

BIHR Briefing: Coronavirus Bill 2020 and Selected Human Rights Implications

The risk of making vulnerable adults and children even more vulnerable

24 March 2020

The [British Institute of Human Rights](https://www.bihr.org.uk) (BIHR) is a charity working in communities across the UK to enable positive change through human rights. We work to support people with the information they need to benefit from their rights; with community groups to advocate for better protections in their areas; and with staff across public services to support them to make rights-respecting decisions. This enables us to call for the development of national law and policy which truly understands people's experiences of their human rights. We work with over 2,000 people using public services and the staff members delivering them; our policy recommendations are directly informed by people's real-life experiences of the issues.

The [Coronavirus Bill](#) was set before Parliament on the afternoon of Thursday 19 March. This is an unprecedented time, at which many of us find ourselves in an unfamiliar (or familiar) position of vulnerability, it is vital that we can be assured safety includes the protection of our dignity and not losing the rules of fairness and respect in the way power is used to respond to this situation. [Human rights](#) are our roadmap for peace times and times of crisis. Restrictions may be allowed but it is very important that these restrictions are kept lawful and maintain a human element as to why safeguards for people in such vulnerable situations are so important. The UK's response must be underpinned by preserving our commitment to human rights and democratic oversight. However, the range of changes, lack of review and length of time these will be in place (up to two years) raises serious concerns which parliamentarians and the Government must address. In particular this briefing highlights:

1. Summary
2. Concerns with Coronavirus Bill provisions
 - A. The 2-year timeframe for powers
 - B. The impact on people with care needs (disabled and older adults and carers)
 - C. The impact of people with complex health needs being inappropriately discharged from hospital
 - D. The impact on people with mental health issues
 - E. Children with Special Educational Needs
3. Children, disabled people, older people and carers human rights protections: what is at stake
4. What happens next

All numbering has been updated to reflect the current House of Lords Bill.

1. Summary

Key concerns relate to the rights of older adults, disabled adults and children, carers and those detained in mental health hospitals:

Enabling powers for up to 2 years, as compared to other emergency enabling legislation, which has review and oversight mechanisms built in (Clause 89).

- **AMENDMENTS NOTE:** on 23.03.2020 a Government Amendment passed which introduced a 6 month Parliamentary review (Clause 98). However, a review only takes place when the House of Commons rejects the following motion “That the temporary provisions of the Coronavirus Act 2020 should not yet expire.” This means there are concerns about any one section of the Act they must review the continuation of the whole Act. We recommend that all powers should be reviewable and amendable, i.e. there should be a possibility for Parliamentarians to review and discontinue some sections and renew others. We would ask Peers to seek clarity on this.

Near wholesale removal of legal duties to assess and provide care and support needs for adults in some of the most vulnerable positions, including disabled and older people and carers (Clause 15 and Schedule 12)

- **AMENDMENTS NOTE:** There were no Clause 15 amendments passed on 23.03.2020. We recommend retention of the duties. If this is not possible, then duties should be retained, but amending their application so that local authorities are required to implement them as far as reasonably practicable. Alternatively, before treating the relevant social care provisions as disapplied, local authorities must to be satisfied that compliance with the duties is incompatible with either compliance with other statutory duties or with the efficient use of its resources. In any event, adding an express requirement to carry out an assessment to verify whether there would be any human rights breach should be included on the face of the Bill.

Suspension of assessments to provide continuing care on hospital discharge (Clause 14)

- **AMENDMENTS NOTE:** There were no Clause 14 amendments passed on 23.03.2020. We suggest that Continuing Care Assessments should not be suspended, but rather the process should be streamlined, completing the assessment and putting in place appropriate care arrangements within a specific time. These will be vital in ensuring people, many who fall into the COVID-19 vulnerable category, receive support they need to keep safe and well. Additionally, we suggest that it be made clear that proposals do not enable a breach of human rights, but only permissible restrictions. As above this should include adding an express requirement to carry out an assessment to verify whether there would be any human rights breach.

