

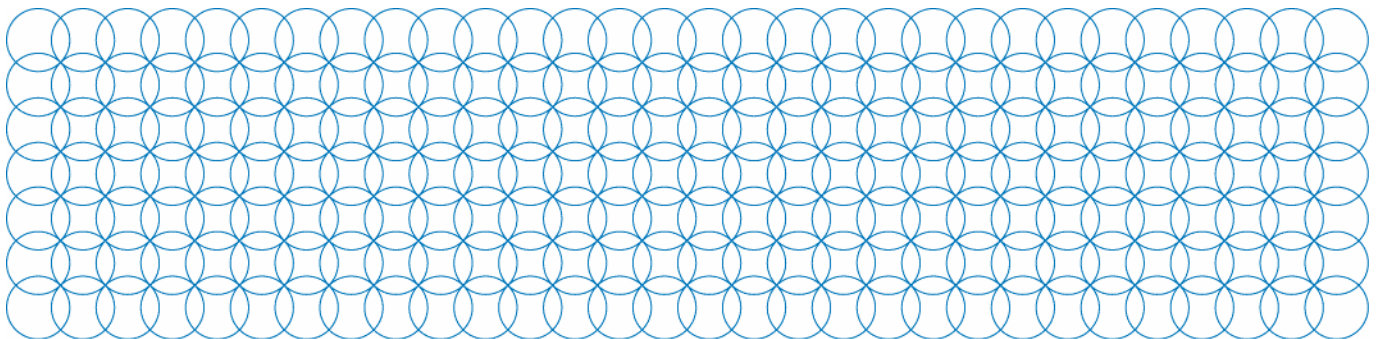


Ministry of
JUSTICE

Pandemic flu

Planning guidance for agencies and others
involved in the justice system

May 2009





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Produced by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Executive summary

The establishment of contingency plans for responding to a flu pandemic in the justice system is part of the government's wider pandemic planning, details of which may be found on the government's pandemic website:

www.cabinetoffice.gov.uk/ukresilience/pandemicflu.aspx

The aim of the guidelines is to bring together assumptions and response strategies of the various agencies involved in the justice system in England & Wales. This will enable planners at different levels within agencies to check consistency of their plans with their agency's national position, and also check that their plans take account of the positions being taken by other agencies and the needs of other stakeholders.

A pandemic is likely to affect the justice system in two key ways:

- Unavailability of staff, judiciary and other parties, including witnesses and jurors, to progress a case or attend a hearing, due to illness or pandemic related reasons. Whilst this disruption will be spread over an extended period of about 15 weeks, peak absence levels will only be experienced for a few weeks. However, even a low level of absence could prevent jury panels from being maintained for jury trials.
- Managing prisons and ensuring infection control.

Arrangements already exist under normal business arrangements for coping when individuals are unable to attend hearings, and there are processes enabling prioritising, rescheduling or moving of cases. These arrangements have been tried and tested during periods of industrial action and other localised events of longer duration. In a pandemic, absence levels will generally be lower than during industrial action, but will last for longer, and affect all areas at broadly the same time. This presents a potential risk in relation to cases or actions that have to be completed by certain time limits, but with prioritisation and the time-scales involved in a pandemic it is expected that statutory obligations can be met. Performance against targets is likely to suffer, particularly for less urgent work.

Infection control guidance has been provided to prisons in a Prison Service Instruction and via links to HPA guidance.

It is intended that the use of existing powers, many of which involve judicial discretion, will continue to be determined on a local basis. It is not intended to escalate to a pre-determined set of 'emergency arrangements' on declaration of a pandemic or particular UK alert level.

Although this guidance sets out how we expect contingency arrangements to be activated, and relates this to WHO phases and UK alert levels, decisions will be made at the time by taking into account the precise nature of an emerging pandemic. Some flexibility will therefore be required in the exact phases and levels at which different actions are taken.

Introduction

1. This paper sets out the planning assumptions and response strategies being proposed by the various agencies who together deliver the justice system. It relates to arrangements in England and Wales with some exceptions in relation to tribunals. It includes those tribunals which are part of the Ministry of Justice Tribunals Service (www.tribunalservice.gov.uk), which include most but not all tribunals in Wales, and some in Scotland. It does not otherwise apply to Scotland, or Northern Ireland, which have separate arrangements and plans. The guidance is aimed at the agencies and other stakeholders who have a role in keeping the system running.
2. For reasons of brevity, where the guidance refers to working with Primary Care Trusts, this includes local Health Protection Units and should be read as local health boards in relation to Wales.
3. An initial Impact Assessment has been completed and does not indicate that the co-ordination of agency plans is likely to lead to additional costs or savings for businesses, charities or the voluntary sector, or the public sector. Consequently, this guidance does not contain an Impact Assessment.
4. In preparing this guidance, and in its implementation, we acknowledge the guidance from the Committee on the Ethical Aspects of Pandemic Influenza (CEAPI): 'Responding to pandemic influenza: the ethical framework for policy and planning'.

