

The Coronavirus Bill and cremation

Steve Baker MP, 22 March 2020

The Coronavirus Bill 2019-21¹ provides for **powers which are inimical to life in a free society**, trespassing on some issues which people hold most dear, such as the wishes of the deceased.

Civil liberties group Big Brother Watch has warned² that the Coronavirus Bill contains the “**most draconian powers in peace time Britain**”.

The Coronavirus Bill:

- Empowers police, immigration officers and public health officials to **demand documentation; detain and isolate members of the public potentially indefinitely**, including children; and **forcibly take biological samples for testing**;
- Permits **prohibition of public events and gatherings** without standard protections for strikes and industrial action that exist in the Civil Contingencies Act 2004;
- Weakens safeguards on the exercise of **mass surveillance powers** by quadrupling time review limits for urgent warrants;
- Provides powers to **suspend port operations**;
- Enables the disapplication of legislation relating to **deceased wishes**; and more

All stages of this 329-page Bill are intended to be taken in the Commons on Monday 23 March 2020. It is inconceivable that the Bill will receive scrutiny commensurate with its powers.

But the reason for these extraordinary measures is plain. We are engaged in an urgent national effort to save **hundreds of thousands of lives and more jobs**. The **imperative of survival in the face of a mortal enemy** has today as in the past **forced Government to implement a command society**, whatever the cost.

Those of us who are civil libertarians – who believe in a free society as the best route to human dignity and flourishing – **cannot deny the imperative for immediate action**.

However, the Prime Minister has cited **a period of 12 weeks** to turn the tide of coronavirus yet the Act expires at the end of the **period of 2 years** beginning with the day on which it is passed, with two qualifications. Given the extraordinary powers in the Bill and the expediency with which it must be passed, a duration of two years is unacceptable. I therefore intend to support **Amendment 6 which would sunset the provisions of the Bill after one year** rather than after two years.

There is one power over which I have particular objections. **Schedule 27 makes provision about the transportation, storage and disposal of dead bodies**. Part 2, beginning on page

¹ Full Bill information may be found at <https://services.parliament.uk/Bills/2019-21/coronavirus.html> or via <https://bit.ly/CVBill20>

² <https://bigbrotherwatch.org.uk/2020/03/emergency-coronavirus-bill-most-draconian-powers-in-peace-time-britain/>

316, provides for directions and other measures to address a lack of capacity to deal with dead bodies. Clause 5 provides for the disapplication of legislation relating to deceased's wishes:

5 The following do not apply to a designated local authority—

(a) section 46(3) of the Public Health (Control of Disease) Act 1984 (local authority not to cause body to be cremated under that section contrary to the wishes of the deceased);

With similar provisions for Northern Ireland and Belfast Crematorium.

This provision means that – in an extreme contingency scenario in which a local authority has insufficient capacity to deal with dead bodies – **bodies may be cremated contrary to the wishes of the deceased**. I believe it is also possible under the Bill that people could be buried who wish to be cremated and I seek confirmation on that point.

In either case, I consider it **extremely undesirable** that the deceased's wishes should be overturned.

Matters of the hereafter are unknown and unknowable. Reasonable people disagree and will continue to. But our society **holds dear the principle that the wishes of a deceased person** should be respected, whatever their faith or none. I know that Muslims in my constituency are particularly exercised about this provision.

The **Memorandum to the Joint Committee on Human Rights**³ refers. It reads at paragraph 179:

*In extremis it may be necessary to **bury or cremate bodies out of the area** desired by the family and if that is not possible **it may be necessary to bury or cremate even if the family wished the alternative** (cremate rather than bury or bury rather than cremate). However, this would be a last resort, where there is not an identifiable alternative and if health and safety requirements on storage/disposal of bodies require that.*

The Government argues that “the policy is **a proportionate way of responding to a legitimate aim of public safety and dignity in death** in the wake of the Coronavirus pandemic given the need to strike a balance between the public interests and the interests of family life.” They also refer to the protections of the Convention rights.

However, the idea that people might be cremated against their wishes is causing **widespread alarm in my constituency**, possibly exacerbated by unreasonable provocation. That is why I am supporting the **manuscript amendment tabled by the Hon Lady for Bradford West**, which provides that:

³ <https://publications.parliament.uk/pa/bills/cbill/58-01/0122/Memorandum%20to%20the%20Joint%20Committee%20on%20Human%20Rights%20-%20The%20Coronavirus%20Bill%202020.pdf> or via <https://bit.ly/2QCx fdV>

*where a deceased is to be cremated and it goes against their religious belief the designated authority **must consult the next of kin or Power of Attorney or the relevant local faith institution in so far as reasonably possible** to find a suitable alternative before proceeding with the cremation*

Knowing local councilors and council officials as I do, **I think it inconceivable that people in Wycombe would be cremated against their wishes without consultation** or that it would be contemplated if there were any alternative. Nevertheless, I think it right that this reasonable amendment should be adopted to provide reassurance about the actions a designated authority would take **even in the most extreme contingency**.