Removal of key safeguards to protect people detained in mental health hospital to prevent them from being detained longer than needed or discharged without support (Clause 10 and Schedule 8)

- **AMENDMENTS NOTE:** There were no Clause 10 amendments passed on 23.03.2020. We suggest that safeguards to protect detained people’s right to

liberty should be maintained, with specific time frames to support decision-making, and should current safeguards be restricted there must be robust review processes.

Downgrading of duties to support children with Special Educational Needs (Schedule 17)

- **AMENDMENTS NOTE:** There were no Schedule 17 amendments passed on 23.03.2020. We suggest that the legal duties under current SEND law should not be reduced to a “reasonable endeavours” duty, but should be maintained to keep vulnerable children safe and well.

The UK, and the World, are facing a health crisis that we have not seen the likes of in over 100 years. This is a worrying time for many people and it is indisputable that government action must be taken to tackle the COVID-19 pandemic, including by our UK Government.

In responding to this crisis, the UK must remain the “land of liberty” that the Prime Minister declared at the 18 March briefing. This means the difficult decisions that need to be made must be human rights compliant, with any restrictions meeting the criteria set by our [Human Rights Act](#). This point has been underlined by [United Nations experts](#) who have urged that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory. In particular, restrictions motivated by legitimate public health goals. Section 19 of the Human Rights Act requires governments to include a human rights compatibility statement with all Bills. The Government has stated that it considers the Coronavirus Bill to be compatible with human rights. However, this [Analysis](#) was not released until late on Friday 20 March, after the Bill was laid before Parliament on 19 March. Whilst the analysis is welcome, we note below that some of the most worrying clauses of the Bill have not been dealt with by the Analysis, missing consideration of key issues for some of the most vulnerable in our communities. Added to this, we have also noted that where proposals have been included in the Analysis, there are worrying conclusion and/or missing information.

There is no question that changes and difficult decisions lie ahead; what is at question is how this happens. The [Explanatory Notes](#) to the new Coronavirus Bill, laid before parliament on 19 March states its purpose “is to enable the Government to respond to an emergency situation and manage the effects of a covid-19 pandemic...The Bill contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts.”

2. Concerns with Coronavirus Bill proposals

The Bill contains significant new powers for the government, which include major changes to the way many public services will be delivered, suspending a range of legal duties and support, and additional options to detain people.

A. Two-year length: Clause 89 provides a two-year timeframe for extended government powers

On the face of it this two-year activation period appears to be a significant period of time. For example, other legislation allowing emergency powers, such as the Civil Contingencies Act

2004 contain [clauses](#) which mean that these powers lapse after 30 days. This therefore raises serious concerns about the proportionality of these measures.

It should be noted that not all of the proposed measures will come into force immediately on the passing of the Bill; some will enable the UK or devolved governments to switch on new powers when they are needed (and to switch them off again once they are no longer necessary). However, the two-year timeframe remains a significant concern, particularly when compared to the operation of the Civil Contingencies Act and its review mechanisms. Additionally, it is also important to scrutinise whether legislation beyond civil contingencies law is in fact required in this situation, or whether that model can in fact be utilised.

NOTE: On 23.03.2020 a Government Amendment passed which introduced a 6 month Parliamentary review (Clause 98). However, a review only takes place when the House of Commons rejects the following motion “That the temporary provisions of the Coronavirus Act 2020 should not yet expire.” This means there are concerns about any one section of the Act they must review the continuation of the whole Act.

ACTION:

Parliamentarians and those influencing them must be aware that this two-year time limit raises significant proportionality issues. We urge consideration of clauses which would enable regular review during the use of any emergency powers, with proper democratic oversight by parliament, ensuring these are human rights compliant.

We recommend that all powers should be reviewable and amendable, i.e. there should be a possibility for Parliamentarians to review and discontinue some sections and renew others. We would ask Peers to seek clarity on this.