Context

5. This guidance provides a planning framework for the justice system, focused on the potential disruption that may be caused by an influenza pandemic. It is aimed at contingency and business continuity planners and it aims to provide consistency on issues such as planning assumptions, response strategies, escalation arrangements, and reporting. Existing local plans should be reviewed against this framework and build on well-established local contact arrangements and practices. The guidance will also be of interest to public bodies and other users of the system.
6. The Justice system plays a key role in the maintenance of law and order and public confidence in and respect for democratic institutions, rights and responsibilities, the safety of individuals and the protection of property. It depends on the effective participation of numerous agencies and other participants, so planning is vital to ensure services can be maintained during periods of disruption.

The threat

7. An influenza pandemic is a natural phenomenon, instances of which have occurred from time to time for centuries, including three times during the last century. They present a real challenge to the economic and social well-being of any country. The severity of pandemics may vary according to the nature of the particular virus, but have the potential to pose a serious risk to the health of the population.
8. The conditions that allow a new pandemic virus to develop and spread continue to exist, and some features of modern society, such as air travel, could accelerate the rate at which the virus spreads. Experts agree that there is a high probability of a pandemic occurring, although the timing and impact of future pandemics are impossible to predict.
9. Pandemic Influenza is considered one of the main natural challenges likely to affect the UK. However, sensible and proportionate preparation and collective action by all involved can help to mitigate its effects.
10. The firm emphasis of the Government's strategy is to develop and strengthen preparations for the potential impact of a pandemic. Government will continue to take every possible step to prepare for and mitigate the potential health and wider socio-economic effects. The Government's overarching strategic approach to doing this is set out in [Pandemic Flu: A national framework for responding to an influenza pandemic](#).
11. The *National Framework* is based on the idea that all plans and preparations depend on the active support of individuals and communities. It therefore promotes sensible and proportionate preparation and collective action by all the organisations involved:
 - Government, both local and central
 - essential services
 - business and other organisations in e.g. the third sector

- the public and communities
- the media.

12. All of these have a role to play in helping to mitigate the health, social and economic effects of a pandemic.

Planning across the justice sector

13. It is government policy that pandemic contingency plans are to be in place in the justice sector, as with other sectors. This guidance note provides central guidance that has been agreed by lead planners within each of the agencies of the justice system. Each agency will develop their own plans, which should take account of the issues identified in these guidelines to achieve co-ordinated planning across the justice system.
14. **Criminal justice** planning for a possible pandemic is being co-ordinated through an inter-agency working group led by the Ministry of Justice and involving representation from:
 - ACPO
 - CPS
 - HM Courts Service
 - The Tribunals Service
 - The Office for Criminal Justice Reform
 - HM Prison Service
 - The National Probation Service
 - The Parole Board
 - The Youth Justice Board
 - The Legal Services Commission.
15. The approach builds on contingency arrangements that have already been tried and tested in live situations including flooding and industrial action, but having regard to the risks posed by the differing scale and duration of impact. Key dependencies have been identified and their resilience reviewed against agreed planning assumptions and a shared awareness of how each agency expects to respond.
16. It is expected that the CJS Inter-agency Contingency Planning group will convene at the early signs of a pandemic. CJS ministers will be regularly briefed trilaterally (Home Office, Ministry of Justice, CPS) on developments and the need to enact emergency powers.
17. **Civil justice** planning is similarly being co-ordinated by the Ministry of Justice where representatives of civil and family business, and of the Tribunals Service have reviewed assumptions, dependencies and risks. The Local Family Justice Councils provide a consultative forum to help raise awareness.
18. **Coroners**. Coroners are independent judicial officers whose duty is to enquire into violent or unnatural deaths, sudden deaths the cause of which is unknown, or deaths in custody. Separate guidance is being prepared for coroners.

Involvement of judiciary, Criminal Justice Boards, Family Justice Councils

19. The judiciary have been consulted in preparing this guidance, to ensure strategies and options do not conflict with exercise of judicial judgement, and to identify judicial concerns that may require alternative contingency solutions. Local Criminal Justice Boards and local family justice councils also have an important role in supporting shared awareness of plans and assumptions.

Importance of compatibility based on common and agreed assumptions and awareness of respective responses/priorities

20. Most services depend on the contributions of several parties, either as service providers or as part of a supply chain. This is particularly true for the criminal justice system which relies on the co-operation of the police, CPS, courts, judiciary, prison and probation services, custody escort services, lawyers, teams such as victim and witness support, and the attendance of those involved as defendants, witnesses, jurors, etc. This also applies, though to a lesser extent, in relation to civil jurisdictions including tribunals.

