

LOCAL AUTHORITY POWERS: CORONAVIRUS UPDATE

‘PART 2A’ PUBLIC HEALTH ORDERS

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As the UK emerges from lockdown, and as local spikes start to emerge, it is increasingly important that new cases of coronavirus are identified quickly and that anyone who may be infectious complies with guidelines on quarantine, self-isolation and contact tracing. This article considers the potential of Part 2A Public Health Orders as a tool for local authorities to enforce testing and quarantine requirements where infectious individuals refuse to comply voluntarily and pose a threat to public health.

Part 2A Orders were introduced by the Health Protection (Part 2A Orders) Regulations 2010 made under the Public Health (Control of Disease) Act 1984 to allow an LA to apply to a justice of the peace for a range of powers to manage persons (or things) that are or may be infectious or contaminated. A Part 2A Order can be sought to impose restrictions on groups or individuals under sections 45G and 45J respectively of the 1984 Act; this article focuses on applications in respect of individuals under 45G, but the procedure and scope of the two regimes is broadly similar.

WHEN WILL THE COURT MAKE A PART 2A ORDER?

The court will make a Part 2A Order only where it is satisfied that¹:

- The subject of the order (‘P’) is or may be infected or contaminated;
- The infection or contamination is one which presents or could present a risk to human health;
- There is a risk that P might infect or contaminate others; and
- It is necessary to make the Part 2A Order to remove or reduce that risk.

¹ Public Health (Control of Disease) Act 1984 (‘PH(CD)A’) 1984 section 45G(1).

WHAT RESTRICTIONS/REQUIREMENTS CAN THE COURT IMPOSE?

The court can order that P should do one or more of the following²:

- Submit to medical examination
- Be removed to and/or detained in a hospital or other suitable establishment
- Be kept in isolation or quarantine
- Be disinfected or decontaminated
- Wear protective clothing
- Have their health monitored and the results reported
- Attend training/advice sessions on reducing the risk of infecting/contaminating others
- Be subject to restrictions on where P goes or with whom P has contact
- Abstain from working or trading
- Provide information or answer questions about P's health or other circumstances (including about the identity of a party who may have infected P or vice versa).

The court cannot require P to submit to medical *treatment* (including preventative treatment such as vaccination)³. The maximum length of a Part 2A Order is generally 28 days though there are some exceptions), but the court can grant extensions of up to 28 further days at a time⁴. P may be ordered to pay compensation or expenses to the LA or others in connection with the costs incurred in taking measures pursuant to the Order⁵.

WHAT EVIDENCE IS REQUIRED TO SUPPORT AN APPLICATION?

The following documents are required to support an application⁶:

- A report which gives details (or explains why it does not) of at least one of (i) the signs and symptoms of P's infection/contamination (ii) P's diagnosis; (iii) the outcome of clinical or laboratory tests; and (iv) P's recent contacts with, or proximity to, a source or sources of infection or contamination.

² PH(CD)A 1984 section 45G.

³ PH(CD)A 1984 section 45E.

⁴ Health Protection (Part 2A Orders) Regulations 2010 ('HP(P2AO)R 2010') regulation 5(2).

⁵ PH(CD)A 1984 section 45K(7).

⁶ HP(P2AO)R 2010 regulation 4(1)-(5).

- A summary of the characteristics and effects of P's infection/contamination, including an explanation of: (i) how it spreads; (ii) how easily it spreads amongst humans; and (iii) its impact on human health (pain, disability and the likelihood of death).
- An assessment of P's risk to human health, including: a description of any of P's acts or omissions, or anticipated acts or omissions, which affect that risk; and an assessment of the options available to deal with the risk. (No assessment is required if the only requirement sought is for P to provide P's health or contact tracing details).
- If the application is to order P to provide information or answer questions about the identity of a related party (i.e. contact tracing details), an assessment of the risk to human health that the related party presents (including any acts or omissions, or anticipated acts or omissions, of that party affecting the risk); and an assessment of the options available to deal with the risk.

This evidence must be given by persons 'suitably qualified' to give it.

WHAT IS THE PROCEDURE FOR MAKING AN APPLICATION?

Before making an application, LAs should take the following steps:

- Where more than one LA could make the application, they should co-operate to decide which of them should proceed⁷.
- The LA should make 'reasonable enquiries' as to: the existence and location of P; if P is a child, the existence and location of those with parental responsibility, or any decision maker for P.⁸
- Notice of the application must be given to P (or if P is a child, anyone with parental responsibility, or a decision maker, for P).
- Notice is not required where the LA reasonably takes the view that P is likely to abscond or otherwise take steps to undermine the Order applied for; or where P is a child that there are exceptional circumstances so that notifying parents etc would not be in P's best interests; or where, after reasonable enquiries, the LA cannot find or contact those who would otherwise have been notified.⁹

⁷ Health Protection (Part 2A Orders) Regulations 2010 ('PH(CD)A 1984') section 45M(2).

⁸ HP(P2AO)R 2010 regulation 3(2).

⁹ HP(P2AO)R 2010 regulation 3(3).

The application is made to a Justice of the Peace. When it has been determined the LA should:

- Provide a written report to Public Health England, as soon as reasonably practicable and no later than 10 days after determination.¹⁰
- Take all reasonable steps to ensure that P understands the effect of the order, the reason it has been made, the power under which it has been made, P's rights to apply to have the order varied or revoked, as well as the relevant, available support services and how they can be accessed. If P is a child, the duty is to ensure that the person with parental responsibility understands these matters. This must be done as soon as reasonably practicable after the order has been made.¹¹

Where P is detained or kept in isolation/quarantine, the LA must, on an ongoing basis for the duration of the Order, have regard to the order's impact on the welfare of P and any dependants.¹²

HOW CAN THE ORDER BE ENFORCED?

A Part 2A Order is 'authority for those persons to whom it is addressed to do such things as may be necessary to give effect to it'¹³. In particular, an officer of a relevant health protection authority has a right to enter premises (other than premises used as a private dwelling) on 24 hours' notice for the purpose of exercising their functions in relation to a 2A Order. It is also a criminal offence to fail to comply with the order without reasonable excuse, or to wilfully obstruct anyone acting in the execution of a Part 2A Order. This offence is punishable on summary conviction by a fine¹⁴.

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¹⁰ HP(P2AO)R 2010 regulation 10(1)-(3).

¹¹ HP(P2AO)R 2010 regulations 8(2)-(4).

¹² HP(P2AO)R 2010 regulation 9.

¹³ PH(CD)A 1984 section 45K(8).

¹⁴ PH(CD)A 1984 section 45O.

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