
Emergency COVID-19 Bill

House of Commons: All Stages
Monday 23 March 2020

About the BMA

The BMA (British Medical Association) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The UK Government's *Emergency COVID-19 Bill* seeks to enable government to respond to, and manage the effects of, the COVID-19 pandemic across the UK. It contains temporary measures designed to either amend existing legislative provisions or to introduce new statutory powers in order to support government action in the following 5 key areas:

1. Increasing the available health and social care workforce
2. Easing the burden on frontline staff
3. Containing and slowing the virus
4. Managing the deceased with respect and dignity
5. Supporting people

The BMA's briefing seeks clarification on several issues in association with measures pertaining to these aims – as well as commenting on important aspects of the health services' response to COVID-19 that are not referenced in the Bill.

Sunset clause

- **Will the Government confirm that the use of measures in the Bill will undergo regular checks by relevant stakeholders, and that any extension to the Bill's lifespan would similarly only be taken following consultation and approval?**

The Bill allows the four UK Governments to switch on the Bill's new powers when they are needed and to switch them off again once they are no longer necessary, based on the advice of Chief Medical Officers of the four Nations. A further suggestion would be for the Chief Medical Officers to review the situation every two weeks and switch off any active powers, as necessary.

It will not be appropriate for measures implemented as a result of this Bill, to respond to the COVID-19 outbreak, to automatically continue beyond the two-year time-limit. The time-limit is, therefore, a vital component of this legislation.

Increasing the available health and care workforce

The Bill's explanatory note highlights that the General Medical Council has existing legislative powers to register doctors in the UK. Although this means doctors are not in the Bill's scope for emergency registrants, we would still like to seek clarity on the following points:



- **Will the Government confirm all doctors, including emergency registrants and those who are not a member of the NHS Pension Scheme (including doctors who have returned to work after retirement), will receive key contractual protections including Death in Service Benefit and Sick Pay?**
- **To increase the number of freelance locums working in the health system, will the Government implement a specific measure to amend the NHS Pensions regulations to allow death in service to be extended to all individuals paying into the scheme, irrespective of hours of worked, during the COVID-19 period (not just when they are engaged in work)?**
- **Will the Government confirm medical students will only be registered as an emergency worker if they are in their final year of studies; and that they will be placed on appropriate contracts which remunerate them for the activities they undertake, and receive death in service cover?**

NHS staff are doing exceptional jobs, in extraordinarily difficult circumstances across the country, as the NHS grapples to cope with the impact of COVID-19. The Government is, of course, having to take drastic measures to bolster workforce numbers as staff and services are stretched, which includes calling for doctors who have recently retired or left the register to return to work, and to register senior medical students. Many of our members are willing and able to return to practice to help the NHS in this time of national crisis. In doing so, they will be putting themselves and their families at great personal risk in their efforts to treat patients. The Government must make sure that they have the adequate protection necessary to mitigate this risk.

There must be clarity regarding the contractual arrangements on which staff will be working. Clearly, medical students who are registered as emergency workers will require appropriate supervision and they should only be requested to work within their competencies. National contractual frameworks for emergency registrants should be used to avoid local variation in the standards that are applied, and to provide the necessary peace of mind and protections that these workers deserve. It is not currently clear how, or if, emergency registrants who agree to bolster the workforce capacity for the emergency COVID-19 response will receive critical workplace entitlements – such as Death in Service and sick pay.

Furthermore, the Bill should allow locums to access Death in Service benefits and sickness benefits from the NHS pensions scheme for the full duration of the crisis, not just when they are providing the services. This should help to increase the number of freelance locums working in the health system.

Indemnity for health service provision

While the emergency Bill provides arrangements for clinical negligence indemnity across the UK, doctors, medical students and healthcare workers asked to undertake work outside their normal field of practice must not be inhibited from doing so due to a lack of personal, professional indemnity. The potential increased risks of complaints and personal claims associated with clinical activity related to coronavirus, needs to be met by the automatic provision of personal professional cover.