21. Each of the services is required to have their own contingency plan and their effectiveness depends on how well the plans work together. Understanding what assumptions are being made by others in the chain and how they will respond is vital. This document therefore sets out expectations agreed at a national level, which should be reflected in local plans.

Validation and testing

22. These guidelines are based on plans established at a national level within each agency and lead planners have had sight of the assumptions of other agencies. Planners should validate their strategies by considering the level of impact on critical areas, having regard to the range of absence levels they might experience, the availability of other stakeholders, and the effect on case-flow.

23. At the local level, managers and planners should satisfy themselves that their plans are consistent with their agency plans and clarify with other agencies, through forums such as the Local Criminal Justice Boards, how local inter-agency co-ordination will work during a pandemic period.

24. If there are concerns about proposed strategies or points of the system or processes are identified as being at particular risk of failure, these must be reported to your agency planning lead:

- HMCS Frank Taylor (frank.taylor@hmcourts-service.gsi.gov.uk)
- Tribunals Service Michael Keen (michael.keen2@tribunals.gsi.gov.uk)
- HM Prison Service Joel Standing (Joel.standing@hmpr.gsi.gov.uk)
- CPS Keith Milburn (Keith.Milburn@cps.gsi.gov.uk)
- LSC Michael Atkin (Michael.atkin@legalservices.gov.uk)
- Police Gary Locker (ACPO) (gary.locker@cabinet-office.x.gsi.gov.uk)

Planning assumptions and impact

Clinical attack rate and absence levels

25. Contingency planners should follow guidance in the National Framework. This advises planning for:
- One or more pandemic phases of about 15 weeks duration each
 - Reasonable worst case of up to 50% absenteeism over the 15 week period
 - Absence peaking at about 20% in the peak 2-3 week period (roughly mid-phase) but with absences of up to 35% in small specialist units in the peak phase.
 - These peak absence figures include the range of absences including other illnesses and those with caring responsibilities.

Note: the precise characteristics of a particular virus are unlikely to be clear in the early stages and the severity is likely to vary, but in general infection levels within prisons are likely to be higher (see below)

Impacts

26. A pandemic is likely to affect the justice system in two key ways:
- Unavailability of staff, judiciary and other parties, including witnesses and jurors, to progress a case or attend a hearing, due to illness.
 - The need to manage the prison population in relation to infection control.
27. These impacts are likely to affect the justice system in the following key areas:
- arrest, charging and availability of legal advice
 - availability of parties for jury trials
 - availability of parties in urgent civil cases, including care proceedings and mental health reviews
 - managing prisons with reduced staff cover and the need to control infection
 - ability to deport individuals in failed asylum or immigration cases.
28. Time-critical activities that are dependent on the availability of a small number of specialists are particularly at risk. Planners must also identify dependence on third party suppliers.
29. In a pandemic, absence levels will generally be lower than during events such as industrial action, but will last for longer. This presents a potential risk in relation to time-limited action, but with prioritisation and the time-scales involved it is expected that statutory obligations can be met.
30. Whilst priority will be given to maintaining essential services, every effort will be made to maintain business as near normal as possible. It should be recognised, however, that performance against targets is likely to suffer, particularly for less urgent work.

31. It is difficult to accurately predict whether, during a pandemic, the number of cases entering the Criminal Justice system will actually decrease or increase as there are factors which could influence either direction if they manifest themselves e.g. there may be less people well enough to be actively committing crime, or more offences could be committed as a direct result of the impact of the pandemic on society and behaviour.
32. The position in the Prison Service is more complex in that the expected infection rates in closed communities is expected to be higher, with infection rates of up to 90% over the pandemic period, and staff absence peaking at up to 50%. However, **prisons will be able to operate** above their minimum baseline of patrol status, though they may have to impose reduced regimes for prisoners and visitors.
33. Managing infection control within prisons, working with Primary Care Trusts and local Health Protection Units, requires careful planning and co-ordination. Planning guidance has already been issued to Governors in Prison Service Instruction 29/2006. This is currently under review and further guidance may be issued.
34. There may also be speculation that disruption to public services and diversion of police resources could result in an increase in lawlessness. That will primarily be an issue for police priorities, but it is possible that those likely to perpetrate crime will be equally affected by a pandemic, offsetting any potential increase. The general assumptions and strategies outlined in this document will continue to apply.

Plan activation

35. Arrangements for activation of plans and introduction of contingency solutions should be linked as far as possible to the WHO pandemic phases and UK Alert levels, as communicated by the Department of Health. Within this framework each agency will need to determine when particular contingency solutions are activated and ensure other stakeholders are aware of when any changes in practice are to be made. In the event of a pandemic emerging, decisions will need to be made at the time by taking into account the precise nature of the emerging pandemic. Some flexibility will therefore still be required in the exact phases or levels at which different actions are taken.