I note that **my church has ceased to meet at this time, as have our mosques**. I do not wish to be buried but I understand that in extremis, burial is more likely to be a solution to a lack of capacity than cremation. I know that **our local councilors and officials are already making provision to increase capacity, including for Muslim burials in Wycombe**.

Moreover, dramatic steps are being taken to **reduce the scale of this disease**. I therefore **think it most unlikely that anyone in Wycombe would suffer having their wishes overturned** when deceased.

I will support the amendment to provide additional reassurance but in any event I will support the Bill containing the necessary contingency powers to preserve public safety whatever the scale of the disease and death from it.

All reasonable people should too.

Appendix 1 – Coronavirus Bill, Schedule 27, Part 2

See next page.

- (a) would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation);
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 5
- (2) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

PART 2

DIRECTIONS AND OTHER MEASURES TO ADDRESS LACK OF CAPACITY

Designation where there is insufficient capacity to deal with dead bodies etc 10

- 4 (1) The appropriate national authority may designate a local authority for the purposes of this Part of this Schedule if of the view that –
- (a) as a result of coronavirus disease there is, or is likely to be, insufficient capacity within the area of that local authority to transport, store or dispose of dead bodies or other human remains, and 15
 - (b) the powers conferred by this Part of this Schedule are likely to be an effective means of addressing that lack of capacity.
- (2) If, having made a designation under this paragraph, the appropriate national authority ceases to be of the view mentioned in sub-paragraph (1), the appropriate national authority must revoke the designation (but this does not limit the future exercise of the power in sub-paragraph (1) in relation to the same local authority). 20
- (3) If a mayoral combined authority is designated under sub-paragraph (1), the designation may make provision for its functions under this Part of this Schedule to be exercisable only by the mayor. 25
- (4) A designation or revocation under this paragraph –
- (a) takes effect when published online, and
 - (b) must, as soon as reasonably practicable after it is made, also be published in the appropriate Gazette. 30
- (5) In sub-paragraph (4)(b) “the appropriate Gazette” means –
- (a) where the designation or revocation relates to a local authority in England or Wales, the London Gazette;
 - (b) where the designation or revocation relates to a local authority in Scotland, the Edinburgh Gazette; 35
 - (c) where the designation or revocation relates to a local authority in Northern Ireland, the Belfast Gazette.
- (6) In this Part of this Schedule “designated local authority” means a local authority for the time being designated under this paragraph.

Disapplication of legislation relating to deceased’s wishes 40

- 5 The following do not apply to a designated local authority –
- (a) section 46(3) of the Public Health (Control of Disease) Act 1984 (local authority not to cause body to be cremated under that section contrary to the wishes of the deceased);

- (b) in section 25(5) of the Welfare Services Act (Northern Ireland) 1971, the words from “and a body” to the end (corresponding provision for Northern Ireland);
- (c) regulation 6 of the Cremation (Belfast) Regulations (Northern Ireland) 1961 ((S.R. & O. (N.I.) 1961 No. 61) (similar provision for Belfast crematorium). 5

Directions to do things calculated to facilitate dealing with dead bodies etc

- 6 (1) A designated local authority may give a direction requiring a person to do anything calculated to facilitate the transportation, storage or disposal of dead bodies or other human remains in the local authority’s area or from its area. 10
- (2) The appropriate national authority may give a direction requiring a person to do anything calculated to facilitate the transportation, storage or disposal of dead bodies or other human remains if –
- (a) one or more local authorities are designated under paragraph 4, and 15
 - (b) the appropriate national authority considers that, in respect of any matter, a regional or national response is appropriate, instead of leaving it to individual local authorities to give directions under sub-paragraph (1).
- (3) A direction under this paragraph may, in particular – 20
- (a) require a person to provide services;
 - (b) require a person to provide facilities, premises, vehicles, equipment or anything else within the person’s possession or under the person’s control;
 - (c) require a person to exercise any right they have to require others to do things (including things within other paragraphs of this sub-paragraph); 25
 - (d) direct whether a dead body or other human remains must be buried by the person or cremated by the person;
 - (e) make provision about how or where a person is to bury or cremate a dead body or other human remains; 30
 - (f) in the case of a direction by a local authority, require a person to do things outside the local authority’s area;
 - (g) make provision about how or when things are to be done in accordance with the direction; 35
 - (h) make provision about the supervision of anything required to be done in accordance with the direction;
 - (i) require a person to provide information about things done in response to a direction.
- (4) A direction may require a person to do things even if they would involve the person breaching a contract or incurring other liabilities (but the right of any other person to claim damages for such a breach or to enforce such a liability is not affected by the direction). 40
- (5) A direction under this paragraph may not be given to –
- (a) an individual, or 45
 - (b) a public authority.