The Government must work with medical defence organisations to ensure that doctors, medical students and healthcare workers will be personally protected. This must happen at a national level and not be left to individuals to explore with their defence organisations each time they are faced with a change in their role.

Easing the burden on frontline staff

- **Within the Bill's power to reduce the number of administrative tasks that key workers have to perform, will the Government relax existing requirements on clinicians to provide letters/notes/evidence for specific purposes? E.g. DWP requests for supporting evidence for PIP and other benefits claims, and the requirement on GPs to meet Subject Access Requests.**

Easing the administrative burden on doctors will help the Government to deliver its goal of enabling crucial services to continue to operate effectively during periods of reduced staffing. It is vital comprehensive measures to relieve bureaucratic pressures on doctors are implemented without delay.

Mental health and mental capacity

- **What impact does the Bill's power to enable existing mental health legislation powers to detain and treat patients who need urgent treatment for a mental health disorder to be implemented using just one doctor's opinion have on the existing legislation for Short-term detention orders, where it is one doctor and one mental health officer? And are there any plans to change or remove tribunal procedure for compulsory treatment orders?**

The existing legal framework to treat and detain patients who need urgent treatment for a mental health disorder includes (1) a compulsory treatment order and (2) a short-term detention order. A compulsory treatment order requires two doctors but also a tribunal procedure, which is not referenced in the Bill. Short-term detention only requires one doctor's opinion but also requires the involvement of a mental health officer (who isn't a doctor). Again, it is not clear what impact the Bill would have on this order.

Certifying death

- **Will the Government provide a national policy to clarify who (and in what circumstances) can certify death caused by COVID-19?**

For example, if a patient self-isolated prior to their death and had not been in contact with their GP, the expectations as to who will certify their death will vary locally and must be clarified at a national level.

Protecting and supporting people

PPE (personal protective equipment)

- **Will the Government confirm what measures it is taking to tackle the current insufficient supply of, and adequacy of, PPE for frontline healthcare workers?**
- **What routes are there for escalating urgent issues regarding lack of supplies of PPE and ability to raise concerns?**

There are limits to the risks to which doctors can reasonably be expected to expose themselves – professionally and ethically. Employers have a legal, moral and ethical responsibility to protect staff and to make sure that enough reliable masks, gowns, goggles and gloves are available.

Doctors need adequate PPE if they are going into situations in which they are treating patients with COVID-19 or suspected to have COVID-19. We are hearing of staff trying to buy masks from

DIY stores in desperation because they are not being provided with it by their employers. This is totally unacceptable; healthcare workers should not, and do not have to, expose themselves to high risk situations without having adequate PPE.

We know that different countries are providing different levels of PPE to their doctors, particularly those in primary care – Italy and Northern Ireland being prime examples. The Government must urgently review the guidance regarding levels of PPE that are necessary in different situations, so that doctors can feel confident in treating their patients who either have COVID-19 or are suspected of having it.

Furthermore, the Government must find a reliable way to substantially increase the production and distribution of PPE. If any healthcare worker treating someone with COVID-19 were to become ill, or worse, due to a lack of PPE, the consequences would be dire and the impact on patient care catastrophic. Without adequate PPE, we will advise members that they should ask for an urgent risk assessment, and commissioners or employers must consider reconfiguring their services.

Priority testing for healthcare workers

- **Will the Government confirm what measures it is taking to prioritise NHS staff for testing?**

The testing of healthcare workers if they or their immediate household members are symptomatic needs to get underway immediately. Doctors are self-isolating in line with current guidelines as they have no way of knowing if they have the virus and need to stay off-work.

The effect of healthcare workers having to self-isolate in lieu of widespread testing is disastrous for the ability to provide services, particularly in smaller departments. At this stage of the crisis, the Government must make swabbing for healthcare workers an absolute priority to maintain frontline services.

March 2020

For further information, please contact:
Holly Weldin, Senior Public Affairs Officer
E: publicaffairs@bma.org.uk