

# Coronavirus Bill

## March 2020



### Key messages:

- Councils are stepping up to play their role in supporting the national effort to tackle the Coronavirus. Acting as a fourth emergency service, local government is prioritising the most vulnerable to ensure they have the support they need.
- This is essential work in the nation's interests. We will of course step-up, but this emergency will stretch councils and our teams to the maximum as it will all public services.
- The Government announcement of £1.6 billion of new funding for local authorities to help them respond to Covid-19 pressures across all the services they deliver was positive. We are now working with the Government to clarify when councils will receive this funding, including the full details of any conditions attached to this new money. We will work with Government to target the balance of the initial £5 billion allocated to support public services.
- Councils will do all they can to support local businesses through these difficult times and there are very significant risks to local economies and employment. We welcome the Government's very significant interventions with businesses, including those measures routed through councils.
- Councils will design new ways of supporting our communities. In order to do so, we need to re-prioritise certain public services. This Bill's assistance with cutting unnecessary burdens and freeing up capacity in councils is positive.
- Additional powers should be added to the legislation to further support councils in their efforts to tackle the emergency. We understand the Government is planning to bring forward the measures outlined below and we would welcome them:
  - Suspending the requirement for a council to hold an annual council meeting.
  - Allowing councillors to hold meetings virtually so that they can continue to take decisions without having to meet in person.
  - Suspending the requirement for councillors to turn up to vote in person every six months.
- We would also like to see further powers introduced to help local government, including:
  - Temporarily relaxing the requirements on councils in regard to GDPR and FOI.
  - Removing all the statutory timescales, targets and obligations around non-essential processes that are not critical to supporting the immediate wellbeing of our residents, such as the Right to Buy.

# Briefing

- Allowing councils to turn on the powers to relax their adult social care duties under the Care Act in their areas, rather than reserving this power to the Secretary of State.
- Creating a new duty of care for landlords of Houses in Multiple Occupation (HMOs) to ensure tenants can satisfactorily self-isolate. This should include a power to levy a significant fine for non-compliance and/or give the local council the power to revoke HMO licence for breach of this duty.
- The response to this emergency is rapidly evolving and it is important that where Government is developing guidance and policy, councils continue to be closely consulted so that they can shape decisions to ensure they are effective locally. The measures needed to support our communities are likely to change which is why it is vital we continue to assess the approach and refine it as required.

## Further information

### **Emergency registration of social worker (clauses 5 and 6 and schedule 4)**

The Bill allows for the rapid temporary registration of additional social workers, drawn mainly from those who have retired recently or people who have nearly completed social work training.

#### **LGA view**

- Social workers have rightly been attributed critical worker status. They will play a vital role in this national emergency and we need to increase the number of them available to work in their communities. Processing of emergency registration for social workers needs to begin very rapidly with due regard to the minimum level of skills and experience that are reasonable in the circumstances. This could take time to get up and running as we need to allow for refresher courses so it is important to bring forward the measure as soon as possible.
- We need to fast track the basic Disclosure and Barring Service checks and this will require coordination across government agencies. Commissioners can also ensure flexibility for providers in hiring and deploying staff, for example following the model in adult social care which will allow recruits to begin working after a DBS 'AdultFirst' check has been obtained, rather than insisting on completion of full DBS checks.
- As well as bringing forward those applicants who are able to become fully-fledged social workers, measures such as all ensure that those going through a Assessed and Supported Year in Employment (ASYE) are prioritised as they have placement experience which will be invaluable.
- Prior to the onset of the pandemic, work was already underway through the Return to Social Work Programme managed by the LGA to encourage those who had left the profession to return to social work. This programme is up and running and we could expand it to increase the amount of people who can return to the profession and support the effort to tackle the virus.
- The Government should also consider a similar scheme to encourage recently retired care workers to return to their profession as well.

### **Emergency Volunteer Service (clauses 7 and 8 and schedule 6)**

This section of the Bill enables employees and workers to take Emergency Volunteer Leave in blocks of 2, 3 or 4 weeks' statutory unpaid leave and establish a UK-wide compensation fund to compensate for loss of earnings and expenses incurred at a flat rate for those who volunteer through an appropriate authority. The Government's aim is to ensure that volunteers do not suffer financial disadvantage as a result of performing a public good. Volunteers already play a critical role in the delivery of health and social care services and are particularly important in caring for the most vulnerable in our society, such as older people, those with multiple long-term conditions or those suffering from mental ill-health. Local authorities will have a statutory duty to administer the "emergency volunteering certificate" system which certifies that the worker has been approved by the authority as and as an emergency volunteer in health or social care, and will be acting as an emergency volunteer in health or social care from the date, and for the period, specified in the certificate.