WHO International phases		Significance for UK	Response
Inter-pandemic Period			
1	No new influenza virus subtypes detected in humans	UK not affected	Central Monitoring. Preliminary planning and raising awareness
2	Animal influenza virus subtype poses substantial risk	UK has strong travel/trade connections with affected country UK affected	
Pandemic Alert Period			
3	Human infection(s) with a new subtype, but no new human to human spread to a close contact	UK not affected	Planning groups formed and convened to monitor. Issue Planning Guidance. Planners to produce and validate Pandemic contingency plans including planning assumptions and any requirement for relaxation of regulations or ministerial decisions.
4	Small cluster(s) with limited human-to human transmission but spread is highly localised, suggesting that the virus is not well adapted to humans	UK has strong travel/trade connections with affected country	Agree HR guidance on personnel issues.
5	Large cluster(s) but human-to-human spread still localised, suggesting that the virus is becoming increasingly better adapted to humans	UK business affected but no domestic cases	Department of Health to address public awareness and arrange national leaflet drop at Phase 5 Business as usual.

Pandemic Period			
6	Increased and sustained transmission in general population	UK Alert level	Planning groups to issue awareness message but emphasise business as usual.
		1 Virus/ cases only outside the UK	Planners to establish readiness. Arrange official and ministerial representation at COBR if required, with briefing.
		2 Virus isolated in the UK	Announce activation of preventative controls and temporary HR arrangements, including advice to staff/ customers to stay away if ill. Confirm arrangements to staff and raise awareness of controls
		3 Outbreak(s) in the UK	Start weekly (and exception) reporting to Departmental leads, input to Civil Contingencies Secretariat and shared with Inter-agency group. Businesses to make contingency decisions affecting service delivery.
		4 Widespread activity across the UK	Maintain controls and monitoring.
Post Pandemic Period			
	End of pandemic: Return to inter-pandemic period		Planners announce lifting of controls and temporary HR arrangements but monitor to reintroduce in further wave. Businesses to confirm arrangements to address backlogs. Planners to evaluate and learn lessons. Concluding status report to CCS and Management Boards.

Response strategies

36. This section sets out the broad approach being adopted by each part of the justice system to address the main impacts of a pandemic. It is acknowledged that absences will make it difficult to maintain normal services. There will therefore be a general prioritising of cases by courts and tribunals.
37. Arrangements already exist as a matter of normal practice to deal with absenteeism and unavailability of parties for hearings, and there are processes enabling prioritising, rescheduling or moving of cases. These arrangements have been tried and tested during localised disruptions for events such as fires and floods and more widely during periods of industrial action and form the basis of the strategy for responding to a pandemic.
38. In reviewing the suitability of existing strategies a number of activities have been identified as being at risk of being adversely affected by an outbreak of pandemic flu, but all are considered to be capable of being managed within existing powers.

Criminal justice

39. A summary of the main stages and involvement of parties may be found at Annex A.

Arrest and charging: the Police and CPS

40. The criminal judicial process starts with the police and covers the reporting, investigation and prosecution of a case including the matter appearing at Court, and the defendant receiving a custodial or non-custodial sentence. There remains uncertainty as to whether more or fewer cases will enter the system during a pandemic.
41. The police service is the first of the criminal justice agencies to respond to crime, but the process of taking business through the criminal justice system involves all partners at an early stage.
42. As a Category 1 responder under the terms of the Civil Contingencies Act 2004 (CCA), the Police Service has a statutory duty to have in place adequate business continuity plans to respond to disruptive events, such as a flu pandemic, in order to maintain policing operations. It is a matter for Chief Constables to prioritise the use of the resources available to them in light of the prevailing threats, risks and demands placed upon them. This is routinely done on a dynamic basis, as the demands change and the resources available to deal with them also change. This would be no different in a pandemic but both sides of the demand and supply equation are likely to be more problematic than normal. Police Forces are also key members of all Local Resilience Fora across the country and are therefore well placed to implement their plans in a multi-agency context. The Police are also represented on Local Criminal Justice Boards and will have sight of CJS issues.

43. Clearly in the event of a flu pandemic, where the availability of Police resources is severely diminished, there is potential for their role within the Criminal Justice system to be adversely affected. In particular, if there are difficulties in bringing offenders to court. Consideration could be given to the wider use of Police bail, utilising longer bail periods than might otherwise be the case, or by an increased use of alternative disposals post-custody. Those are matters to be considered by Chief Constables in light of the prevailing coverage and impact of the pandemic but there will always be the need to hold some offenders in custody, pending a Court appearance, in the interests of public protection.