- (6) In exercising its functions under this paragraph a designated local authority or the appropriate national authority must have regard to the effect that any direction is likely to have on the ability of any person to carry on their normal business.
- (7) Designated local authorities and the appropriate national authority must keep such records relating to directions under this paragraph for such time as they consider appropriate. 5
- (8) A person commits an offence if the person fails without reasonable excuse to comply with a direction under this paragraph.
- (9) A person guilty of an offence under this paragraph is liable on summary conviction— 10
 - (a) in England and Wales, to a fine;
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (10) A direction under sub-paragraph (1) lapses on the revocation of the designation under paragraph 4 of the local authority that gave the direction. 15
- (11) A direction under sub-paragraph (2) lapses if there are no designated local authorities.

Power of ministers etc to step in

- 7 If the appropriate national authority considers that a designated local authority is failing to exercise its powers under paragraph 6(1) properly, it may give any direction under paragraph 6(1) that could have been given by the designated local authority (and paragraph 6 applies with any necessary modifications). 20

Appropriate national authority directions to prevail 25

- 8 If there is a conflict between— 30
 - (a) a direction given by a designated local authority under paragraph 6(1), and
 - (b) a direction given by the appropriate national authority under paragraph 6(2) or in reliance on paragraph 7,

the direction given by the local authority is of no effect to the extent of that conflict.

Compensation where directions given

- 9 (1) The appropriate national authority must publish a scheme for the making of payments to persons to whom directions are given under paragraph 6. 35
- (2) The scheme must include provision for a person to whom a direction is given under paragraph 6 to be paid— 40
 - (a) a reasonable sum in respect of anything provided by the person in accordance with the direction, and
 - (b) compensation in respect of—
 - (i) any losses,
 - (ii) any liabilities to pay damages for breach of contract, or
 - (iii) any other liabilities,

incurred by the person as a result of the direction.

- (3) *The scheme may include provision for payments in respect of other matters.*
- (4) The scheme may include provision designed to prevent double recovery (for example, by reducing a payment in respect of a liability for which a person is entitled to be indemnified under an insurance policy). 5
- (5) A payment under the scheme –
 - (a) in relation to a direction given by a local authority under paragraph 6(1), is to be paid by that local authority;
 - (b) in relation to a direction given by the appropriate national authority in reliance on paragraph 7, is to be paid by the local authority that it considered to be failing to exercise functions properly; 10
 - (c) in relation to a direction under paragraph 6(2), is to be paid by the appropriate national authority.
- (6) The scheme may include provision about procedural matters, including provision – 15
 - (a) imposing time limits for the making of a claim or other steps under the scheme;
 - (b) the calculation of amounts and how they are to be determined;
 - (c) permitting or requiring the review of decisions under the scheme.
- (7) The scheme may confer discretions or other functions on public authorities. 20
- (8) The appropriate national authority may vary a scheme under this paragraph.
- (9) The appropriate national authority need not make a scheme under this paragraph unless or until it has designated a local authority under paragraph 4. 25

Guidance

- 10 (1) The appropriate national authority may give guidance as to the exercise by designated local authorities of functions under this Part of this Schedule.
- (2) Designated local authorities must have regard to any guidance given under this paragraph. 30

General provisions about directions

- 11 A direction or scheme under this Part of this Schedule may –
 - (a) make provision that applies generally or only in specified circumstances or for a specified purpose;
 - (b) make different provision for different purposes; 35
 - (c) contain incidental, supplemental, consequential or transitional provision.

Procedure

- 12 (1) A power to give directions under this Part of this Schedule includes power to vary or revoke the directions. 40
- (2) A direction under this Part of this Schedule must be given in writing.

Appendix 2 – Coronavirus Bill, Memorandum to the Joint Committee on Human Rights, relevant sections on Clause 56+Schedule 27

See next page.

