



## HEALTH AND SOCIAL CARE BILL - Sections 119 and 120

### Evidence from the National AIDS Trust to the Public Bill Committee

#### Summary

**The National AIDS Trust recommends that an amendment be made to the Bill to require that any application from a Local Authority to a JP for an order of a health measure in relation to persons, and all decisions on such applications, be reported centrally to ensure appropriate monitoring and accountability**

**The National AIDS Trust recommends that the infections to which JP orders can apply be limited to those spread from person to person through casual contact.**

#### Introduction

1. The National AIDS Trust wishes to bring to the attention of the Committee in particular sections 119 and 120 of the Health and Social Care Bill, which significantly extend the public health powers of the Secretary of State for Health and of Justices of the Peace in relation to infection and contamination.
2. The National AIDS Trust is the UK's leading independent policy and campaigning charity on HIV. We develop policies and campaign to halt the spread of HIV and improve the quality of life of people affected by HIV, both in the UK and internationally.
3. Sections 119 and 120 of the Bill are the product of a consultation process undertaken by the Government in the first half of 2007 on 'Review of Parts II, V and VI of the Public Health (Control of Disease) Act 1984'. The National AIDS Trust, along with a number of other HIV organisations such as Terrence Higgins Trust as well as human rights bodies such as Liberty, presented submissions in relation to these proposals, in particular raising concerns as to the implications for civil liberties of some of the coercive public health powers proposed.
4. Those who had submitted views to the consultation process were only told of the Government's conclusions, and of the consequential legislative provision in sections 119 and 120 of the Health and Social Care Bill, the day after the Health and Social Care Bill was presented to Parliament. This did not give us time to analyse the Bill and make representations

before the Second Reading debate. We hope that the Committee will nevertheless consider what we believe to be some important remaining concerns.

### **Overall Comments**

5. We understand and agree with the need to reform public health powers, many of which are over a century old, are inflexible and inconsistent. The proposed reforms as found in sections 119 and 120 of the Bill extend public health powers in a number of ways. We would draw the Committee's attention to two in particular. First, instead of confining the application of coercive public health powers to a limited list of named infections, as was the case previously (for example, 'cholera, plague, relapsing fever, smallpox and typhus'), the new powers apply to any infection or contamination. 'AIDS', but not HIV, was subject to some of these powers but they have never to our knowledge been used in relation to AIDS. Secondly, the coercive powers available to a JP in relation to risk of infection or disease are extended. Where previously a JP could make an order for medical examination, removal of someone with a notifiable disease to hospital or detention in hospital, the JP can now additionally quarantine, order disinfection or decontamination, order the wearing of protective clothing, require an individual to provide information and answer questions, require the monitoring of an individual's health, require an individual to attend training or advice sessions on risk reduction, restrict where an individual goes or with whom they have contact, and require they abstain from working or trading.
6. It is important to note and welcome the fact that in response to consultation submissions the Government did improve their proposals in a number of ways. For example, JP orders can be appealed against and have strict time limits, significant regulation making powers of the Secretary of State are subject to affirmative resolution, and proposals to criminalise generally exposure to risk of infection have been dropped.
7. The National AIDS Trust has two substantive remaining concerns. The first is the absence of any reporting and monitoring mechanism on the use of powers which have significant implications for civil liberties. The second is on the possible application of public health powers to blood-borne infections such as HIV which are properly applied only to contagious diseases.

### **Monitoring the use of public health powers**

8. As should be clear from the description above of possible JP powers, they have been significantly widened both in terms of application to any infection or contamination but also in what can be required in an order. Requirements to answer questions, to restrict movement, to quarantine, and so on may on occasion be necessary as a last resort to control a dangerous and contagious outbreak but also have the potential for misuse against a stigmatised condition or group of people (for example, gay men, sex workers, migrants).
9. In responding to the consultation one of the difficulties frequently cited was the lack of information as to how public health powers have been used to date. With the Human Rights Act now on the statute book and

the Equality and Human Rights Commission established, it is vitally important that we have a national picture over time as to how such powers are used, whether they are consistently applied and proportionate, as well as effective.

10. **The National AIDS Trust recommends that an amendment be made to the Bill to require that any application from a Local Authority to a JP for such an order of a health measure in relation to persons, and all decisions on such applications, be reported centrally to ensure appropriate monitoring and accountability.** The Government may have a view as to the best national body to which reports should be made, but our view is that either the Health Protection Agency or the Equality and Human Rights Commission would be appropriate.<sup>1</sup>

### **Limiting the infections to which coercive public health powers apply**

11. Public health powers are especially important in relation to serious contagious diseases spread by casual everyday contact. With worries over SARS and avian flu, as well as possible future health threats, it is understandable that the Government wishes to have at its disposal a flexible and extensive set of powers to deal with a real health emergency.
12. It is not, however, apparent that such powers should be applied to infections such as HIV which are not transmissible through everyday or casual contact, which instead require significant human agency from both parties for transmission and where the risk of transmission from a single exposure is extremely low. To this must be added the question of stigma. Too often the history of HIV worldwide has been a history of neglecting actions which effectively address the epidemic, and instead of improper use of both criminal and public health law. Sections 119 and 120 of the Bill extend significant coercive powers to HIV without in our view appropriate justification. We accept HIV may not be directly in the Government's mind in their drafting of this piece of legislation. Nevertheless there is nothing at present to stop the proposed powers being used on someone living with HIV. Such coercive measures have never been effective in dealing with the HIV epidemic – instead they feed the fear and stigma which make HIV so difficult to address.
13. **The National AIDS Trust recommends that the infections to which JP orders can apply be limited to those spread from person to person through casual contact.** To that end, we recommend either the Bill be amended appropriately or that the Government make a commitment to the Committee to include in Regulations [see proposed Part 2A section 45G(7)] requirements that JPs, before making such an order, must be satisfied that the infection in question is spread from person to person through casual contact.

### **National AIDS Trust - December 2007**

---

<sup>1</sup> Reporting requirements are not uncommon for legislation with significant human rights implications – see for example, Terrorism Act 2000 s126, Prevention of Terrorism Act 2005 s14 and ID Cards Act 2006 s22 and 23