Issues for the Crown Prosecution Service

44. The Crown Prosecution Service (CPS) has the power to offer a conditional caution in summary and specified either way offences¹, and already uses these powers in a relatively small proportion of cases. During a flu pandemic the CPS could use its power for further either way offences, hence a conditional caution could be issued in a wider range of cases without the need for a court appearance. There are also other disposals such as simple cautions and penalty notices for disorder that allow some offences to be brought to justice outside the courts system. Reduction in cases brought before magistrates should help offset any delays due to staff absence.

45. As a means of obviating the need for a defendant to attend Court conditional cautions would, under the current circumstances, only apply to limited and lesser offences as set out in the Director's Guidance on Conditional Cautioning published in October 2007. Simple cautions are intended for low level offending that does not merit prosecution at court. Both simple and conditional cautions require an admission of guilt and the offender to agree to accept the caution as a means of disposing of the offence.

46. In relation to conditional cautions the provisions of the statutory Code of Practice and the non-statutory Director's Guidance would still have to be applied by Prosecutors. But the list of offences for which a conditional caution could be administered could be extended without the need for legislative amendment. Annex A of the Director's Guidance on Conditional Cautioning could be changed without legislative amendment.

47. If the provisions in the Police and Justice Act 2006 allowing punitive conditions (including financial penalties and unpaid work) to be attached to a caution were to be implemented, then there would be additional scope for the use of Conditional Cautions.

48. Local revision of the Public Interest element under the Code for Crown Prosecutors could be a consideration in the event of a pandemic, allowing the Prosecutorial decision to take account of capacity constraints in the criminal justice system.

¹ All criminal offences currently fall into one of three categories. **Summary offences**, which include most motoring offences and other relatively minor matters such as drunkenness, common assault and prostitution, are triable only in a magistrates' court. **'Either-way' offences**, including theft, drugs offences and some involving violence against the person, are triable either by a magistrates' court or by the Crown Court. And **indictable only offences**, such as murder, rape and robbery, must be tried by the Crown Court.

Legal Advice

49. The CPS currently provides an out-of-hours advice service to Police (CPS Direct) through prosecutors working at home via telephone/networked computer. This service could be extended during an outbreak of pandemic flu to enable greater availability of CPS Direct during office hours, thereby supplementing the provision of charging advice to Police within time limits.
50. The Legal Services Commission runs the legal aid scheme in England and Wales, providing information, advice and legal representation to help two million people each year access justice.
51. The Community Legal Service (CLS) helps people with civil legal problems such as family breakdown, debt and housing. The Criminal Defence Service (CDS) helps people who are under police investigation or facing criminal charges.
52. Administration will be covered by normal business continuity arrangements, moving work between sites if needed. The 'Magistrates courts exceptional cases unit' is single unit and will need priority cover. Contracts require solicitors to be able to transfer work, enabling cover of priority cases when allocated solicitors are not available.

Courts and hearings

Prioritisation of court cases

53. During a pandemic, courts are likely to suffer a reduction in capacity with a consequent impact on the management of caseloads. HMCS's strategy will be to prioritise cases. Current guidance categorises bail applications and custody time limit applications as top priority and thereafter custody cases, and cases involving persistent young offenders, youths and vulnerable victims. Minor summary offences (e.g. road traffic matters) may not be listed as a priority. The courts also have broad powers under existing legislation (Criminal Procedure Rules 2005) for dealing with such an eventuality.
54. The following table lists cases in order of priority in the Crown, Magistrates and Civil & Family courts:

Priority	Crown	Magistrates	Civil & Family
1	Bail applications Custody time limit applications Urgent family cases before High Ct Judges Urgent applications e.g. PII applications, Terrorism Act etc	Urgent family cases (emergency protection orders, prohibited steps, renewal of interim care etc) Custody cases (charge in custody, overnight arrests, arrest warrants etc)	Interim care orders Any urgent family hearings including breach of injunction arrests

2	Custody cases Youth cases Sensitive/high profile cases and cases involving children and vulnerable witnesses/victims	Out-of-hours cases Scheduled family cases Sensitive/high profiles cases and cases involving children and vulnerable witnesses/victims	Out of hours cases Accelerated possessions
3	Preliminary hearings Plea and case management hearings	All other work	All other work
4	Bail cases		
5	Non-custodial appeals		

Jury trials

55. Cases will continue to be listed but a pandemic will mean that some parties will be unable to attend. Absence should be reported in the normal way. It is not the intention to apply blanket postponement of trials (e.g. for certain types of offence of those trials expected to be of extended duration) with any postponement being a matter for the judge in individual cases.