164. The intention is that wholly video or wholly audio hearings will only take place where the court is satisfied that appropriate arrangements can be made to facilitate access. Listing practices will ensure that interested members of the public or press are able to find out about video and audio hearings and how to observe them. These practical steps meet the requirement of publicity. To protect the solemnity of the court as well as victims, witnesses and others, the Bill creates new criminal offences that prohibit unauthorised recording or transmission of video and audio proceedings, similar to existing prohibitions on photography and sound recording that apply in physical courts.
165. The current statutory safeguards that apply to youths and proceedings in the youth court will remain. Therefore, for example, the court may not decide to utilise viewing screens in court premises in respect of proceedings in the youth court in light of section 47 of the Children and Young Persons Act 1933 (“CYPA 1933”) which provides that access to a hearing in the youth court is restricted to certain categories of person, or other such individuals who have been specifically authorised by the court.⁴
166. We are therefore content that no issue of compatibility with Article 6 arises in so far as open justice is concerned and the principle of open justice is maintained.

Clause 56 – Powers in relation to bodies

167. These provisions allow information to be gathered to ascertain capacity locally and nationally in respect of the transport, storage and disposal of dead bodies. This is achieved by a power for local authorities to require persons to give information, and by empowering national authorities to require local authorities to give information to a specified person or body (e.g. a local authority). Restrictions are placed on use and disclosure of the information and offences created in relation to failing to comply with a requirement to provide information, using or disclosing in contravention of provisions or knowingly or recklessly providing false information.
168. Further, the provisions allows national authorities to designate a local authority area where there is likely to be insufficient capacity within that area to transport, store or dispose of bodies. Once an area is designated a local authority can give directions to companies or corporations.
169. These provisions have the potential to interfere with the following rights:
- a. Article 3 freedom from torture, inhuman and degrading treatment,

⁴Under section 47 CYPA 1933 and Rule 24.2 (1) Criminal Procedure Rules access is restricted to the parties and their legal representatives, a defendant’s parents, guardian or other supporting adult, a witness, anyone else directly concerned in the case, and a representative of a news-gathering or reporting organisation.

- b. Article 6 right to a fair trial,
- c. Article 8 right to respect for private and family life, and
- d. Article 9 freedom of thought, conscience and religion.

Article 3 – Freedom from torture, inhuman or degrading treatment

- 170. The powers of direction relate to the storage and disposal of dead bodies. In so far as Article 3 may be relevant, we note that there is a high threshold to meet. This threshold is a relative one that takes into account all the circumstances of the case (*Kudla v. Poland* 2000-XI; 35 EHRR 198, paragraph 91 GC).
- 171. In the case of *Sabanchiyeva and others v. Russia*: hudoc 2013, following a terrorist attack, there were many corpses in a very short period of time. The Government admitted that local refrigerated storage had been insufficient in the early days and not all bodies were kept there. This was not found to infringe Article 3. In coming to its decision, the Court took into account that the treatment was unintentional and a logistical issue in difficult circumstances.
- 172. In light of the above case law, we consider that these provisions are compatible with Article 3.

Article 6 – Right to a fair trial

- 173. There is an offence (summary only) of failing to comply with directions (companies only) or provide information or misuse of information (individuals and companies). The criminal offence will be tried in the relevant existing criminal justice system in England and Wales, which contains the necessary procedural guarantees set out in Article 6(3) of the Convention.
- 174. The offences are necessary to ensure national authorities get the information they need to manage excess deaths appropriately. They are there to encourage and act as a deterrent for people failing to follow directions designed to deal with the additional deaths anticipated.
- 175. The ability to deal with capacity issues is not met unless information is provided and therefore it is appropriate to ensure people comply with requests for information.
- 176. In respect of the offence related to directions, the power is limited to the Coronavirus pandemic and the purposes of this provision (broadly managing capacity issues in transport, storage and disposal of dead bodies). If these tests are met, a national authority can designate a local authority to make directions and the offences come into play for failure to act properly in relation to a direction given.
- 177. The offences are proportionate in that they are limited to the Coronavirus pandemic, the directions offence is limited to companies/corporations and local

areas with identified capacity needs. Further, these are summary only offences and time limited and will operate only for so long as is necessary to contain the outbreak. We are therefore content that the provisions are compatible with Article 6.

Article 8 – Right to private and family life

178. Whilst these provisions engage Article 8 they do not breach Article 8 which is a qualified right. These provisions meet a legitimate aim of public safety and the protection of public health. Further, they are considered necessary to try to mitigate the effect of additional deaths in a short period of time. They are designed to ensure that there is as much respect as possible in death by speeding up the processes for dealing with dead bodies, so that they are not stored inappropriately and there is not unnecessary delay between death and funerals.