B. Adult social care: Clause 15 and Schedule 12 proposals will effectively suspend almost all duties to assess and provide care and support for children, carers and adults

The Bill will suspend wide-scale duties under the Care Act 2014 to assess people who have (or may have) care and support needs. This means local authorities will no longer be obliged to determine if someone needs help. It appears the Bill will terminate this duty for everyone, whether or not the person seeking help was receiving this before the Bill comes in or not.

In Scotland the Bill suspends duties within but not limited to The Social Work (Scotland) Act 1968; The Children (Scotland) Act 1995; The Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1); The Carers (Scotland) Act 2016 (asp 9). If complying with the provisions under these pieces of legislation, “would not be practical” or if to do so would, “cause unnecessary delay in providing community care services to any person.” Duties which could therefore be suspended include not simply duties related to assessing needs but;

- General principles for the provision of social care in Scotland.
- Duties to provide adult carer support plans and young carers statements
- Identification of adult and young carer’s outcomes and needs for support

People this impacts: disabled people, people who are vulnerable, and carers

- These proposals impact the millions of people across the country who have care needs, due to disability, older age, or because of other vulnerable situations, and their carers.

- Currently, under the Care Act, Local Authorities have a duty to meet a person's "eligible" needs. This means a person must have a mental or physical impairment or illness that prevents them from achieving at least 2 of 10 specified outcomes which results in a "significant impact" on their wellbeing. Outcomes relate to the ability to do tasks such as maintaining a healthy diet, personal hygiene or a habitable home, to keep safe and to hold relationships and access the community. Given the government guidance around vulnerable groups, this raises real concerns.
- The Care Act also requires Local Authorities to support carers such as family and friends who provide care to people with needs. This recognises that without such carers the number of people who would need care directly from the Local Authority would be significantly higher.
- The [Health and Social Care Alliance in Scotland](#) has already raised concerns of reports of social care packages being completely withdrawn as well as social care to the most in need being restricted. The long term impact of a withdrawal of social care must be considered now, not at the end of the emergency period.

Is the human rights reference sufficient?

The Bill does contain an exception for when failure to provide care and support would breach the rights set out in the European Convention on Human Rights, as brought into UK law by the Human Rights Act. The relevant rights here are likely to be the right to not be subjected to inhuman and degrading treatment (Article 3) and the rights to respect physical and mental wellbeing, autonomy, relationships, community participation and home (Article 8), and the right to not be discriminated against in these rights (Article 14). However, the key problems with this approach are:

- a) There are legal thresholds and tests which must be met when determining if a decision breaches (or may breach) Articles 3 or 8; and
- b) **It is unrealistic to expect local authority staff to be able to make this decision.** There is no mandatory human rights training for such staff, and very little integrated and consistent guidance. **Each year BIHR works with over 2,000 staff members who make these decisions and people subject to them; in our observations less than 10% are able to name the legally protected rights at stake, less still are able to identify when this is relevant to their decisions applying other law and policy or are aware of their legal duty to do so under the Human Rights.**

On the surface the reference to human rights exceptions appears to be a bottom-line safety net; the reality is very different. People who are already in vulnerable positions will likely be made more vulnerable, and there will be no duty to support those who develop needs in the future. There will undoubtedly be knock-on effects for the NHS as those in need seek support elsewhere. In the current circumstances, which recognises the risks to those in vulnerable categories, this position is highly worrying.

Response to the [Government's human rights analysis](#)

- Note, the Government's Human Rights Analysis makes no reference to the human rights implications of Clause 15, presumably due to the reference to human rights in the clause itself. However as noted above, this is clearly not sufficient, and some of the most vulnerable people in our community will be made more vulnerable by the proposals.

ACTION:

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Parliamentarians and those influencing them must be aware that these proposals will disproportionately impact disabled adults, and those in vulnerable positions. It will mean potentially drastic cuts or withdrawal to care and support that people currently receive, and which in the current circumstances may be vital to keeping them healthy and safe; and moving forward there will be no obligation to assess and provide care and support, impacting those made vulnerable in the future.