Custody time limits

56. Due to increased absences of judiciary, staff and others during a flu pandemic, and the associated reduced turnover of court activities, it may prove necessary to seek an extension of the time a defendant remains in custody prior to court proceedings. The senior judiciary are satisfied that there should be sufficient judicial capacity to handle priority cases including applications to extend custody time limits, and that judges should deal with listed cases and applications on a case by case basis, using existing powers. Annex A sets out the available options to deal with this matter. It is not intended to ask the Secretary of State to change limits in a general way by regulation under the Prosecution of offences Act 1985.

Prisons

57. Planning for pandemic flu is underway in prisons based on a Prison Service Instruction issued by Her Majesty's Prison Service (29/ 2006). In relation to a potential shortage of staff, prisons will use existing powers to operate a reduced regime. Arrangements will need to address the following areas of risk:

Sentencing

58. During an outbreak of pandemic flu, human rights arguments may be raised against defendants being sentenced to a prison with infected offenders. The allocation of prisoners to particular locations is a matter for the Prison Service following sentencing, and decisions will need to take account of capacity and its strategy for managing infection. If arguments based on human rights are raised, advice should be sought from the Ministry of Justice Human Rights Division in considering how to respond to them. In general, however, a robust response should be given to such arguments, given that imprisonment is an important tool by which the Government fulfils its obligations to ensure public protection and to prevent crime.

Infection control:

59. With infection levels in prisons expected to be higher than in the general population, governors will need to work with their Primary Care Trusts and local Health Protection Units to develop strategies for managing infection control and for the care of those who have contracted influenza. Guidance has already been provided in Prison Service Instruction PSI 29/2006. It is anticipated that the peak period will arrive earlier in prisons than in the general population but will then trail off over a longer period.

Remand population.

60. Whilst prisons will prioritise the availability of prisoners where required to be delivered to court for hearings, there could be a reduction in trials (it may be difficult to start a lengthy jury trial). It is expected that this may increase the remand population, though the potential increase will be offset by a reduction in the number of defendants remanded in custody. This will partly reflect other police priorities and the exercise by the police and CPS of options such as fixed penalties. The existing monitoring of the prison population will provide early warning of problems.

61. Fixed penalties are unlikely to be suitable for the types of cases where the defendant would otherwise have been remanded in custody.

Reduced prison regimes.

62. Staffing shortages may require the restriction of regimes with prisoners confined to cells for extended periods. Worst case planning for infection rates in prisons envisage 90% infection with peak absence of up to 50%. However, prisons should be able to provide in excess of the minimum patrol cover. The aim would be to provide a regime which allowed for the serving of meals and, where feasible, meaningful activity including exercise, access to telephones, work, education and visits.

Impact on under-19s.

63. The same approaches would be used for under-19s as for adults during a flu pandemic, as the legal issues - surrounding ECHR and public safety - will apply equally.

Note: we will aim to optimise the use of prison video link technology to avoid unnecessary prisoner movement. The Virtual Court prototype was successfully operated in London in 2007 and is being further developed for piloting in 2009.

Parole Board

64. The role of the Parole Board is to make risk assessments about prisoners, to decide who may safely be released back into the community. The Board would be able to carry on with its main activities without the need for emergency powers. However, if the Board's ability to consider cases was seriously curtailed it could have an impact on the prison population. Availability of judges will be a priority for the Parole Board.
65. Maximum use should be made of electronic communications that can be accessed by practitioners or members of the public from remote locations, reducing the need for travel or personal contact. Some CJS staff already have remote access to their office files and e-mails via secure laptop.
66. Further use could be made of existing video technology to hold hearings, discuss cases or share information which would also reduce the need for travel and personal contact.
67. The Board's policy in relation to the consideration of cases is to ensure the protection of the public. All cases are therefore considered in the same way on the basis of risk.

Probation Services

68. Each Probation Area is responsible for its own contingency plan and they report directly to their own Boards. Priorities for the probation service are:
 - Management (assessment and supervision) of high risk offenders
 - Accommodation of High Risk offenders – (Approved Premises)
 - Enforcement of orders and post release licences
 - Supervision of orders
 - Preparation and delivery of Court Reports
69. There are existing guidance and procedures in place for reporting issues of Serious Further Offences and Deaths in Approved Premises.

The Youth Justice System

70. The Youth Justice Board has a number of business critical obligations as well as statutory obligations that in the event of a Pandemic must be continued.
71. The YJB will work with HM Courts Service to ensure contingency plans are in place for youth courts.
72. YJB Placements carry out the function of placing children and young people remanded or sentenced to custody in appropriate secure accommodation. In order to maintain the placement and casework functions YJB will ensure that all current Placements and Caseworker staff are trained to operate systems and exercise the statutory functions such as calculating release dates and producing Notices of Supervision and Licences for young people placed into Secure Training Centres and

Secure Children's Homes. This arrangement will have a remote working solution. Other statutory functions are not business critical and could still function with reduced numbers, although performance against targets could suffer.

