

Using public health law to contain the spread of COVID-19

Richard Griffith, Senior Lecturer in Health Law at Swansea University, considers what powers are available to ministers, health and local authorities to minimise the spread of the novel coronavirus and the disease it causes



Since the identification of a new coronavirus as the cause of a cluster of pneumonia cases in Wuhan, China, in December 2019 the number of cases has continued to increase and spread across borders (Li et al. 2020). In the UK, the number of cases of the new disease, COVID-19, continues to grow and those who might have been exposed to the virus and those confirmed as carriers have cooperated with public health bodies and the NHS. However, there are concerns that, without proper containment measures in place, should a person not cooperate the virus will spread more widely across the population.

The UK government has a duty to protect the health of the public under article 11 of the European Social Charter 1961 (Council of Europe 1961). This requires measures such as the removal of the causes of ill health, health education to promote health and encouragement of individual responsibility for health. To protect the population from infectious and communicable diseases and contamination additional measures are available through the Public Health (Control of Disease) Act 1984 (as amended by the Health & Social Care Act 2008).

Three sets of regulations complement the amended Act:

- Health Protection (Notification) Regulations 2010 updated the system of notification
- Health Protection (Local Authority Powers) Regulations 2010 updated the

powers and duties of local authorities in relation to protecting the public from infection or contamination

- Health Protection (Part 2A Orders) Regulations 2010 allow local authorities to obtain an order (Part 2A Order) from a Justice of the Peace that impose restrictions or requirements to protect the health of the public.

It is vital that nurses are aware of the powers of the Public Health (Control of Disease) Act 1984 and its regulations to allow for an effective response when faced with a person who refuses to comply with prevention measures and treatment during an infectious disease outbreak such as COVID-19.

The Public Health (Control of Disease) Act 1984 (as amended) protects the health of the public through a system of surveillance and action. Surveillance allows for the identification, investigation and confirmation of an outbreak of a disease or a case of contamination. Appropriate and timely intervention to control the spread of the disease including isolation and quarantine can be initiated.

Public health protection powers

The Public Health (Control of Disease) Act 1984 gives health protection powers to local authorities, which can be used without approval from a court. They also give powers to magistrates to make orders specifying what action must be taken by authorities to protect the health of the public. Before the powers can be invoked, local authorities and magistrates must be satisfied that there is evidence of an infection or contamination and that it represents a significant risk to health along with the risk of the infection spreading to others and the action required to remove or reduce the risk.

A recent high-profile example of contamination posing a risk to public health

would be the Novichok incident in Salisbury in 2018 (BBC News, 2019).

Local authority powers

Under the Health Protection (Local Authority Powers) Regulations 2010 and the Health Protection (Local Authority Powers) (Wales) Regulations 2010, local authorities are able to request or require action to be taken to prevent, protect against or control a significant risk to human health. A requirement compels a person to act under pain of punishment. A request only allows the local authority to ask a person to comply. If the person refuses, the local authority must go to court to seek an order of enforcement.

Health Protection Local Authority Powers Regulations allow local authorities to:

- Require that a child is kept away from school
- Require a head teacher to provide contact details of pupils attending their school
- Request individuals or groups to cooperate for health protection purposes
- Request the disinfection or decontamination of premises or articles
- Restrict contact with or relocate a dead body for health protection purposes.

Cooperation for health protection

A person or group of people may be required to take or refrain from taking any action to protect human health from infectious disease or contamination. Local authorities can request such action; for example, a person may be asked to self-isolate. Where a person is not willing to cooperate with such a request, the local authority can apply to a magistrate for an order to enforce the action (Public Health (Control of Disease) Act 1984 (as amended) Part 2A).

Magistrates' powers

To further protect the health of the public the 1984 Act gives powers to Justices of the

Peace (magistrates) in cases of infection and contamination. Magistrates can make orders requiring action to protect human health from disease and contamination.

The Health Protection (Part 2A Orders) Regulations 2010 and Health Protection (Part 2A Orders) (Wales) Regulations 2010 allow a local authority to apply to a magistrate for an order imposing restrictions or requirements on:

- A person, or
- A thing
- A body
- Human remains, or
- A premises.

