

BIG BROTHER WATCH

Repeal the Coronavirus Act

Renewal motion: Thanks to cross-party pressure, **Section 98 of the Coronavirus Act contains a vital safeguard requiring a parliamentary motion to approve the Act every six months;** otherwise the Act must be repealed. **These reviews cannot be a rubber-stamping exercise - they must be used to repeal emergency laws once the need for them has run its course.**

Motion on 25th March 2021: “That the temporary provisions of the Coronavirus Act 2020 should not yet expire.”

We are calling on Parliamentarians to reject this motion.

Key issues with the Coronavirus Act 2020:

- The Coronavirus Act has an unprecedented 100% unlawful prosecution rate. We are not aware of any other UK law, ever, that has such a record.
- The CPS has identified 252 unlawful prosecutions under the Coronavirus Act.
- Unlawful prosecutions are continuing consistently, month after month.

Extreme powers

The Coronavirus Act contains some of the most **extreme detention and dispersal powers in modern British legal history and has proven a real risk to rights and justice.**

Schedule 21 gives unprecedented, almost arbitrary powers to the police, immigration officers and public health officials to detain “potentially infectious” members of the public, including children, potentially indefinitely in unspecified locations.

The generalised power to detain any “potentially infectious” individual, particularly without *necessitating* the advice of a public health officer or adequately providing tests, has not only resulted in injustice and rights infringements - it is **damaging public trust in authority at a critical time** and incurring risks rather than benefits to public health.

Schedule 22 gives broad powers to the Health Secretary to **prohibit gatherings, meaning protests, vigils and political assemblies could be banned at ministerial discretion.** The Health Secretary must declare a “public health response period” in order to activate these powers. Such a declaration has never been made, despite passing two peaks of coronavirus infections. Schedule 22 is plainly unnecessary, but neither is it proportionate in a democracy. All the time it sits on the statute books **it poses a threat to the right to free expression, freedom of assembly and democracy. Given the Government’s authoritarian approach to protest rights, it is more critical than ever that freedom of assembly is safeguarded.**

Unlawful prosecutions

The Coronavirus Act has been used for **252 prosecutions - every single one of which was found unlawful by the CPS on review. This is an unprecedented record of 100% unlawful prosecutions under the Coronavirus Act.**

Big Brother Watch, Kirsty Brimelow QC and the Times newspaper investigated and analysed case studies of policing with Schedule 21 powers. **We found that innocent and healthy individuals were being arrested and even held in police cells unlawfully with Schedule 21 powers** and we called for a CPS review, which the CPS is now conducting monthly. **It is unprecedented for the CPS to conduct monthly reviews of every single charge under a piece of legislation and every review to date has uncovered 100% unlawful prosecutions.** When Steve Baker MP asked the Health Secretary to address the use of Schedule 21 in September’s debate on the Coronavirus Act, the Health Secretary replied:

“There has been a change in the way that schedule 21 is used, and I believe that has reduced some of the concerns in this area”.¹

However, there has been no significant change in the rates of unlawful prosecutions under Schedule 21 since September.

We have also uncovered **several unlawful prosecutions under Schedule 22, despite it not having been activated by the Health Secretary,** due to confusion amongst police forces and prosecutors.

¹ HC Deb (30th September 2020) vol. 681, col. 389: [https://hansard.parliament.uk/commons/2020-09-30/debates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020\(ReviewOfTemporaryProvisions\)](https://hansard.parliament.uk/commons/2020-09-30/debates/AAB1B147-2F78-4F41-ADE6-F1E50B3F3ECB/CoronavirusAct2020(ReviewOfTemporaryProvisions))

CASE STUDY

Marie Dinou was arrested, held overnight in a police cell and fined £660 for 'loitering' between platforms at Newcastle train station and refusing to tell officers her identity or reason for travel. Police alleged Ms Dinou committed an offence under Schedule 21, para. 23(1)(a) and (2) of the Coronavirus Act, as Schedule 21 broadly criminalises "failing without reasonable excuse to comply with any direction, reasonable instruction, requirement or restriction." However, the Schedule does not confer a general stop and account power to police. Police had no clear evidence to suspect that Ms Dinou was "potentially infectious". This case study also deepened our concerns about the risk of discrimination with such arbitrary Schedule 21 powers - Ms Dinou is a black woman.