73. YJB is also responsible for setting standards and monitoring the performance of each custodial establishment. As a commissioning body YJB would expect all providers (HM Prison Service Young Offenders Institutes, local authority Secure Children's Homes and private Secure Training Centres) to have contingency plans in place for dealing with an outbreak of pandemic flu within an establishment. YJB would seek reassurance of implementation of these plans, a reporting mechanism to achieve this will be put into place and weekly reports would be provided.
74. Whilst YJB do not run Youth Offending Teams (YOTs), they are an essential part of the youth justice system and a key stakeholder. They are made up of representatives from the police, Probation Service, social services, health, education, drugs and alcohol misuse and housing officers. They are run by local authorities. YJB will liaise with local authorities to obtain reassurance that they have sufficient business continuity plans in place in relation to their responsibilities towards YOTs.

Civil Justice and Tribunals

75. HM Courts Service manages business across the courts estate (covering Crown, Magistrates, Family and Civil). The aim will be to use existing legislation to ensure business as usual as far as possible and where this cannot be achieved to prioritise business in order of importance (see table page 19).
76. Whilst the overall aim of planning is to maintain, as near as possible, business as usual within the judicial process during a pandemic, it is recognised that the process may slow down due to staff absences and give rise to bottlenecks and disruption in some areas. Priority will be given to cases involving loss of liberty or hardship.
77. HMCS has developed a contingency plan for dealing with a pandemic, which is adapted from its existing plans for industrial action, and the rules that already exist for dealing with unavailability of parties, including through illness, on a day to day basis. This applies equally to criminal and civil jurisdictions.
78. The aim will be to use existing legislation to ensure business as usual as far as possible and where this cannot be achieved to prioritise business in order of importance, with maintenance of essential services as a minimum.
79. HM Court Service will consider how to keep services running at higher than normal levels of absence. This would include the following:
 - Identifying the key personnel – guidance suggests the following groups would be critical to keeping maximum numbers of courts running during an emergency: Judiciary, legal advisers, listing officers, court clerks, Ushers/jury bailiffs, security staff and parties to case (defendants, witnesses, jurors)
 - Identifying activities dependant on external stakeholders/providers and whether they share the same priorities – this would require constant liaison with stakeholders to gauge the effect of the pandemic and adjust court business accordingly.

80. The above information will be reviewed as information on the particular characteristics of the pandemic becomes available. Unlike the industrial action scenario, the effect of a pandemic is unlikely to curtail the courts operation to the same extent as during a universally applied strike. However, in depleting the workforce, particularly if key staff are affected, the pandemic scenario could call for decision making and adjustments to court lists on a day-to-day basis for several weeks.

Care proceedings.

81. The main civil risk relates to urgent emergency protection order applications which may lead to care proceedings, due to the urgency, dependency on specialist presence, and potential impact on family life of these applications. The onus is on the local authority to demonstrate that an emergency protection order or interim care order should be continued and there are strict time limits and judicial case management for these types of applications. It is expected that local authority social services teams will be able to prioritise urgent hearings and consideration will be given to use of video links.

82. Greater use may be made of existing police powers to protect a child in an emergency for up to 72 hours.

83. An outbreak of pandemic flu would affect the capacity of the system to list and hear cases as well as the ability of parties, experts and other witnesses to attend court. The judiciary would be able to prioritise each family case taking into account the impact on the child, family or adult applicants, of any delay in listing.

Tribunals Service

84. Irrespective of tribunal type, all cases handled by the Tribunals Service are subject to time limits and in this regard, an outbreak of pandemic flu is likely to affect the capacity of the system to list and hear cases. Each tribunal has its own contingency plan.

85. The Tribunals Service would prioritise resource towards key activities and prioritise particular case types within jurisdictions having particular regard to cases involving loss of liberty or hardship and benefit entitlement. Emergency powers are not expected to be required.

86. Overarching contingencies in the Tribunals Service would aim to ensure all Tribunal hearings are maintained and all customer facing/frontline services continue as near to normal service as possible.

87. It is not envisaged that in the medium/long term of a flu pandemic, the Tribunals Service would request high level policy changes of ministers. It is very likely however that any policy changes made in other government departments would have a knock on effect to the subsequent appeals submitted to Tribunals against those departments' decisions.

88. Within jurisdictions, case prioritisation would take place where deemed necessary. Prioritisation would take place using the following factors:

- Cases would be prioritised whereby the individual's liberty is in question.
- Cases would be prioritised where there is significant impact to an individual's livelihood.