## **The LGA view**

We recognise the intentions of this provision to support front-line services but we do have concerns about its feasibility as it will take some considerable time to train people to undertake personal care and support and take resources away from the front-line, we would suggest a better option would be:

- DHSC, LGA, ADASS and care providers working together to agree a set of priority tasks and support that are part of people's care packages that can be undertaken by an unqualified volunteer, freeing up quality care assistants to do personal care
- A focus on adult social care returners who need minimal skills refresh and Covid19 training.
- To ensure we can deliver the right support quickly, national guidance should be co-produced with LGA, ADASS, representatives of care providers and the community and voluntary sector
- Councils should have the flexibility to commission other agencies, for example a local voluntary services council to do this on their behalf, if the most effective local solution.
- As it is difficult to estimate the costs for delivering this, we would ask that Government commits to fully funding any additional costs.

## **Mental health (clause 9, schedule 7)**

The Bill will enable existing mental health legislation powers to detain and treat patients who need urgent treatment for a mental health disorder and are a risk to themselves or others, to be implemented using just one doctor's opinion. It also allows for a temporary extension or removal of time limits in mental health legislation to allow for greater flexibility where services are less able to respond. These temporary changes would be brought in only in the instance that staff numbers were severely adversely affected.

### **LGA view**

- Covid-19 will place further pressure on already overstretched inpatient and community mental health services, both in terms of increased demand and staff shortages. Additional resources will be required to meet these pressures as much as possible.
- Despite the challenging situation it is essential that vulnerable people's rights are protected, including the rights of children and young people. As the Bill recognises, the proposed changes to detention and treatment under the Mental Health Act must only be used when there are significant staff shortages, and there is an immediate risk to people's safety.
- We need to maintain a focus on ensuring that people are treated with dignity and receive access to quality, timely and personalised treatment. Any delays to discharge must be kept to an absolute minimum so that we avoid people being in hospital for any longer than is necessary.

## **Local authority care and support (clause 14 and schedule 11)**

For the duration of the 'emergency period', the Bill makes provisions to ease councils' responsibilities under the 2014 Care Act. Importantly, these enable councils to not comply with the following duties:

- Assessment of an adult's needs for care and support;
- Assessment of a carer's needs for support;
- Determination of whether a person's needs meet the national eligibility criteria;
- Assessment of financial resources (the 'means test');
- Preparation of a care and support plan or support plan.

As a consequence, the Bill makes associated changes to councils' duties and powers on meeting needs for care and support. Due to the temporary relaxation of the duty to conduct a financial assessment, the Bill also enables councils to charge retrospectively on completion of a financial assessment.

### **LGA view**

- It is essential both now, and for the coming weeks, that councils are supported by national government decisions to prioritise resources, services and support to those with the greatest needs. The emergency legislation will help councils do this and the measures are welcome.
- The Government [guidance](#) explaining what the Bill will do makes clear that councils: 'will still be expected to do as much as they can to comply with their duties to meet needs during this period and these amendments would not remove the duty of care they have towards an individual's risk of serious neglect or harm'. Councils will of course do all they can in these difficult circumstances to meet people's needs. Adult social care does however start from a position of pressure and we estimate that the service faced a funding gap of £810 million in 2020/21 even before the Coronavirus took hold.
- The Government guidance also states that: 'These powers would only be used if demand pressures and workforce illness during the pandemic meant that local authorities were at imminent risk of failing to fulfil their duties'. We understand that it is for the Secretary of State for Health and Social to make this determination and thereby turn the powers on. We believe councils should be allowed to turn on the powers to relax their social care duties under the Care Act in their areas, rather than reserving this power to the Secretary of State. As a minimum, urgent clarity is needed on exactly how this judgement will be made – on what basis, with what notice and for how long. At such a challenging time, councils need as much certainty as possible as this will help them to support their communities effectively.
- As drafted, the Bill is silent on councils' duty to 'promote the efficient and effective operation of a market in services for meeting care and support needs'. Supporting the provider market during this crucial time will be of paramount importance and councils will continue to work closely with provider partners to help mitigate the serious pressures they are facing and will face over the coming weeks.

### **Provisions related to registration of deaths and still births, and powers in relation to bodies (clauses 17 and 18)**

The provisions in the Bill are designed to simplify the administrative processes related to registering deaths and cremations, as well as reducing the cases that need to be notified or referred to a coroner during the pandemic. Amongst the measures the Bill simplifies the certification process, enables deaths to be registered without family members having to attend the registrar's office and allows funeral directors to register the death as well. Medical referees will only need to have a certificate from a single medical practitioner to authorise a cremation.

Although Covid-19 is a notifiable disease, coroners will no longer have to hold an inquest, and if a doctor has not seen the deceased during their last illness this death will not need to be referred to a coroner if there are no other factors that would require the death to be reported. The Bill also introduces powers of direction to allow councils to direct those involved in the death management system to transport, store or dispose of human remains to ensure systems are not overwhelmed by the number of excess deaths. There are also provisions for documents to be transferred electronically.

