

COVID-19 Review Observatory (CVRO), University of Birmingham

Renewing powers under the Coronavirus Act 2020: MPs' Crucial Role



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EXECUTIVE SUMMARY

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- *In spite of the Health Secretary's promise, Six-Month Reviews (SMRs) have so far not been effective "additional safeguards" in holding the Government to account under the Coronavirus Act 2020 (CVA).*
 - *This is the last opportunity for MPs to raise concerns before the CVA either expires or is extended by the Government.*
 - *Despite the limited nature of the review process, MPs can now take "Six Steps to Accountability" and scrutinise the Government's flagship pandemic legislation.*
- b) **'All-or-nothing' framing of the review** – The Government so far has refused to engage with alternatives to the CVA when proposed, or amendments that would allow MPs to expire only some of the powers. Instead, MPs must agree to the continuation of all or none of the powers in use at the time of the review.
- c) **Failure to address key issues and human rights concerns** – including whether the Government has fulfilled its positive obligations under the [right to health and life](#) in its handling of the pandemic, the [unequal impact](#) of school closures, [the effect of changes](#) to courts on access to justice, the impact of [CVA-related detention](#) on vulnerable adults.
- d) **Insufficient detail and error in Government reports** – Important information such as the standards local authorities must apply in withdrawing social care has been left out of Government 2-monthly reports and the One-Year Report contained a significant error.

The Coronavirus Act 2020 (CVA)

Running to over 342 pages, the Coronavirus Act 2020 is one of the most extensive pieces of emergency legislation passed in British legal history. Parliament had just over 13 hours to debate the Act before it became law. The last extensive emergency legislation, the Anti-Terrorism, Crime and Security Act 2001 passed in the wake of the 9/11 attacks, was debated for over 58 hours before it became law. The six-month reviews of the CVA are supposed to ensure that MPs have a meaningful role in overseeing the operation of the Act after it was fast-tracked through Parliament.

The CVA Six-Month Review: Missed Opportunities and Marginalisation of MPs so Far

'I asked the Health Secretary whether we would be able to amend or delete an element of the legislation at the six-month review; otherwise, we will perhaps be faced with eight good bits of legislation and one or two bits that are doing badly, and we will be forced to vote the whole thing through, rendering it a rubber stamp.'

(David Davis MP, HC Deb, 23 March 2020, Vol 674, Col 70)

- a) **Timing** – The Government scheduled the first Six-Month Review for just **90 minutes**. The Second SMR was scheduled for **210 minutes**, but had to be debated in conjunction with four other substantial motions.

One-Year Report (OYR) on the CVA Error Timeline

22 March 2021 - OYR published 3 Days before second Six-Month Review, starting expiry of s24 (retention of fingerprints/DNA).

25 March 2021 - MPs welcome expiry of s24 and renew CVA.

19 April 2021 - Document of corrections posted while MPs are in recess stating 1 of 2 s24 regulations would continue to be in force

The Forthcoming Six-Month Review: Myths

'This is the final review before the Act expires so it does not matter'

- This may not be the final review before Act expires. The Government has [already stated](#) it will review whether to extend CVA powers this spring.



'In the spring, the Government will review this legislation and the other remaining regulations and measure and decide whether any need to remain in place'

CVA report September 2021 CP 534, p2.

'The provisions undermining human rights are now expired'

- While some powers have now expired, the [latest report](#) under the Coronavirus Act indicates at least fifteen of its powers remain in force. The CVA continues to have a significant effect on everyday life, and requires close scrutiny from Parliament.

'If there is a problem with human rights protections related to the CVA, the courts will step in'

- Parliament is sovereign and the government is primarily accountable to Parliament. Courts are generally reluctant to rule on emergency powers, and [have been deferential](#) to the Government throughout the pandemic. That deference is predicated on robust parliamentary accountability.

The CVA Six-Month Review: Six Steps to Accountability

It is not too late to secure parliamentary accountability for the CVA. Before and during the review, MPs can:

1. [Secure Adequate Time](#) – Use urgent questions to ensure the Government schedules proper time for the review
2. [Use Available Evidence](#) – Since March 2020 Parliamentary committees have produced [more than 100 reports](#) on the pandemic, the pandemic response, and its effects. These have barely been used in the SMRs so far.
3. [Protect Human Rights](#) – The wide-ranging human rights impacts of the CVA have been [considered by the JCHR](#), the [Women and Equalities Committee](#), and extensively documented by NGOs. In spite of this, they have been insufficiently engaged with in the SMRs.

Mentions of Human Rights in SMRs

SMR1: 2

SMR2: 8

SMR3: ?

4. [Propose Alternatives](#) – MPs can vote against the renewal motion. This would result in the CVA expiring after 21 days. That provides time to pass new legislation as needed ([CVA, s90](#)). While replacement legislative

COVID-19-related Committee Reports Published before Six-Month Reviews (SMR) (mentions in SMR)

SMR1: 28 Committee Reports (**0 mentions**)

SMR2: 63 Committee Reports (**5 mentions**)

SMR3: 80+ Committee Reports (**?**)

schemes have been [proposed by Liberty and the Opposition](#), they have not received meaningful consideration in the SMRs.

5. [Help to Frame the COVID-19 Public Inquiry](#) – MPs can make clear their view that the effectiveness of the CVA should be considered in the upcoming public inquiry, to supplement the limited scrutiny that the SMRs afforded and learn lessons for the future.
6. [Demand Reform](#) – MPs can insist that Parliament is not again [marginalised](#) in future crises. MPs can secure a commitment that in considering whether any powers under the CVA should remain in force after March 2022, the government will take steps to ensure effective parliamentary accountability by means such as establishing a specialised committee and instating periodic review by Parliament.

About us

CVRO is based at Birmingham Law School and records, tracks, and assesses reviews of responses to the COVID-19 pandemic from a human rights perspective. CVRO is led by Professor Fiona de Londras, and Daniella Lock and Dr Pablo Grez Hidalgo are Research Fellows. CVRO has published widely, including in the *Political Quarterly* and [politics.co.uk](#) on parliamentary scrutiny of Coronavirus Act 2020. CVRO is funded by the Arts and Humanities Research Council.

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Contact

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