INSTITUTE OF CIVIL PROTECTION AND EMERGENCY MANAGEMENT (ICPEM)

ICPEM's Response to PACAC's Call for Evidence Pending Parliamentary Review of the Coronavirus Act

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Reasons for submitting our evidence align with the objectives of the Institute:

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- To promote public safety and to protect the lives and property of citizens Worldwide
- To advance education in the science or art of civil protection
- To promote the highest standards of study and research into all aspects of emergencies and disasters
- To disseminate recognised research and information which could beneficially influence public and private emergency management practices

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Preliminary considerations on the Coronavirus Act

Was the Coronavirus Act a good idea in the first place? It should be possible to deal with a crisis (even one of this magnitude) using existing legislation that sets out the civil protection powers and emergency response system of the Government. One could regard the Coronavirus Act as evidence of serious shortfalls in the current legal framework to be ready for a major event.

Many of the provisions of the Act seem to be about protecting the Government against liability claims. Others (for example, on the postponement of elections) are provisions that in other countries would be dealt with by temporary decree or ordinance, a more lightweight and flexible way of providing legislative change. Still other provisions ought to be in permanent legislation for the management of national emergencies of all kinds.

The UK Coronavirus Act is a hugely cumbersome piece of legislation. It appears to be a sort of 'temporary repair' to a problem that permanent, generalised legislation ought

to tackle, for example, concerning the roles of general practitioners and pharmacists in health emergencies.

Six months is too long a review period. The Act should be reviewed monthly by a third party. Although this shorter review period would increase workloads, it would also support the argument for using an independent review by a third party.

While the 'R' number is significant, it should not be used in isolation, as other factors need to be taken into account. Emergency planning experts should play a more prominent role in both SAGE and any review panels. Emergency planners can be considered as the glue that holds together an effective science-based programme which accounts for all phases of the emergency planning cycle. Emergency planners can synthesise all the relevant data and scientific disciplines to inform their decisions and prevent problems that were apparent when this pandemic emerged. Despite a pandemic being of a 'rising tide' nature, many countries, including the UK, were ill-prepared. A well-informed, all-phase, scenario-based approach with emergency planners at the helm would have prevented the need for so much improvisation and would have avoided the shortfalls in PPE and delays in implementing plans. Many factors need to be considered when planning a response to an emergency or disaster, especially in the absence of robust planning, preparedness, recovery strategies, training programmes and command exercises. A mathematical equation revealed the potential of this outbreak: had the worst-case scenario been taken more seriously into account, the loss of life in the UK would probably have been smaller. An approach based on careful emergency planning might have saved many lives and allowed the country to recover quicker.

Looking to the future, the current lack of professionals and academics with enough expertise in emergency planning should offer us a warning not to make the same mistake again. Criteria should include the availability of resources, assessment of the self-sufficiency of the UK, statistics of deaths, sickness and asymptomatic persons, the effect of antibodies on the potential for the virus to spread, and the impact of the pandemic on the economy. It is important to acknowledge the significant adverse impacts that a failing economy may have on health, lives and mortality.

(1) What should be the criteria for maintaining the Coronavirus Act 2020 as a whole and any regulations made under it?

The winding down of the Act needs to be mapped to the Covid-19 alert system. Essentially, the Act needs to be maintained while the situation meets the definition of a worldwide pandemic or major UK epidemic. It should remain in place until there is widespread immunity to Covid-19, either from natural antibodies or as a result of immunisation, and until there is no significant risk of subsequent waves of infection.

Given the persistence of Covid-19, it is likely that the Act will need to be maintained until the automatic 'sunset' that is due to occur on 24th March 2022. The current arrangements whereby Ministers bring different aspects (or tools) of the Act into force seem appropriate for the current pandemic.

We currently have a system of planning and responding to emergencies grounded at the local level and dignified in law by the Civil Contingencies Act of 2004. It is

perturbing that we suddenly have a UK-wide emergency in which existing local arrangements, knowledge and experience are cast aside in favour of a nationally led response with no local input. Local Resilience Forums in England and Wales, and equivalent arrangements in Scotland and Northern Ireland, should have some say in the maintenance and operation of the Coronavirus Act.

(1a) How and by whom should these criteria be measured and judged?

Public safety and well-being are paramount. Ultimately, we judge the success of the Government's actions by infection and case-fatality rates. Meanwhile, there is a relationship between physical distancing measures (and associated policing powers) and the R-number that denotes the spread of infection.

It is counter-productive to write legislation in impenetrable language when it is designed to clarify how people manage an imminent crisis. As the Act consists of 360 pages of dense legalese, one doubts whether its effectiveness could ever be evaluated. For a start, the amount of cross-referencing between articles and other legislation would leave the evaluator cross-eyed. Many of the provisions of this extraordinarily tortuous document ought to be covered by standard legislation, for example concerning the powers to order the closure of schools or to manage the food supply.

Parts of the Act seem to denote an obsession with the need to prevent loopholes. For this, a mixture of vagueness and overspecification is used, producing language that would be comic if it were not so pompous and the situation were not so tragic.