The powers are flexible and allow magistrates to make decisions that are relevant to each case. Where a magistrate is satisfied that the criteria are met they can issue an order to protect against infection or contamination that presents a risk of significant harm to human health.

Further regulations

The Public Health (Control of Diseases) Act 1984 contain authority for further regulations to be created. Section 13 of the 1984 Act gives the Secretary of State for Health the authority to create regulations to control diseases in England and Wales through a statutory instrument approved by Parliament. These regulations take time to complete the parliamentary process, so in urgent cases section 45R of Part 2A of the 1984 Act allows the Secretary of State to issue regulations controlling a disease without a draft being laid before parliament. The emergency regulations will have immediate effect but will cease after 28 days unless approved by parliament (and the national assembly if they are to apply in Wales).

To protect against the public health risks arising from COVID-19 the present Secretary of State for Health and Social Care used the urgent procedure to implement the Health Protection (Coronavirus) Regulations 2020 in England.

The 2020 regulations create additional powers to control people who may have

coronavirus now the Secretary of State has declared that its transmission is a serious and imminent threat to public health.

The powers apply where either:

- The Secretary of State or a public health consultant believes that a person may be infected with coronavirus and there is a risk that they might infect others; or
- The person has arrived in England on a ship, aircraft or train and has left an infected area in the previous 14 days.

The 2020 regulations give the Secretary of State the power to impose screening requirements (regulation 6), obliging the person to give samples, produce documents and answer questions. There is a power to detain a person for 48 hours or while this screening takes place (regulation 4). There is also a power to restrict a person's travel and other activities and contact with specified people where necessary and proportionate to reduce the risk of infecting others.

The Secretary of State or a public health consultant can impose any other restriction or requirement on a person, including being held in isolation, where this is necessary and proportionate for the purpose of reducing or removing the risk of the spread of coronavirus (regulation 5 and 8). Restrictions can be imposed on groups, such as a planeload of passengers, as well as individuals (regulation 10) without the need to seek an order from a magistrate.

The 2020 Regulations allow the police to intervene to prevent the spread of COVID-19. They include a power for a constable to return someone to detention or isolation by using reasonable force and to remove someone to a hospital or enter any premises in order to do so on the basis of reasonable suspicion that the person may be infected with coronavirus (regulation 13).

Although the 2020 regulations have restrictive measures for screening, isolation and contact, in keeping with public health law generally, there is no provision for compulsory treatment of a person. People can appeal against restrictions to a magistrate but failure to cooperate is punishable by fine.

KEY POINTS

- Health protection powers can be invoked where it is not possible to secure cooperation to prevent a health risk
- Local authorities have health protection powers, which can be used without approval from a court
- Magistrates can make orders requiring action to protect human health from disease and contamination
- COVID-19 is considered to be a serious and imminent risk to public health so Secretary of State for Health and Social Care has issued urgent regulations providing further powers to limit onward transmission of the virus that causes it

Conclusion

Patient cooperation remains the key to limiting the spread of COVID-19 in the UK. Where a person or groups of people might be at risk of spreading the virus then the Public Health (Control of Diseases) Act 1984 and its regulations can be used to ensure identification, screening and isolation of those people. As COVID-19 is considered a serious and imminent risk to public health the Secretary of State has issued urgent regulations that provide further powers to limit onward transmission of the virus. **BJN**

BBC News. Salisbury declared decontaminated after Novichok poisoning. 1 March 2019. <https://tinyurl.com/y42fnfkz> (accessed 3 March 2020)

Health Protection (Coronavirus) Regulations 2020 (SI (2020/129))

Health Protection (Local Authority Powers) (Wales) Regulations 2010 (WSI 2010/1545)

Health Protection (Local Authority Powers) Regulations 2010 (SI 2010/657)

Health Protection (Part 2A Orders) (Wales) Regulations 2010 (WSI 2010/1544)

Health Protection (Part 2A Orders) Regulations 2010 (SI 2010/658)

Li Q, Guan X, Wu P et al. Early transmission dynamics in Wuhan, China, of novel coronavirus-infected pneumonia. *N Engl J Med*. 2020. <https://doi.org/10.1056/NEJMoa2001316> (epub ahead of print)

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020 7738 5454



bjn@markallengroup.com



@BJNursing