#### **LGA view**

- Councils want to ensure anyone who dies as a result of the pandemic is treated with respect and dignity, while minimising delays bereaved families may face in arranging burials or cremations. These provisions will assist councils and others involved in the death management process to streamline the administrative processes, and to coordinate local partners in transporting, storing and arranging burials and cremations to deal with any increases in the number of deaths resulting from Coronavirus.
- In order to put plans into operation councils need to know when funding will be made available for example to arrange additional storage capacity and will also need to access personal protective equipment to allow the safe running of that storage capacity.

#### **Temporary closure and continuity of educational institutions and childcare premises (Clauses 35 and 36 and Schedules 15 and 16)**

Clause 35 and Schedule 15 of the Bill enable the Secretary of State for Education to give directions for the temporary closure of premises used for the provision of education, including schools, 16 to 19 Academies, further and higher education and childcare providers. It allows a local authority to exercise any of the Secretary of State's functions in relation to all schools and settings in its area, including academies and free schools. Clause 36 and Schedule 16 enable the Secretary of State for Education to give directions for requiring the provision, or continuing provision, of education, training and childcare, and to give notices disapplying or modifying enactments.

#### **LGA view**

- We support the Government's decision to temporarily close schools and childcare settings to most children and welcome the recognition that councils will need to work with all schools and settings in their areas, including academies.
- Keeping vulnerable children safe is a key priority for councils and we welcome Government plans to ensure that these children can still attend childcare and education, along with the children of key workers who will be carrying out their vital roles. It is helpful that these powers can be devolved to local authorities where required as this will ensure a suitable local response to the pandemic and to support the needs of local children and families.
- Supporting guidance will need to clearly outline the role of both councils and providers, including funding and staffing arrangements, to ensure that children are able to safely access good quality care while supporting efforts to tackle the pandemic.

#### **NHS Pension Scheme (clause 43)**

The Bill enables retired staff to return to work in the NHS without effects on their pensions.

## **LGA view**

- It is vital that in dealing with this national emergency, all those who can support our communities are in a position to do so. To support local authorities in their efforts to tackle Coronavirus and provide vital assistance to communities, this sensible provision that is being applied to the NHS should apply across public sector schemes including local government. In our view the Bill should also include a contingency to apply the idea across social care providers as well if staff shortages emerge. It will also be necessary to ensure that people who return from retirement will need to be paid according to their salary position immediately prior to retirement.
- The LGA is working to support councils and national government. On this issue, we are taking urgent steps to obtain information from Local Government Pension Scheme administrators about the methods they would use to avoid abatement of pension payments in these circumstances. The Bill may require amendment to make provision for other critical pension schemes.
- Councils do vital work in their communities, whether it is providing care, looking after children and the vulnerable, providing fire and rescue services or managing waste collection and the more people we can encourage to come back to their former roles in local government and provide their expertise, the more likely we are to succeed in our efforts.

## **Postponement of elections (clause 57 and 58)**

Section 57 of the Bill related to the postponement of elections due to be held on 7 May 2020 and section 58 setting out the power given to the Secretary of State or the Minister for the Cabinet Office to postpone certain other elections and referendums.

## **LGA view**

- It is positive that the Bill includes clear provisions to postpone the local elections due to be held on 7 May 2020 until 6 May 2021 and other elections and referenda including by-elections, neighbourhood development plans and polls.
- It is also welcome that there is provision to provide compensation for local authorities or candidates incurring additional expenditure as a result of the Act, including retrospective provision.
- These provisions will allow councils to protect their communities and focus on providing the community support that is needed of them. It will also allow Returning Officers to postpone local elections, by-elections and other referendums without fear of prosecution.
- Councils continue to need to make good decisions and engage in rigorous democratic debate to ensure they are the right decisions during this difficult time. As such, councils need an additional provision in the Bill to allow them to undertake this remotely and where necessary postpone meetings, and we ask Government to include this.
- These unprecedented times also mean that councillors may not be able to be physically present to vote for more than six months, either because they have already been absent due to illness or another reason, or because they will be unwell going forward, must self-isolate or undertake social-distancing. For local government to be able to continue to function democratically we need a provision in the Bill to allow Councillors to remain able to serve if they are not physically present to vote for more than six months.

- In order to follow the Government's advice around social distancing and to respond to the intention of Government to postpone all elections; some council had to cancel local by-elections that were due to be held after the Government's social distancing and self-isolation advice and before Royal Assent of this Act.
- To support local government in focusing their efforts providing communities with support, provision should be made in the Bill to prevent legal action being taken against Monitoring Officers during this period of time. It should also apply the retrospective provision of compensation to these councils.
- As measures are taken to suppress the virus, councillors are likely to be required to self-isolate and it may not be possible to hold meetings. New powers are needed in the bill to allow for quoracy of virtual meetings. This to take account of the fact that in this emergency there will be decisions that are vital, urgent and need to be made promptly for the continued functioning of local government.
- In order to support the Government in fully mobilising our local efforts, all local statutory targets and obligations that are not critical to supporting the wellbeing of our residents need to be suspended.