We note the proposals put forward by [39 Essex Chambers](#):

*** Retaining the relevant social care duties but amending their application so that local authorities are only required to implement them as far as reasonably practicable.** This means where the draft Bill says the local authority does not have to comply with a duty, the new drafting would say that the local authority has to comply with the duty only to the extent reasonably practicable. The ‘reasonably practicable’ rider would not apply where there were anticipated ECHR breaches.

*** Alternatively, requiring the local authority, before treating the relevant social care provisions as disapplied, to be satisfied that compliance with the duties is incompatible with either compliance with other statutory duties or with the efficient use of its resources.**

*** In any event, adding an express requirement to carry out an assessment to verify whether there would be any human rights breach.** This would most likely be implied as a matter of law on the basis of the current drafting, but it would be clearer for local authorities for it to be spelled out on the face of the legislation – the current draft requires local authorities to be satisfied there would be no human rights breach but says they have no duty to assess any individual’s needs, which would be the only way to ascertain this.

C. Adults with complex health needs: Clause 14 enables suspension of NHS Continuing Care Assessment

NHS Continuing Care Assessments are vital in ensuring people with complex health needs are supported to be safe and well in the community. The points raised above in relation to removal of assessments apply. It is likely that a significant proportion of people with complex care needs who are being (or will be) discharged from hospital under these provisions, will fall into the COVID-19 vulnerable categories, or may become vulnerable without the right support, and create further pressure on NHS services later down the line.

It is worth noting that NHS Guidance for patients, which has already been issued ([COVID-19 hospital discharge service requirements](#)), states: “The health system is busy helping patients affected by coronavirus (COVID-19) ... Because of this, you will not have a choice over your discharge. You will not be able to remain in hospital if you choose not to accept the care that is being offered to you.”

Already BIHR is being alerted to stories of the impact of discharging people from hospital without assessments of care and support needs: “a frail 83 year old with dementia discharged yesterday after 5 months in hospital; no warning, assessment or discussion with his next of kin or carer (his son who has health conditions himself). He has since fallen twice and can barely stand.

Response to the [Government’s human rights analysis](#)

- Note, the Government’s Human Rights Analysis make no reference to the human rights implications of Clause 14, presumably due to the reference to human rights in the clause itself. However as noted above, this is clearly not sufficient, and some of the most vulnerable people in our community will be made more vulnerable by the proposals.

ACTION:

Parliamentarians and those influencing them must be aware that these proposals will disproportionately impact people who have complex needs who may already be vulnerable, or make them vulnerable through lack of proper care and support. Discharging people from hospital may secure more hospital bed space to deal with COVID-19, but in doing so regard must be had to creating future demand for NHS treatment by exacerbating or creating vulnerability.

We suggest that **Continuing Care Assessment should not be suspended, but rather the process should be streamlined**, completing the assessment and putting in place appropriate care arrangements within a specific time.

Additionally, we suggest that it be made clear that proposals do not enable a breach of human rights, but only permissible restrictions. As above this should include **adding an express requirement to carry out an assessment to verify whether there would be any human rights breach.**

D. Mental Health: Clause 10 and Schedule 8 allows for removal of safeguards in mental health detention, extended confinement and poor hospital discharge decisions

When people are detained and discharged from mental health hospital there are a number of safeguards that should protect their rights to liberty (Article 5, Human Rights Act) and rights to physical and mental wellbeing (Article 8, Human Rights Act). Proposals in the Bill will remove these protections for this group of people, who are already vulnerable to arbitrary decision-making:

- The power to detain someone under the Mental Health Act (1983); the Mental Health (Northern Ireland) Order 1986 and the Mental Health (Care and Treatment) (Scotland) Act 2003 can be implemented using one opinion instead of two.
- Extension or removal of time limits in mental health legislation, which means people may either be detained for longer than they need or released to the community early. This latter point needs to read in conjunction with the above section on removal of the duty to assess care and support needs in the community.
- Emergency detention in Scotland, the period for which a patient may be detained in hospital has effect as if for “72 hours” has been substituted to “120” hours.
- In Northern Ireland, the period under which a person can be detained in hospital pending report by medical practitioner has effect as if for “6 hours” there were substituted to “12 hours.” In Scotland, a nurse’s power to detain pending medical examination extended from 3 hours to 6 hours.
- In addition, the assessment period, the period during which a person is admitted to hospital to be examined by a medical practitioner has effect as if for “immediately

after” there were substituted “as soon as practicable and not later than 12 hours after”.

Concerns also arise from proposed changes to Mental Capacity legislation in Northern Ireland. For example, Schedule 10 contains temporary modifications of the Mental Capacity Act (Northern Ireland) 2016 (c. 18 (N.I.)), and related provisions.

- Period of detention in place of safety 11 Section 146(1) (maximum period of detention of person removed from public place to place of safety under section 139) has effect as if for “24 hours” there were substituted “36 hours”.
- Periods of remand to hospital Section 162(5) for report on mental condition or treatment the words “or for more than 12 weeks in total” were omitted.

However, there appears to be no equivalent consideration of the impact of mental capacity legislation in other UK jurisdictions, including under the Mental Capacity Act.

People this impacts: people with mental health issues

- Last year’s [NHS data](#) (England) shows almost 50,000 people were newly detained under the Mental Health Act in 2018/19, although the true figure is likely to be higher as the data is incomplete.
- Added to this are some significant failures of both mental health law and services to respect the rights of people who are detained. The Mental Health Act (MHA) itself is currently under review. There are numerous reviews and investigations into the way detained people are treated, just last month the [regulator](#) found that more focus on human rights is needed by healthcare services when using the MHA.

The COVID-19 situation is undoubtedly impacting on people’s mental wellbeing. The need for safeguards when a person is already in a vulnerable situation cannot be overstated. It is important to note that the consequences of increased detention or inappropriate discharge raise further human rights concerns, as these decisions may result in people experiencing inhuman and degrading treatment (Article 3), which is never lawful under human rights law. The people with mental health issues that BIHR works with everyday tell us, having their human rights respected would have helped make their experience of mental health treatment and detention far less traumatic. The risk with sweeping new measures is that the experience of people who are already vulnerable becomes even worse, and for up to two years. Any length of unnecessary detention will have a significant impact.

Response to the [Government’s human rights analysis](#)

- Section 6 of the Human Rights Act continues to remain in force. This requires all public authorities (including decision-makers and service providers) to respect, protect and fulfil people’s human rights in their decision-making, policy and practice. This is very welcome. However, the fact remains that most frontline staff across the NHS, social care and other sectors receive almost no human rights training and guidance is patchy at best.
- **Inhuman and degrading treatment (Article 3):** The Government states “We do not consider Article 3 is breached by the amendments to mental health legislation in the Bill ... safeguards are sensible and pragmatic precautions in the circumstances and the Bill does not fundamentally reduce the important level of scrutiny that is given in cases where deprivation of liberty is under consideration.” This is simply not the case, the changes by their nature remove current checks and balances. Moreover, the government has provided no consideration that either detaining someone in a

mental health ward beyond what is necessary or releasing them early into the community without the required support, can amount to inhuman and degrading treatment. This is despite the overwhelming evidence of poor treatment and outcomes in both, including from reviews of mental health law and inquiries by both the Care Quality Commission and parliament's Joint Committee of Human Rights.

