

What are the implications of COVID-19 law and regulation for health professionals in Wales?

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Aims of this report

This report provides health professionals with an overview of key legal and regulatory responses to COVID-19, and how they affect important areas of health and social care, in Wales. It explains the laws and other sources related to professionals' rights and duties to help guide their decision-making. The overview of legal measures aims to be of ongoing relevance, but laws may change, and this document is representative of the situation on 3rd July 2020. The report also provides guidance to assist reflective practice underpinned by a human rights-based approach.

COVID-19: The UK's legal response

In March 2020, the UK Parliament enacted the [Coronavirus Act 2020](#). This Act will be in force for up to two years; albeit that some of its provisions have not been given immediate effect—and may never take effect. The Act operates alongside existing legislation enacted for all of the UK, as well as measures that apply only to England, Northern Ireland, Scotland, and Wales, or just some of these. The legal and policy situation for health and social care is complex, with regulation and guidance coming from the UK government and the devolved administrations. Local government also has a crucial role to play, as do health professionals and their representative organisations and regulators.

Rights and duties are at the core of being a health professional. Health professionals owe general duties to the public, underwritten by law and professional ethics. It is important to take a holistic, culturally congruent stance on the provision of health and social care in light of people's needs and rights.

The legal and regulatory context in Wales

Senedd Cymru (the Welsh Parliament) has responsibility for health as this is a devolved matter. Wales has its own distinct public health and healthcare framework, made up of legislation passed by the Senedd and regulations laid down by Ministers of the Welsh Government, in addition to measures applying throughout the UK, passed in Westminster. The framework and its operation by public bodies at all levels are subject to review by the [UK Equality and Human Rights Commission](#). Professional regulators enforce codes of conduct, and independent bodies provide ethical advice. Navigating the system may be complex.



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The following diagram illustrates how legislative, regulatory and advisory sources interact in Wales:

Overarching law

Human Rights Act 1998 and Equality Act 2010

These Acts respectively codify fundamental rights and prohibit discrimination. Both remain in force throughout the pandemic, requiring all measures enacted to be proportionate and necessary to its aims, and for consideration to be afforded to unequal effects.

The Coronavirus Act 2020

This Act introduces novel powers, and amends (or provides the power to amend) existing legislation, aiming to slow the spread of the virus, reduce the resourcing and administrative burden on public bodies, and limit the impact of potential staffing shortages.

Welsh public health laws

Public Health (Control of Disease) Act 1984

This legislation allows Senedd Cymru to legislate on Health and Public Health matters and is the source of devolved powers.

Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

Laid down by the Welsh Minister for Health and Social Services under the Public Health (Control of Disease) Act 1984, the Regulations give legal effect to the ‘lockdown’ measures in Wales. They are binding on health professionals and the wider population until relaxed by order of the Ministers. The Regulations are subject to ongoing amendments and are reviewed periodically.

Professional regulation and governance for public health

Statutory Regulators for Health Professionals’

Bodies which license and discipline health professionals, including the General Medical Council and the Nursing and Midwifery Council, have general codes of conduct and have also issued specific COVID-19 related guidance.

Public Health Wales

The lead agency for dealing with public health matters, including disease outbreaks. Its guidance must be followed by health and social care professionals in Wales.

Advisory guidance

Professional Associations

Bodies including the Academy of Medical Royal Colleges, the Royal College of Nursing, the Faculty of Public Health, and the British Medical Association are providing guidance and support to their members in responding to COVID-19.

Advisory and Expert Ethics Bodies

Bodies such as the COVID-19 Moral and Ethical Guidance for Wales Advisory Group (CMEAG-Wales) and Nuffield Council on Bioethics are addressing the ethical questions raised by the pandemic.

COVID-19 laws and regulation in key areas of health and social care

The COVID-19 measures adopted make significant changes to health and social care. When exercising duties, it is important to maintain a high standard of practice and continue to respect human rights and equality obligations.

1. Health professionals: workforce and employment

The Act permits recently retired healthcare professionals and medical students nearing the end of their training to (re-)join the NHS workforce. The GMC and NMC have introduced temporary registers for this purpose. Clinical staff, temporary workers and volunteers will be indemnified against negligence claims associated with the treatment of COVID-19 if they can show that they acted reasonably in the circumstances. A dedicated life assurance scheme for NHS and social care staff has been put in place for the duration of the pandemic. Health professionals have a duty to raise concerns about unsafe work practices, including insufficient supplies of PPE. Whistleblowers acting in good faith with reasonable grounds are protected under the Public Interest Disclosure Act 1998. Wales Trades Union Congress have launched a hotline for health and social care workers to report concerns. Direct and indirect discrimination against staff on grounds including race, sex, sexual orientation, age and disability is prohibited.