For evaluation, there is a need to rely on suitably qualified and experienced experts. Public Health England (or equivalents in the other countries) and health authorities are the only agencies who can judge the data. Politicians should not be the arbiters of data.

Decision makers should be able to rely on an independent, apolitical body with expertise in managing the response to incidents, perhaps something that is similar to the US Federal Emergency Management Agency (FEMA) model. A third party scientific advisory group should be formed, consisting of scientists who are independent of the Government. Experts in epidemiology, medicine, logistics, IT, risk management, emergency response, and all the relevant disciplines should be convened with an emergency planning expert as their chair. Findings and advice can be compared to those provided by SAGE and advice given accordingly. In this context, ICPEM members have a wealth of knowledge and comprise people who are both qualified and interested in providing support, as well as learning from this experience.

It is debatable as to whether Britain's senior politicians have the experience or training to manage a national emergency. Hence, the way we prepare for and respond to civil emergencies in the UK requires a major review and overhaul in light of the coronavirus experience. Government ministers have apparently relied heavily and perhaps exclusively on SAGE and its sub-groups for technical and scientific advice. There is no evidence that experts in the field of emergency management have been involved or consulted at any stage. This is a major gap in government response thinking. Professional bodies are comprised of many experts who are available to help.

(2) Is the framework for Parliamentary scrutiny under the Coronavirus Act 2020 appropriate?

On the positive side, the role of PACAC is a vital one. However, it could do with more authority to question ministers in order to offer more clarity and transparency to the public. The exchange of letters between the Chair of PACAC and Michael Gove in May 2020 demonstrates how a minister can fail to answer direct questions. Whether this is through lack of knowledge of the topic at hand or other reasons will, one trusts, be explored in a public inquiry which should be set up under the Inquiries Act of 2005. A public inquiry is essential in order forensically to examine the historical and current planning processes, as well as response and recovery arrangements.

On the negative side, the Act is so complex, and the specifications are in places so vague that scrutiny will have to consider what sort of impact this legislation has had. That will be difficult to separate from the complexity of general impacts. Parliamentary review is specified well enough to ensure that, if there is a consensus in Parliament, the temporary provision of the Act will be revoked. However, it is not clear how this would work if it is appropriate to revoke some temporary provisions but not others. This is one reason why the Act is not a suitable piece of legislation for the situation it is intended to govern.

The Civil Contingencies Act, Part 2 has a mechanism that enables emergency legislation, which expires without review every 30 days. The fact that this statute appears to not to have been used implies a shortfall in review capabilities. Any review should be conducted by a third party, whose primary interest is to manage emergencies and civil protection while at the same time deriving lessons from the process.

(3) Should the “lockdown regulations” have been included as part of the Coronavirus Act 2020?

One school of thought argues that the 'lockdown' regulations should have been part of the Act, in which they should have been specified as a set of options, or tools, to be used as the situation demanded. Simple, clear lockdown regulations applied early in the pandemic served countries such as New Zealand very well and were adhered to because they were not confusing or over-complex. The timing and administration of lockdown are crucial factors.

The contrary opinion is that lockdown is not appropriate to a law as specific as the Coronavirus Act, as it can be used in other disasters. Specifying lockdown in the Act might reduce the flexibility of this tool for combating the pandemic. In any case, lockdown is more appropriate to the Civil Contingencies Act.

Lockdown regulations will have to change with the evolution of the situation regarding the potential for infection of the general population. The power to impose lockdown appears to be inherent in many of the provisions of the Coronavirus Act. If new legal powers are needed in order to impose lockdown, then they should have been included. However, as lockdown regulations continue to be issued frequently, this implies that such a move was not necessary.

(4) Would the Civil Contingencies Act 2004 have been an appropriate Act to use to introduce Covid-19 legislation?

If the Civil Contingencies Act (CCA) is not suited to being utilised in a major national emergency such as Covid-19, then it is not an appropriate piece of legislation to specify or regulate the system of emergency response in the United Kingdom. The fact that the Chancellor of the Duchy of Lancaster described the CCA as an 'instrument of last resort' strongly suggests that the UK needs new and better civil contingencies legislation. Major emergencies do not need legislation of last resort: they need a law that regulates the response system.

In his written response to PACAC, Michael Gove did not put forward a reasonable explanation for not invoking the Civil Contingencies Act. Part 1 of the CCA is a useful tool for emergency planning and management, but it has not been scrutinised following any emergency since it became law. The emergency powers in Part 2 of the CCA should have been invoked during the Covid-19 pandemic.

The alternative view is that including Covid-19 in other legislation would have reduced the impact of ' stand-alone' legislation. As the Civil Contingencies Act is very broad in scope, separate legislation was required to deal with the specificities of Covid-19, although aspects of the CCA helped manage the wider cross-government implications of the emergency, which, of course, was not merely an issue for health.

(5) To what extent should the Government's five tests for easing lockdown also inform whether to end the temporary provisions of the Coronavirus Act 2020?