- **Right to liberty (Article 5):** The Government states: "The Bill does not permit indefinite detention; rather the outer limits of the holding powers ... are extended by a certain number ... These safeguards ensure that the detention powers, even while augmented by the Bill, remain proportionate and at the minimum required to achieve the policy." The time of extension here for people whose liberty is deprived is significant. However, it appears the Government's response does not engage with the fact that under the proposals a person may be detained in a mental health hospital for up to 2 years without access to the current safeguards around necessity and independent review.
- **Family life (Article 8):** The Government states this "is a qualified right: interference can be justified "in the interests of public safety" and "for the protection of health" ... The purpose behind the provisions is to ensure the on-going treatment of mental health patients when the number of medical professionals available to deliver it is significantly reduced by the effect of the pandemic." There appears to be a confusion in the government reasoning here, as the "protection of health (and morals)" in Article 8 is generally referred to for public health (in the same line as public safety). However, the reasoning in the Bill and the Explanatory Notes appear to be about resources. Clarification on Government reasoning for the restriction of this right is important. Additionally, the family and private life rights of people related to the detained person (e.g. family and carers) do not appear to have to be considered in the Government analysis.
- **Non-discrimination (Article 14):** this is not mentioned in the Analysis; however, this proposal has a clear impact on people with mental health issues.

ACTION:

Parliamentarians and those influencing them must be aware that these proposals will disproportionately impact on people with mental health issues. There are very real risks presented by proposals to remove safeguards that should protect already vulnerable people who are detained and ensure review and appropriate discharge presents. Issues outlined above related to inappropriate discharge and the exacerbation/creation of vulnerability and future needs for NHS services, also apply.

We suggest that **safeguards to protect people's right to liberty should be maintained.** Where there are concerns about staff capacity to complete the process, these processes could be streamlined with specific timeframes to support decision-making, with additional review processes if current safeguards are reduced. With regards to the power to detain someone being implemented using one opinion instead of two, we suggest including an express provision that single professional cannot recommend sectioning of a person who will be detained in that hospital where a private provider and would profit from this.

Additionally, we suggest that it be made clear that proposals do not enable a breach of human rights, but only permissible restrictions. As above this should include **adding an express requirement to carry out an assessment to verify whether there would be any human rights breach.**

E. Children with Special Educational Needs: Schedule 17 changes to SEND legislation (the Children and Families Act 2014).

Educational Health and Care plans are legal documents that describes a child or young person's special educational, health and social care needs. They explain the help that will be given to meet needs and how that help will support the child or young person to achieve what they want to in their life.

Under the Human Rights Act, every child has a right to education (Article 2, Protocol 1), to make decisions about their own lives (Article 8) and to not be discriminated against (Article 14). However, the Bill gives following powers to the English government to make changes to the Children and Families Act 2014:

- The power to disapply the duty for schools named on a child's EHC plan to admit that child. This means the child may have to go to a different school.
- The power to disapply the requirements on reviews and re-assessments of the EHC.
- The power to modify the duties on local authorities and the health service to secure the special education and health provision specified in an EHC plan, the requirement can be changed to use "reasonable endeavours".

DEVOLUTION: Similar powers are given to the Welsh government regarding Statements of special educational needs and for the Northern Ireland to disapply parts of their SEND legislation (s.6 to 21B of the Education (Northern Ireland) Order 1996).

Two further changes, not directly to SEND legislation, but which may have an impact to children with special education needs.

The duty for local authorities to provide free transportation to school (s. 508A-F Education Act 1996) becomes a requirement to use "reasonable endeavours".

The duty for local authorities to provide alternative education to pupils who are ill or excluded (s.19 Education Act 1996) also becomes a requirement to use "reasonable endeavours".

The Bill also contains power to issue new guidance on disabled children's social care under (s.17 Children Act 1989) that will trump existing guidance while in force.

People this impacts: children and young people with Special Education Needs, their families and carers

- Last years' [Department of Education data](#) shows that there were 354,000 children and young people with Education, Health and Care (EHC) plans maintained by local authorities as at January 2019.

Response to the Government's Human Rights Analysis

- Section 6 of the Human Rights Act 1998 will continue to apply, requiring all public authorities to act compatibly with the Convention rights. The government states that the "exercise of these powers will be carried out in awareness of these matters and in view of mitigating any detrimental impacts on pupils/students with disabilities, as far as possible." However, it is not clear what steps will be taken to mitigate the impact on children and young people with disabilities.

