families at this time, are affected through primary legislation - that is wholly overlooked in this Bill.

**Among the particular steps members are urged to seek the government to consider are:**

- **what it will do to end or restrict the use of immigration detention to ensure that nobody held or working in the detention estate is put at undue risk, and to end any use of immigration detention where this cannot achieve any purpose for which it is authorised at this time?**
- **how it will ensure that the fear of data-sharing with the Home Office will not deter anyone who needs to access health services or other public services to maintain their or their family members' health and wellbeing at this time, such as by suspending data-sharing for immigration purposes**
- **how it will ensure that people are able to access vital healthcare and other public services, and access accommodation and the means to support themselves and their family members, whether by individual or general grants of leave to remain, the removal of conditions on leave to enter or remain or measures to remove statutory barriers to access?**

### **Domestic violence and abuse**

The current Bill does not provide measures to respond to a very likely increase in domestic abuse and violence as more and more people go into self-isolation during the pandemic. Emerging evidence from China is that police reports for domestic violence tripled during lockdown period. In Italy the national network of refuges has seen calls to its helpline decrease because women do not feel safe calling while housebound with an abusive partner.

The impact of measures taken to control the spread of the virus on victims and those who are in recovery need to be taken into account and appropriate measures adopted as this comes in a context when specialist services are already struggling with funding cuts and not able to provide support to all who need it.

Amnesty International supports the recommendations put forward by the Violence Against Women sector, available at <https://www.womensaid.org.uk/vawg-sector-statement-on-covid-19/>

**Among the particular steps members are urged to request the government to consider are:**

- **what it will do to improve funding for the sector to be able to cope under the impact of Covid-19 including ensuring new immediate funding and well as replacing income lost by refuges which might have to close.**
- **Support all women to be safe by lifting conditions that discriminate against migrant women including: suspending data-sharing for immigration purposes which may deter women from seeking healthcare and reporting violence, ensuring women with No Recourse to Public Funds can access life-saving refuges.**
- **Ensure refuge staff are qualified as key workers so they can continue to provide life-saving support. This also a need to recognise that support might change because of the evolving circumstances and there is a need to invest in remote forms of support (phone and web-based). Refuge services, which are often communal forms of accommodation, must be supported to test for coronavirus and deliver self-contained provision where needed.**

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- **Explain what it will do to ensure that guidance on social distancing and self-isolation includes specific advice for those who experience harm at home at the hand of a violent partner, what specialist support there is available and what their family and friends and specialist services might be able to do to help.**

### **Social Security and Worker's Rights**

Several measures have been introduced by the UK Government, or powers contained within the Coronavirus Bill, with the aim of protecting public health – such as travel restrictions, quarantines, limitations on public gatherings – which could adversely impact people's rights to and at work, with those in insecure forms of labour being disproportionately affected. This includes migrant workers, people in insecure employment including in the "gig" economy, people on lower incomes, irregular migrants and people working in the informal sector. Workers in these sectors often do not get adequate, or any, social security benefits, meaning they lose wages when they are quarantined and have no sick pay. They may also face additional challenges in accessing testing and treatment when they fall ill.

The UK Government should ensure that all people have access to social security – including sick pay, health care and parental leave – when they are unable to work because of the COVID-19 epidemic. This includes, for instance, if they are sick, or quarantined, or caring for children because of school closures. Such measures are also essential to support people to effectively adhere to the public health measures states put in place. For example, people are more likely to respect quarantines if they have access to adequate social security benefits. The more adverse consequences to themselves in self-isolating, the less likely they are to do so.

The Coronavirus Bill gives HMRC the power to reimburse employers who pay Statutory Sick Pay (SSP). Entitlement to SSP is confined to "employees," so excluding the self-employed, freelancers and other workers who are not on an employment contract. Also excluded are workers who earn less than the lower earnings limit of £118 per week. Zero-hours workers are likely to be ineligible too. It is not clear to what extent the Bill will permit regulations to extend SSP to workers who are not "employees." The fact that the Bill gives power to remove the three waiting days before SSP kicks in is to be welcomed.

At £94.25, SSP amounts to only 18.4 per cent of the average weekly wage of £512 per week, which is almost certainly insufficient to maintain the 'Right to an adequate standard of living' which is a fundamental human right embodied in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights to which UK is a party. Most countries in Europe provide a significantly higher rate of sick pay.

While the Bill contains power to make regulations to define when a worker's incapacity for work is related to coronavirus, it is unclear whether SSP is available only for those who are sick or also for workers who are advised to self-isolate and need guaranteed income even if they do not end up with the disease.

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