179. In extremis it may be necessary to bury or cremate bodies out of the area desired by the family and if that is not possible it may be necessary to bury or cremate even if the family wished the alternative (cremate rather than bury or bury rather than cremate). However, this would be a last resort, where there is not an identifiable alternative and if health and safety requirements on storage/disposal of bodies require that. In any event, we note the Court recognises the state's wide margin of appreciation in such cases (*Elli Poluhas Dödsbo v. Sweden* 2006).

180. Our view is that the policy is a proportionate way of responding to a legitimate aim of public safety and dignity in death in the wake of the Coronavirus pandemic given the need to strike a balance between the public interests and the interests of family life. Section 6 of the Human Rights Act will also continue to apply, requiring public authorities to exercise the powers compatibly with the Convention rights.

Article 9 – Freedom of thought, conscience and religion

181. These provisions engage Article 9 because there may be a need to bury and/or cremate a body contrary to the religious beliefs of the dead person and/or their family.

182. Article 9 contains two strands: the right to hold a belief and the right manifest it. While the former is absolute, the latter is qualified and any interference with it can be justified if it is prescribed by law, it meets a legitimate aim and is necessary in a democratic society. The powers do not affect the first strand of Article 9, instead they relate to the right to manifest a belief.

183. The powers would be exercised in such a way that religious wishes are respected as far as possible, recognising that it may not be possible to hold a service within the time limits that some faiths adhere to normally, given the expected excess demands. In terms of type of death service (i.e. funeral or cremation) these

wishes will be given priority which means that if that is the preference and it is not available in a particular area, arrangements for out of area service will happen before any decision on going against these wishes.

184. The proposals strike a fair right balance between freedom of religion and the interests of society. They are necessary and proportionate as they will only be used as a last resort in the time of an excess of deaths and to meet health and safety obligations at a time of pandemic. Section 6 of the Human Rights Act will also continue to apply, requiring public authorities to exercise the powers compatibly with the Convention rights.

Clauses 57-67 – Postponement of Elections

185. These provisions enable the postponement of elections due to be held between the clause coming into effect and 5 May 2021.

A3P1 – Rights to free elections

186. A3P1 therefore requires free elections to be held at reasonable intervals. The next scheduled ordinary general elections to the Scottish Parliament and the National Assembly for Wales are 6 May 2021. The next scheduled ordinary general election to the NI Assembly is 5 May 2022. None of these elections are being postponed by the clauses.
187. The result of a by-election to a devolved legislature being postponed would be that a seat remains vacant potentially until 6 May 2021. A vacancy remaining for that length of time is not considered to be an interference with the right to free and fair elections at reasonable intervals.
188. In any event, the delay of a by-election for up to one year is considered to be in pursuit of a legitimate aim and to be a proportionate response in light of the circumstances. In particular, delaying a poll where otherwise it may be difficult for electors to vote or for local authorities to successfully deliver the poll, seeks to achieve the aim of protecting the right to free and fair elections by ensuring that when elections are held they are well administered and the outcome is sound.
189. Furthermore, it is not without precedent for a vacancy to be allowed to remain for a length of time. For example, in relation to the Scottish Parliament and the National Assembly for Wales, if the seat of a constituency member falls vacant a by-election will be held within three months. If the latest date for holding the by-election would bring it within three months of the next ordinary election the vacancy will remain unfilled until that election. In relation to regional member vacancies, these are either filled from the next person on the party list, or where the member was an independent member, the vacancy remains unfilled until the next general election. As a result, where an independent regional member seat

Appendix 3 – Coronavirus Bill, manuscript amendment relating to disapplication of legislation relating to the deceased wishes

SCHEDULE 27 – PART 2 IN RELATION TO Disapplication of legislation relating to deceased's wishes

Insert 5(d):

"In respect of sub-paragraphs 5 (a), (b), (c) where a deceased is to be cremated and it goes against their religious belief the designated authority must consult the next of kin or Power of Attorney or the relevant local faith institution in so far as reasonably possible to find a suitable alternative before proceeding with the cremation"

In Paragraph 6 (a), [INSERT: having had due regard to paragraph 5(d) of this Part]

Explanatory notes: Only in unprecedented circumstances, these clauses may be needed as the local authority has capacity issues and therefore the next of Kin, Power of Attorney or local faith institutions i.e. Church, Mosque, Synagogue can support in providing the relevant support, in order to respect an individual's wishes.