



March 2020

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Coronavirus Bill Introduces Changes to Conduct of Legal Proceedings and Investigations in the U.K.

By [Simon Airey](#) & [Joshua Domb](#)

The Coronavirus Bill 2019-21 (the "Bill") was introduced to the House of Commons and given its first reading on 19 March, 2020. The second reading will occur on 23 March 2020, although this is largely expected to be a formality.

The Bill has been brought forward in response to the COVID-19 outbreak. The Bill seeks to address the following key areas:

- enhancing capacity and flexible deployment of staff;
- easing of legislative and regulatory requirements;
- containing and slowing the virus; and
- managing the deceased.

This alert provides a brief summary of some of those aspects of the Bill which will be of most relevance to legal practitioners, particularly those involved in court proceedings and criminal law matters.

Courts and Tribunals – Use of Video and Audio Technology

The Bill amends existing legislation to enable the use of technology, either in video/audio-enabled hearings, where one or more participants appears before the court using a live video or audio link, or a wholly video/audio hearing where there is no physical courtroom and all participants take part using telephone or video conferencing facilities.

If directed by a criminal, family, civil court, or tribunal, the Bill enables members of the public to see and hear proceedings held fully by video or audio link.

The Bill creates offences for recording or transmitting live-streamed proceedings, including taking photographs or making sound recordings of the same.

The Bill also allows for various restrictions to be imposed on potentially infectious individuals. These decisions can be appealed by an individual subject to such restrictions via the magistrates' court. If a hearing takes place, the Bill provides that it should be conducted entirely by video link, unless the court directs otherwise, in order to prevent spread of the coronavirus.



Separately, it is useful to note that on 18 March 2020, the HM Courts and Tribunals Service webpage, which provides advice and guidance for all court and tribunal users during the coronavirus outbreak, was updated to include guidance on telephone and video hearings during the coronavirus outbreak.

This expansive use of video and audio technology in the context of court proceedings signifies a substantial change from the usual approach of conducting hearings in person. These new laws will help to ensure that legal proceedings can continue in spite of the significant restrictions to the freedom of movement of individuals anticipated throughout the period of social distancing which has been recommended by the government.

Investigatory Powers and Urgent Warrants

The Investigatory Powers Act 2016 creates the statutory basis for the use of investigatory powers by intelligence and law enforcement agencies and the issuing of (i) targeted interception warrants, (ii) targeted examination warrants, and (iii) mutual assistance warrants.

Issuing any of these types of warrants requires signatures from (i) the Secretary of State and (ii) one of fifteen Judicial Commissioners. The Bill allows the Secretary of State to vary the appointment procedure for Judicial Commissioners where there are too few Judicial Commissioners due to the coronavirus.

Currently, if an urgent warrant is to be issued, ex post facto authorisation is possible from a Judicial Commissioner, which must happen within three working days of the warrant being issued. This authorisation will last for five working days (unless renewed). The Bill provides for this five-day limit to be altered at the request of the Investigatory Powers Commissioner.

Inquests

The Bill states that there is no need for coroners to conduct a jury inquest in circumstances where they have reason to suspect that a death was caused by coronavirus. This will help ensure that a sufficient number of jurors remain available for other inquests which are still required during the course of the outbreak.

Mental Health and Mental Capacity

The Bill provides for a reduced numbers of doctors' opinions/certifications to be required for the detention, treatment, and movement of individuals between court, prison, and hospital. This will allow such decisions to be taken in circumstances where fewer doctors are available than would ordinarily be required for actions of this type.

Health Service Indemnification

The Bill also provides an indemnity for health care professionals in relation to claims for clinical negligence which are connected to the care, treatment, or diagnostic services provided as part of the arrangements for responding to the coronavirus.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings London lawyers:

Simon Airey
44.020.3023.5156
simonairey@paulhastings.com

Joshua H. Domb
44.020.3023.5226
joshuadomb@paulhastings.com