2. Resource allocation

The Welsh NHS has put in place dedicated plans for management and allocation of staff, equipment and medicines during the pandemic. Spare capacity in field hospitals and private hospitals is available. Ventilators have been procured through NHS Wales Shared Services and supply currently exceeds demand. A number of clinicians across the Health Boards have been working with Public Health Wales in recruiting patients, including those in Intensive Care, Acute Medicine wards and Maternity wards to take part in the Oxford University COVID-19 vaccine trial. Public Health Wales have issued specific guidance on PPE. They say that it is vital that PPE is used correctly so that health and social care workers are protected.

3. Social care

With over 25% of the COVID-19 related deaths to date occurring in the care home population, Public Health Wales have issued guidance to managers for keeping

residents and staff safe, e.g. monitoring for symptoms, shielding guidance and how to best make use of PPE. The Act temporarily suspends several obligations of Local Authorities including removing disabled people's rights to social care which has potential implications for human rights. Appropriate protections from the risk posed by COVID-19 are in place for residents lacking capacity. Specific guidance has been issued for patients with learning disabilities, autism, mental health problems or dementia. This includes introducing safeguards to ensure that reductions in staffing ratios, reduced contact with family members and pressures on space do not lead to excessive use of restrictive interventions and segregation. The Social Care Institute for Excellence have produced helpful practical guidance about caring for those most at risk during the COVID-19 pandemic. All care homes in Wales can access testing for residents and staff, including those which have not reported an outbreak.

4. Mental health care

The Mental Health Act 1983 has been amended by the Act in anticipation of a depleted workforce owing to the pandemic. The changes permit the removal and detention of a patient, and the provision of certain treatments, on the recommendation of one registered medical practitioner instead of two. The amendments afford greater powers to health professionals, lower levels of scrutiny and allow for significantly increased periods of detention and restriction of autonomy, having significant implications for the safeguarding of the human rights of individuals with mental disorders. Cases before the Mental Health Tribunal for Wales may be determined without a hearing where this is in the interests of the patient's health. By contrast, the Mental Capacity Act has not been amended and Deprivation of Liberty Safeguards for people lacking capacity and suffering a mental disorder remain in place, but there might be changes in how they are applied. Social Care Wales have issued guidance on this. Staff should continue to operate in line with existing law and the Mental Health Act Code of Practice.

5. Managing death and bereavement

During the pandemic efficient processing of death certificates and disposal of the deceased is essential. To prepare for a reasonable worst case of deaths caused by COVID-19, the Act introduces new powers to streamline the death management process. Death certification and registration requirements have been relaxed to permit certification where relevant medical practitioners are

unavailable, and deaths may not be registered remotely. Additional mortuary capacity has been put in place across Wales. Local Authorities are required to address problems of insufficient capacity for transport, storage or disposal of dead bodies. Local and National Authorities are obliged to have regard to their personal wishes, religion and beliefs when carrying out functions under the legislation. The Regulations permit attendance at funerals, while Welsh Government guidance explains that only close family and friends, if invited, as well as carers, are permitted to attend funerals in person (though livestreaming is permitted).

Reflective practice: a human rights based approach

The law on COVID-19 is complex, controversial, and subject to change. It will not always make clear what is required, or fit easily with other types of rules and guidance operating in the workplace. But decision-makers in a clinic or hospital, in public health, or in social care still need to make informed judgements. Human rights standards, which are part of UK and international law, can help.

Human rights standards resonate with ethics, equity and other ways of thinking with which health professionals should be familiar. They offer key prompts in the face of challenging or apparently everyday decisions. They enable health professionals to identify the fundamental values at stake, how they conflict, and the way in which such conflicts can be resolved, while never losing sight of the interests of the person receiving care.

What are the key features of a human rights-based approach?

- **Mobilise social rights.** The right to health obliges states to combat pandemics, through disease control measures, but also preparedness planning, adequate resourcing of the health system (including public health) and removing obstacles to treatments and vaccines.
- **Adopt fair processes.** Valuable resources, like tests, ventilators, and PPE, should be allocated on the basis of public criteria, with transparent decision-making and wide participation where feasible. Accountability should be promoted by regular monitoring and review, with remedies available where standards are breached.
- **Respect civil and political rights.** The right to life and the right not to be subject to inhuman or degrading treatment must be respected. Government has a positive

obligation to take appropriate steps to safeguard people's lives; this includes making regulations that require public and private facilities to adopt measures for the protection of the lives of people in their care. Liberty and privacy, the ability to sustain important relationships and to accept or reject professional advice, are integral to ethical health care and to individual dignity. They continue to be fundamental in a time of pandemic emergency, though they may be limited.

- **Justify restrictions.** Limitations can only be imposed if they are necessary, the least restrictive means needed to protect the public's health, justified by scientific evidence, and laid down in law. Independent review after a fixed time-period is essential.

- **Embed equality and non-discrimination.** Decisions should not exacerbate existing inequalities or create new ones. Planning at all levels should take account of the needs of people from BAME communities, older people and other marginalised groups, as well as women, who are disproportionately burdened with caring responsibilities in the health and social care sector and domestically.

Further information and resources

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For further briefings and resources on the law and regulation in all four UK nations, please see the project website: <https://bit.ly/3eaM1Sg>

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