Unnecessary powers

Despite the nation enduring two peaks of the pandemic, there has been no evidence over the past year that Schedules 21 and 22 are necessary or safe - yet **overwhelming evidence that they endanger rights and should be repealed**. It is plainly unacceptable that people have been charged, exclusively wrongly, under this extreme law for a year.

The Department of Health's two-monthly reviews of the necessity of Coronavirus Act powers have failed to acknowledge a single unlawful prosecution, failed to make a case for the necessity of Schedules 21 and 22, and refused to revoke these dangerous powers. Clearly, the Government's reviews have proven an inadequate safeguard.

The Joint Committee on Human Rights advised in its report of 21 September 2020, "In the absence of any clear evidence to support the retention of [Schedule 21] powers, **they ought to be repealed.**"² The Public Administration and Constitutional Affairs Committee noted in its report **that Schedule 21 may be of interest to Parliamentarians wishing to "urge the Government to expire or at least suspend particular provisions that do not seem to be necessary at that time."**³

Alternative powers

The most significant Government response to the pandemic, the lockdown restrictions, have not relied on the Coronavirus Act. Instead, the Public Health (Control of Diseases) Act 1984 has been used. Of the 400 pieces of secondary legislation which relate to the

² The Government's response to COVID-19: human rights implications: Seventh Report of Session 2019-21, HC 265, 21st September 2020, Joint Committee on Human Rights, p. 48: <https://committees.parliament.uk/publications/2649/documents/26914/default/>

³ Parliamentary Scrutiny of the Government's handling of Covid-19: Fourth Report of Session 2019-21, HC 377, 10th September 2020, Public Administration and Constitutional Affairs Committee, p. 26-7: <https://committees.parliament.uk/publications/2459/documents/24384/default/>

Covid-19 pandemic, only 21 derive their power from the Coronavirus Act.⁴ The remaining statutory instruments have been laid using over 117 other Acts of Parliament.

While the Coronavirus Act has been used for exclusively unlawful and unnecessary charges, a range of existing powers **render Schedule 21 and 22 unnecessary for their stated aims.**

Self-isolation is now a legal requirement for anyone who has received a positive Covid-19 test result or has been in close contact with someone who has tested positive, under The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 in force as of 28th September 2020. The Regulation allows police officers and PCSOs to use reasonable force to return anyone required to isolate should they abscond.

*If a potentially infectious person were to refuse to give a biological sample for testing, extensive powers under the Public Health Act 1984 and Health and Social Care Act 2008 provide **for authorities to detain and test individuals for public health protection with a magistrate's approval. The authorisation of a magistrate, present in the Health and Social Care Act but absent from the Coronavirus Act, is a vital safeguard to ensure that, in the unlikely event of an affected individual coming to the authorities' attention for refusing to take a test,** both public health and human rights are protected.*

The Health and Social Care Act 2008⁵ gives magistrates the power to order people who are believed to be infected or contaminated to:

- submit to medical examination, including microbiological tests
- be removed to a hospital or other suitable establishment
- be kept in isolation or quarantine
- be disinfected or decontaminated
- be subject to restrictions on where they go or who they have contact with

In order to reduce any significant risk to harm to human health.⁶

Furthermore, the Health Protection (Coronavirus, International Travel) Regulations 2020 require those returning from countries on the quarantine list to self-isolate. The Regulations afford police the power to forcibly return an individual to an isolation place should they refuse.

⁴ Coronavirus Statutory Instruments Dashboard – Hansard Society (updated 17th March 2021): <https://committees.parliament.uk/publications/2649/documents/26914/default/>
<https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>

⁵ Which amended the Public Health (Control of Disease) Act 1984

⁶ *Health and Social Care Act 2008, section 45G*
<http://www.legislation.gov.uk/ukpga/2008/14/section/129>

Regulations have also been made under the Public Health Act 1984 to restrict gatherings and have allowed Ministers to specifically prohibit or exempt certain types of gatherings, rendering Schedule 22 unnecessary. There are also powers under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 for the Health Secretary and local authorities to issue specific directions in relation to premises, events and outdoor public space. This contains more comprehensive safeguards than Schedule 22, such as a 7-day review of directions, the right to appeal and a specified end date to directions issued.

Parliament passed the Coronavirus Act in a matter of days in March 2020. It would unquestionably be able to enact new provisions that protect public health, without the dangerous and unnecessary powers contained with Schedules 21 and 22.

We urge parliamentarians to vote against the renewal of the Coronavirus Act and protect rights, justice and public health.