

# The Relevance of the Coronavirus Act 2020 to Family Placement Work

*Alexandra Conroy Harris, CoramBAAF Legal Adviser*

The regulations came into force immediately upon issue on 26 March 2020 and will be reviewed on 16 April. Regulation 3 declares an “emergency period” during which the Regulations will have effect. The Act will come into force as commencement regulations are passed.

The areas of the legislation that are of particular relevance to the children’s social care sector are summarised below, and will be updated as new provisions come into force.

It should be noted that, apart from provisions about social care assessment for children moving into adulthood, there is nothing (as of 30 March) that changes or relaxes any of the local authority or agency duties under the Children Act 1989, the Adoption and Children Act 2002 or any of the Regulations associated with those Acts.

The duties of assessment and service provision and the requirements to visit children and to provide contact between children and their parents remain the same, with the additional need to carry out those duties in accordance with the advice of Public Health England to protect the health of the public and now in accordance with the restrictions imposed by this Act and these Regulations.

## Temporary modification of mental health and mental capacity legislation

Section 10 of the Act enacts Schedule 8, but is not in force until commencement regulations have been laid. The majority of mental health legislation makes no distinction between adults and children and the changes will apply to children being detained for assessment and treatment.

Schedule 8 contains temporary modifications of the Mental Health Act 1983, and related provision.

- There are several sections of the Mental Health Act that require the approval of two doctors before powers of compulsion can be exercised. This Act allows a report or recommendation of one doctor if it is “impractical or would involve undesirable delay” to require two.
- The time period for which a police officer can detain a person in a place of safety under s.135 or s.136 is extended from 24 hours to 36 hours.

<https://www.legislation.gov.uk/ukpga/2020/7/schedule/8/enacted>

## Planning for transition to adulthood

Section 15 of the Act enacts Schedule 12, but is not in force until commencement regulations have been laid.

Schedule 12 contains provision modifying the powers and duties of local authorities in England and Wales in relation to the provision of care and support. A local authority has a duty under ss.58 – 63 of the Care Act 2014 to assess the needs of a child, a child’s care or a

young carer which they believe are likely to continue after the child reaches the age of 18. Schedule 12 para 2(3) allows a local authority not to comply with that duty and Schedule 12 para 11 allows the local authority not to comply with the duties to prepare and review care and support plans as required by the Care Act 2014. Schedule 12 para 15 gives a local authority a similar exemption in relation to their duties of assessment and planning for children transitioning to adult care under s.17ZH of the Children Act 1989.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/12/enacted>

### **Closure of schools and child care**

Sections 37 and 38 of the Act enact Schedules 16 and 17 to give powers to the Secretary of State to close schools and colleges to all pupils or groups of pupils, or to direct a school, college or childcare provision to continue to provide education, training or childcare and associated services and facilities. It allows the Secretary to order a school, etc, to close, to re-open, to remain open, to change its term dates or opening hours and to provide ancillary services such as transport. The advice of the Chief Medical Officer about the need for such actions must be considered and the directions must be necessary and proportionate. These Schedules are in force and schools have been closed, save where ordered to provide child care for the children of essential workers and vulnerable children. The Department for Education (DfE) has given guidance that this includes looked after children and children on a child protection or child in need plan.

Schedule 16 para 3 suspends the duties of local authorities to provide exceptional educational provision. It also suspends the duty of a parent to send their child to school, and there is no obligation on a parent to accept the offer of a place at a school kept open for child care provision.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/16/enacted>

### **Compulsory screening and assessment**

Section 51 of the Act creates powers relating to potentially infectious persons, detailed in Schedule 21.

If the Secretary of State makes a declaration that Covid-19/coronavirus represents a serious and imminent threat to public health and that using emergency powers will delay or prevent transmission, a “transmission control period” will start. As of 30 March 2020, such a declaration has not yet been made. During this period, public health officers will have the power to direct that a person go immediately to a place for screening and assessment or can take or ask a police officer to take a person for screening and assessment. A police or immigration officer can direct or take a person to a place for screening and assessment if they suspect that a person is potentially infectious. A public health officer can direct a person to remain at a screening and assessment centre for up to 48 hours (a police officer can require 24 hours, with a further 24 hours after authorisation, an immigration officer can require three hours with a nine hour extension). A person can be required to provide biological samples and information about their health, travel and contacts and to provide documentation and contact details.