- **Right to be free from discrimination (Article 14) taken together with right to education (A1P1):** The Government states: “We consider that any differential treatment in relation to disability, is capable of being justified. There is a clear, legitimate aim to these measures in relation to the protection of public health and safety. The Department considers that the measure are proportionate in striking a fair balance between the rights and freedoms of the disabled person and the general public interest.” However, EHC plans are there to ensure that children or young people’s special educational, health and social care needs are met. The move from this being a specific legal duty on local authorities to meet the needs included in these plans to the requirement being to use “reasonable endeavours” is a very significant change. The removal of these duties could have a huge impact on the lives of hundreds of thousands of children and young people, who are already in a vulnerable position. Clarification is needed around which steps will be taken to ensure that that the educational, health and social care needs of children and young people are being met. There is already [government guidance](#) on the addressing the needs of children with EHC plans during the COVID-19 period; give this there is a question as to why removal of legal protections under the Bill is required.
- **Private Life (Article 8):** this is not mentioned in the Analysis; however, this proposal has a clear impact on children and young people’s wellbeing and autonomy.

ACTION:

Parliamentarians and those influencing them must be aware that these proposals will disproportionately impact disabled children, who are already placed in vulnerable positions. It will mean potentially drastic cuts or withdrawal to care and support that children with special educational needs currently receive, and which in the current circumstances may be vital to keeping them healthy and safe. This may well have a future impact on their vulnerability in relation to COVID-19.

We suggest that the **downgrading of the legal duties around SEND to a reasonable endeavours approach must not be accepted.** The current duties must be retained to ensure the protection of some of the most vulnerable children in the UK. At this time of significant uncertainty, it is vital children with SEND are able to have access to the support they need to keep safe and well.

3. Children, disabled people, older people and carers human rights protections: what is at stake

The Government has provided a section 19 Human Rights Act statement which states that they believe the Bill is compatible with our legal protected human rights, and that the analysis which backs this up will be published separately. It is concerning that this was not made public at the same time as the Bill, as this would have provided an insight into government thinking and understanding how they are balancing people’s human rights during this difficult situation.

The right to life (Article 2, HRA) is an absolute right, which should not be restricted; clearly the government must take action to protect this right in these unprecedented times. Other rights which are at stake, particularly the rights to liberty (Article 5) and to wellbeing, choice, family and relationships, and home (Article 8). These rights can be restricted, provided such restrictions are lawful, legitimate and proportionate. Legitimate reasons for restrictions

include for the protection of public health; however, there does need to be scrutiny of whether this is in fact the reason, or whether resourcing is the main reason for restriction. These are of course unprecedented times; but lack of resources as a sole justification is usually not enough to restrict a person's rights. Parliamentarians must be clear about the reasons for restrictions and clear that these are proportionate to the risks posed.

It is also important to note that the government must be aware of knock on effects of any proposals, which may raise concerns about leaving people in inhuman and degrading circumstances (Article 3, HRA). This may happen when people who are in vulnerable positions are left without care and support which leaves them living in undignified situations that compromise basics such as shelter, nutrition and hygiene, or indeed leaving people detained in mental health hospitals when this is not necessary for their treatment.

It is vital that any emergency measures are clear that implementation of measures must not unlawfully breach people's human rights, that any restrictions which are permitted are lawful, legitimate and proportionate. Any accompanying guidance must underscore this point.

4. What happens now?

The Bill was laid before parliament on 19 March. The parliamentary timetable:

- Today (24 March) the Bill will move to the House of Lords.
- It is expected that all parliamentary processes on the Bill will be complete by 30 March.

Importantly, the Joint Committee on Human Rights is holding an [Inquiry into the human rights implications of the Government's response to COVID-19](#).

To find more information:

- [BIHR's human rights and Coronavirus hub](#) with explainers, blogs and other information.
- About the [Human Rights Act](#).