First, the five tests, and the rationale behind them, need to be explained further, laying open the causality behind them and their relationship to the measures taken to impose or lift lockdown. They can only be used with open evidence and judged by committees of experts, not used for political purposes. However, test no. 5 cannot be applied, as during the first wave of Covid-19 one cannot be confident that there will not be a second wave that is more lethal than the first. As the Act governs matters that are not related to the performance of the NHS in Covid-19 response (such as protection of tenants from eviction), then it is not appropriate to use the five tests. Nevertheless, unless the five tests are continuously met, one cannot claim to be in a post-pandemic phase. In this respect, the duration of continued improvement should be specified.

(5a) How should the five tests be evidenced?

The five tests seem reasonable, but with the devolved administrations opting to decide on what suits their needs, the whole process is fragmenting. It is becoming very confusing for the public. The data that form the evidence which underpins the decision-making for each of the tests should be evaluated by a new, independent group.

The geographical expression of infection and mortality rates are paramount. Provision of equipment and supplies, regional surge capacity in hospitals and availability of intensive care complete the picture. However, one should also take into account the ability to prevent other kinds of mortality and reduce non-Covid morbidity. Evidence

should be presented independently and publicly. Key data need to be analysed daily. It would help if data were standardised, Covid-19 ‘in hospital’ deaths were reported within 24 hours of occurrence, and the question of what is and what is not a Covid-19 death were resolved.

(5b) What should be the triggers for re-introducing lockdown measures?

The R index and the five tests are fundamental determinants of whether lockdown is appropriate. Lockdown is a measure that has several aspects and gradations. One is to confine people to specific places; another is to curtail transportation and port activity, and a third is to shut shops, parks and other places where people congregate. This need not be done nationally if it is more appropriate to do it regionally or locally. There are also questions about international travel and between which countries it could be permitted. This can be determined bilaterally. Small, specific communities can be isolated, city centres, parks and beaches can have their accessibility limited, and plans to segregate vulnerable people can be created.

The relaxation of lockdown requires a phased approach. Reimposition should be automatic if the R value rises above 1.1 (note, however, that the R number is less reliable if any herd immunity has occurred). The virus has a known potential to have a second wave. Hence, lockdown remains important. There is an approximately 21-day latency, taking into account the incubation period and testing delays. According to one point of view, local decisions should be taking over from the current blanket approach in England and the devolved administrations. This should have been the starting point.

Effective testing and tracing systems need to be in place. These could have been initiated earlier in the year if the government's acclaimed 'horizon scanning' processes had been operational. International experience and evidence was emerging rapidly. In the UK, systems did not seem to be in place for following the evidence.

(5c) What data are available to make these decisions? Are those data sufficiently robust?

Data are difficult to obtain and are often derived by word of mouth rather than from verifiable sources. Planning assumptions for decision making are non-existent. Care home and community data must be collected rigorously, as they are vital inputs to decision making. The robustness of data can always be improved but it must be the fruit of reliable accurate current information, new case rates, admissions to hospital, care home statistics and death rates. Quality control must be exercised on the sources of data. Universities should be co-opted into the process, as in the United States where the key role is that of Johns Hopkins University. Independent scrutiny is needed in order to validate the appropriateness and accuracy of data as they are collected. The number of asymptomatic carriers of the disease is unknown and is thought to be relatively high. This further complicates the process of estimating the progress of the disease.

(6) To what extent should there be alignment throughout the UK on the response to Covid-19, and ending lockdown restrictions?

As the disease does not respect political boundaries, alignment should be sought with the EU as well as the four UK nations.

(6a) To what extent is there scope for divergence in policy for devolved administrations and local authorities, in particular in relation to easing lockdown restrictions and Covid-19 testing capacity?

In the first place, why should there be divergence in policy? However, if the UK Government had facilitated a devolved approach, there would have been excellent scope, and it would have been an efficient way of dealing with the crisis. However, that has not happened. If it were to happen, local authorities have been starved of resources for too long to be able to provide services adequately, despite the fact that they have the structure and the expertise to do so.

There needs to be an agreed national way forward that applies equally to England, Wales, Scotland and Northern Ireland. Anomalies for people living in one country but working in another should not be allowed to persist. Whereas devolution would facilitate local responses to areas of high infection, if the R number rises significantly in two or more areas it may be prudent to switch back to national management.

Devolved administrations allow for flexibility and offer freedom to do what is appropriate in their domains. However, if data are not robust, widely available to all and understood by decision-makers, then the potential exists for mistakes to be made, with adverse effects upon other domains and areas of the population.

In summary, there must be a complete overhaul of arrangements for preparing for, responding to and recovering from human novel infectious diseases.

Contributions to this submission were received from the following: Prof. David Alexander (Institute for Risk and Disaster Reduction, UCL), Sabine Furlong, Dave Dowling (Emergency Arrangements Consultant), Dr Kenneth Hines (retired GP and advisor in contingency planning and the medical aspects of disaster management), Richard Clark (Protection Officer, Surrey Fire and Rescue Service), Tony Thompson (Director, OTHO UK) and various unnamed members of the Institute.