



HM Government

Considerations relating to Public Sector Equality Duty and the National Health Act

26 March 2020

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Business Closure and Enforcement Provisions - MHCLG

In considering this matter, Ministers must have regard to the Public Sector Equality Duty (PSED) under section 149(1) Equality Act 2010, the Secretary of State's general duties under Part 1 of the National Health Service Act 2006, and the requirements of the Family Test.

The public sector equality duty that is set out in section 149 of the Equality Act 2010 requires the Secretary of State, in the exercise of his public functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The Regulations prohibit most retail and public premises from opening for the 21 day period, with exceptions, for the purpose of reducing the public health risks arising from Wuhan novel coronavirus (2019-nCoV) ("novel coronavirus"). This is an important public interest aim. It is not considered that there will be any significant impact on persons with a protected characteristic due to the policy set out in the Regulations. If, and to the extent, there is any differential impact, the public health reasons justify the approach, and there is no alternative way of dealing with the public health risks as effectively.

Based on the data available, we believe that these Regulations may have a positive impact on those with the protected characteristics of age or disability, compared with not introducing the Regulations. This is because the fatality rate of novel coronavirus is believed to be higher in the elderly and in those with pre-existing medical conditions, which could include some forms of disability. The measures provided for under these Regulations are aimed at protecting the general public from novel coronavirus and therefore are considered to have a positive impact on individuals with those particular protected characteristics.

With respect to the general duties under Part 1 of the National Health Service Act 2006 in England – we believe that the following duties are relevant to this submission:

- duty to promote a comprehensive health service

- duty to have regard to the NHS Constitution

We do not believe the Secretary of State's duties in relation to improvement in quality of services, reducing inequalities, promoting autonomy, research, education and training, and reporting on and reviewing treatment of providers are relevant in this case.

Our assessment is that by taking steps to limit the onward transmission of novel coronavirus in the UK, Ministers would be acting in accordance with the above duties. We consider, on balance, that these Regulations can be justified on public health grounds.

The duties in the NHS Act 2006 apply to the health service in England only, as will these regulations.

With respect to the Family Test, we are of the view that only questions 2 (impact on families going through key transitions) and 3 (ability of family members to play a full role in family life) may be applicable. The Regulations may have a negative impact on all families by enforcing requirements of restrictions on individuals within the family. We expect the Regulations to have a positive impact on other families and the wider general public, and especially on those families who have caring responsibilities, to individuals who may be elderly or have a long-term medical condition, by mitigating the risk of onward transmission of the novel coronavirus.

Gatherings and Stay at Home Provisions – Home Office

In considering this matter, Ministers must have regard to the Public Sector Equality Duty (PSED) under section 149(1) Equality Act 2010, the Secretary of State's general duties under Part 1 of the National Health Service Act 2006, and the requirements of the Family Test.

The public sector equality duty that is set out in section 149 of the Equality Act 2010 requires the Secretary of State, in the exercise of his public functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The Regulations provide for restrictions on movement and individuals at home unless they are shopping for essential items; taking one form of exercise a day; for any medical need, including to provide supplies for vulnerable people; and to travel to and from work where necessary. There are further provisions on: restricting all gatherings of more than 2 people unless those people live together, or where gatherings are for a work purpose and stopping social events, including weddings, baptisms or other religious ceremonies, excluding funerals attended by immediate family.

The Regulations have been drafted to create specific carve outs for some groups who would have otherwise been disproportionately affected by the restrictions, including those with protected characteristics under the Equality Act 2010. There are specific exemptions on the restriction of movement provisions which ensure that different groups including those over 70, the vulnerable, those with medical or caring needs, are able to access the help or assistance they require which would have otherwise been impossible without these exemptions.

In addition, restrictions on gatherings do not apply to where it is reasonably necessary to gather to provide care for the vulnerable including those over 70 years old, or pregnant.

The Regulations are being put in place for the purpose of reducing the public health risks arising from Wuhan novel coronavirus (2019-nCoV) (“novel coronavirus”). This is a legitimate public interest aim. It is not considered that there will be any significant impact on persons with a protected characteristic due to the policy set out in the Regulations. If, and to the extent, there is any differential impact, the public health reasons justify the approach, and there is no alternative way of dealing with the public health risks as effectively.

Based on the data available, we believe that these Regulations may have a positive impact on those with the protected characteristics of age or disability, compared with not introducing the Regulations. This is because the fatality rate of novel coronavirus is believed to be higher in the elderly and in those with pre-existing medical conditions, which could include some forms of disability. The measures provided for under these Regulations are aimed at protecting the general public from novel coronavirus and therefore are considered to have a positive impact on individuals with those particular protected characteristics.

With respect to the general duties under Part 1 of the National Health Service Act 2006 in England – we believe that the following duties are relevant to this submission:

- duty to promote a comprehensive health service
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We do not believe the Secretary of State’s duties in relation to improvement in quality of services, reducing inequalities, promoting autonomy, research, education and training, and reporting on and reviewing treatment of providers are relevant in this case.

Our assessment is that by taking steps to limit the onward transmission of novel coronavirus in the UK, Ministers would be acting in accordance with the above duties. We consider, on balance, that these Regulations can be justified on public health grounds.

The duties in the NHS Act 2006 apply to the health service in England only, as will these regulations.

With respect to the Family Test, we are of the view that questions 2 (impact on families going through key transitions), 3 (ability of family members to play a full role in family life), 4 (impact on families before during or after couple separation) and 5 (impact on families most at risk of deterioration of relationship quality and deterioration) may be applicable. The Regulations may have a negative impact on all families by enforcing requirements of restrictions on individuals within the family. We expect the Regulations to have a positive impact on other families and the wider general public, and especially on those families who have caring responsibilities, to individuals who may be elderly or have a long-term medical condition, by mitigating the risk of onward transmission of the novel coronavirus.



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