If somebody tests positive for the virus, or the test is inconclusive, they can be required to remain at the place for screening and assessment, go to another place for assessment or

remain at a specific place for a fixed period, including being in isolation at a specific place. The police may arrest and return any person who leaves in defiance of a requirement. There is provision for appeal to a magistrates' court.

All of these provisions apply equally to children, and an adult who has responsibility for a child (meaning that they have charge of the child, custody of the child or parental responsibility for the child) must, as far as reasonably practicable, ensure that the child obeys the direction or complies with any requirement or restriction. Screening and assessment can only take place in the presence of an individual who has responsibility for the child, or other appropriate adult.

Failure to comply with directions or requirements is an offence which carries a fine of up to £1,000.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/21/enacted>

### **Gatherings and premises**

Section 52 of the Act gives powers to issue directions in relation to events, gatherings and premises, set out Schedule 22. The Secretary of State may give a direction that a specific gathering, or type of gathering, be prohibited or restricted and may close premises. Failure to comply with such a direction or restriction will be an offence.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/22/enacted>

### **Closure of holiday accommodation**

Regulation 5 requires the closure of all holiday accommodation, but it may be kept open if used by someone who is unable to return to their main residence or who uses the accommodation as their main residence. This would allow cottages, etc, being used as emergency accommodation for looked after children to remain open. Regulation 5(4)(d) also allows accommodation to remain open if requested for any purpose by a local authority. Note that whilst this makes it lawful for the accommodation to remain open if requested, e.g. where it had been booked to accommodate adoption introductions, it does not allow the local authority to order the accommodation to remain open.

<http://www.legislation.gov.uk/uksi/2020/350/regulation/5/made>

### **Restrictions on movement**

Regulation 6 forbids anyone from leaving their home without reasonable excuse. Reasonable excuse includes:

- obtaining basic necessities;
- to take exercise alone or with members of their household;
- to seek medical assistance;
- to travel to work where they cannot work from home;
- to participate in legal proceedings;
- to access critical legal services (including social services);
- to continue existing arrangements for contact with a parent with whom a child does not live (but not contact with other relatives who do not have parental responsibility, or with siblings);
- to move house where reasonably necessary;
- to avoid a risk of harm.

<http://www.legislation.gov.uk/ukxi/2020/350/regulation/6/made>

### **Restrictions on gatherings**

No more than two people may gather together in a public place unless they are members of the same household. This would catch contact in the community where a child, parent and contact supervisor, all living in different households, meet up in a public place.

<http://www.legislation.gov.uk/ukxi/2020/350/regulation/7/made>

### **Enforcement**

A police officer, including a PCSO, can require somebody who is outside their house without reasonable excuse, or who is part of a gathering of three people or more, to return to their house and can remove that person to their home. If the person is a child, the officer can direct an adult who has parental responsibility or has custody or charge of the child to ensure that the child obeys the instruction. Having charge of the child will include foster carers, who will become responsible for ensuring that the child returns to their home.

Regulations 9 and 10 make refusal to comply with directions an offence that can attract a fixed penalty fine.

[www.legislation.gov.uk/ukxi/2020/350/regulation/8/made](http://www.legislation.gov.uk/ukxi/2020/350/regulation/8/made)

### **Remote court hearings**

Sections 53–57 of the Act expand the use of video and audio technology in courts and tribunals – Schedule 25 provides for public participation in video or audio link hearings. In the Family Courts, the President has given guidance on conducting remote hearings in children’s cases.

[https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance\\_Covid-19-2.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf)

### **Emergency registration of social workers**

Section 6 of the Act enacts Schedule 5, which amends the Social Workers Regulations 2018.

- If the Secretary of State notifies the regulator (the HCPC) that there is an emergency situation, the HCPC may register appropriate people or groups of people as social workers for the period of the emergency.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/5/enacted>