

Coronavirus (COVID-19)—new powers for national and local government in next phase of recovery strategy

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The Prime Minister, on 17 July 2020, announced the creation of a ‘COVID-19 contain framework’ providing local and national government with additional powers to control local outbreaks of coronavirus (COVID-19) as part of next phase of the government’s ‘COVID-19 recovery strategy’. Effective 18 July 2020, the powers allow unitary metropolitan councils and county councils, referred to as upper tier local authorities (UTLAs) to close individual premises, shut outdoor public spaces and cancel specific events in areas where there is a spike in coronavirus cases. The framework provides similar powers for central government where action by local councils is deemed insufficient and intervention is required. Described as a ‘national framework’, the provisions are focussed on containing and controlling local outbreaks in England. James Arrowsmith, Partner at Browne Jacobson and Helen Randall, Partner at Trowers & Hamlins comment on the announcement.

The key documents published are as follows:

- COVID-19 contain framework: a guide for local decision-makers
- The next chapter in our plan to rebuild: The UK Government’s COVID-19 recovery strategy

The ‘COVID-19 contain framework’ is designed to ‘support local decision-makers by clarifying their responsibilities and empowering them to take preventative action’, allowing UTLAs to respond swiftly to local coronavirus outbreaks. It outlines a number of options available to UTLAs to respond to outbreaks including accelerated testing of asymptomatic people, increasing public health messaging, developing incident management plans and leading local interventions to stop transmission. Interventions will be closely monitored and issues escalated to a national level where necessary if measures have not led to a significant reduction of cases.

Ministers will be empowered to close whole sectors or types of premises in an area, introduce local ‘stay at home’ orders, prevent people entering or leaving certain areas, reduce the maximum size of gatherings and restrict transport systems serving local areas. Ministers also have an additional power to direct UTLAs to act or to consider whether a direction is unnecessary and should be revoked, and can rely on existing powers under the Public Health (Control of Disease) Act 1984 to impose more substantial restrictions where required.

However, the framework provides that powers should be used ‘with discretion’ and with regard to advice given by the Directors of Public Health to the UTLA. When exercising any of the powers under the framework, UTLAs must notify the Secretary of State as soon as practicable after the direction is given and review the decision at least once every seven days to ensure that the basis for giving the direction continues to be met. In addition, powers should not be applied to ‘settings of national importance’ without prior consultation with the setting owner and the NHS Test and Trace Regional Support and Assurance team who works with the government to determine the best course of action. Settings of national importance may include areas which form part of UK critical infrastructure.

Further detail on the new legal powers are contained in Annex 2 to the framework. This includes a non-exhaustive list of relevant legislation, including new regulations for England:

- Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, SI 2020/350
- Public Health (Control of Disease Act) 1984, ss 45G, 45H and 45I
- Food Safety Act 1990, s 12
- Food Safety and Hygiene (England) Regulations 2013, SI 2013/2996, reg 8

- Health Protection (Local Authority Powers) Regulations 2010, SI 2010/657, reg 8
- Powers under the Coronavirus Act 2020 and the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, SI 2020/684 are also referenced

The framework is described as the blueprint for collaborative work between NHS Test and Trace, Public Health England (PHE), local businesses, community partners and the wider public. It outlines how local businesses, schools and religious groups can get support from health protection teams if there are spikes in cases in their organisation. This is in line with some of the key principles for effective implementation of new powers which include prioritising public safety, being open with data and insight, and building consensus between decision makers to enable trust, confidence and consent.

The government will publish a weekly watchlist summary highlighting areas of concern, areas receiving enhanced support from NHS Test and Trace and areas where national interventions are being taken. The watchlist will form part of the 'National COVID-19 surveillance reports' published by PHE, which can be viewed [here](#).

'Strong emphasis on local monitoring and management of the virus'

Commenting on the Prime Minister's announcement, Arrowsmith states that: 'The framework gives a key role to upper tier local authorities (ULTAs) in the ongoing control of Covid-19, with a strong emphasis on local monitoring and management of the virus' and that 'ULTAs should set out arrangements for partnership working to achieve this'. Arrowsmith points out, however that any directions given by ULTAs must be 'necessary in response to the incident or spread of coronavirus, and the directions are proportionate'.

Arrowsmith believes that there are limitations to ministers' existing powers under the Public Health (Control of Disease) Act 1984., Food Safety Act 1990, Food Safety and Hygiene (England) Regulations 2013 and The Health Protection (Local Authority Powers) Regulations 2010, and that although they 'may be relevant to control of coronavirus in some circumstances. In practice the limits to each of these powers means that it will often be necessary to rely on the new regulations.'

'Swift and necessary measures'

Randall welcomes the new powers for local authorities as 'swift and necessary measures to deal with any impending local COVID-19 threats' and believes that it will 'facilitate local and central government working more collaboratively and effectively with one another'. She states that enhanced powers 'highlights and acknowledges the importance of existing efforts by local authorities to minimise an outbreak as local authorities will be able to draw upon their expertise and greater understanding of their local communities'. Randall points out, however that there must be 'adequate central government support, data flow and funding' to allow early preventative action to be taken and 'avoid the recurrence of strict localised lockdowns such as Leicester'.

In exercising any powers under the framework, Randall highlights that 'the usual public law constraints will also apply such as acting for a proper purpose, showing "Wednesbury" reasonableness including having due regard to the public sector equality duty, human rights implications and value for money considerations'. In addition, she points out the legislative conditions that underpin giving a direction including: responding to serious and imminent threats to public health, providing a necessary public health response to prevent, protect against or control the virus and achieving proportionality in relation to that purpose.

Written by Sabina Habib

Sources:

- PM statement on coronavirus: 17 July 2020
- New powers and framework to help contain coronavirus (COVID-19) locally
- COVID-19 contain framework: a guide for local decision-makers
- Our plan to rebuild: The UK Government's COVID-19 recovery strategy
- Closing certain businesses and venues in England



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