89. TS priorities by jurisdiction

Priority	AIT	ETs	SSCSA	Special Tribunals
1.	Bail cases	Hardship cases (involving tied accommodation)	Hardship cases (no benefit in payment)	TS Mental Health Section 2 cases (Non Restricted / Restricted)
2.	SIAC/POAC cases		Child Support cases (if hardship identified)	Asylum Support – all cases
3.			DLA appeals for children	

90. Tribunal Case type priorities

Priority	Jurisdiction	Case Type
1.	AIT	Bail Cases
2.	AIT	SIAC / POAC cases
3.	TS Mental Health	Section 2 cases (Non-Restricted / Restricted)
4.	SSCSA	Hardship cases (no benefit in payment)
5.	Asylum Support	All cases
6.	SSCSA	Child Support cases
7.	SSCSA	DLA appeals for children
8.	ETs	Hardship cases (involving tied accommodation)

91. Overarching contingencies in the Tribunals Service would aim to:

- Ensure all Tribunal hearings are maintained
- Ensure customer facing/frontline services continue as near to normal service as possible.

Asylum and Immigration Tribunal.

92. Time limits are prescribed for the listing, promulgation and service (by Border and Immigration Authority (BIA)) of asylum appeals and the resulting determinations. There is also a special fast-track process for straightforward asylum cases, but that is triggered when BIA decides a case. The time-limits and processes are not statutory, but they are defined in secondary legislation.
93. An outbreak of Pandemic flu could affect the capacity of the system to list and hear cases (as well as the ability of appellants and representatives to engage with the system). However as asylum cases are prioritised, it is expected that additional time to a hearing is expected to be relatively small.
94. Any significant delay could be felt in non-asylum cases. Time limits thereafter (promulgation of decision by AIT; service of decision by BIA) would be unlikely to attract a great deal of attention, and any delay through adjournment, because of a lack of judge/appellant/rep/interpreter would be reasonable (while still undesirable) under such circumstances.
95. There is a potential difficulty if an individual is required to be returned to another country, but that country has imposed border closures. Removals are the responsibility of BIA.

Other jurisdictions

96. The focus will be on prioritising cases affecting loss of liberty or hardship. In Social Security Appeals, cases dealing with entitlement to benefits would be prioritised due to the potential impact on an individual's livelihood.
97. In the TS Mental Health tribunal, there will be a need to ensure that all parties involved in reviews will continue to be available, including health care specialists. Such reviews, determine whether patients are detained under supervision or allowed back in to the community. The exposure of workers across the health sector increases the risk of absenteeism. Whilst all those working in the health sector may be at greater risk of infection, it is not expected that mental health practitioners will be diverted to other work and should therefore be able to cover any urgent hearings.

Planning, monitoring, reporting and co-ordination

98. In the period immediately preceding a pandemic, and during its course, there needs to be a consistent approach to cover the activation of plans and any escalation of contingency measures. This requires effective sharing of information with consistent ratings of impact, enabling effective aggregation of status returns.

Monitoring and reporting

99. Information relating to the impact of a pandemic needs to be collected at the local level and shared locally as well as escalated within agencies. This will keep service partners informed of pressures and enable prioritisation of potentially scarce resources.

Weekly reporting against aim of maintaining essential services

100. It is envisaged that weekly status reports will be produced as at mid-day each Friday, aggregated within agencies, to reach Departmental leads by 5pm.

101. They should cover business impact and indicate levels of employee absence.

102. A 'traffic light' system of assessing status is recommended (R/A/G), based on the ability to maintain services.

Highlighting inter-agency problems

103. Reports should identify any aspects of inter-agency difficulty, indicating any actions taken locally, thereby enabling decisions at the lowest possible level.

Exception reporting

104. Exception reports should be escalated (or may be requested) between normal weekly reports where an urgent decision is required to address an actual or potential failure of essential services.

Escalation to agency leads

105. Reports must be escalated to lead planners within the agency at National level, where they should be shared with the relevant agency board.

Production and sharing of agency level reports

106. Within the Ministry of Justice, the various agency returns will be copied to the Corporate Security & Business Continuity Branch, who will collate returns to form a Ministry of Justice summary. This will be presented to Ministry of Justice's Corporate Board and Ministers, and copied to the Civil Contingencies Secretariat. Other Departmental leads should similarly copy to their Boards/Ministers and CCS.

107. Agency/Departmental leads should also provide copies of their summary reports to their representatives on the Inter-Agency Contingencies group. This group will monitor co-ordination issues to anticipate potential problems and provide briefing of their respective ministers on issues requiring attention.

Liaison with Local Resilience Forums

108. The Civil Contingencies Act requires category 1 and 2 responders to co-operate in the local resilience area. The principle mechanism for such co-operation is the local resilience forum.

109. The CCA and concept of category 1 and 2 responders primarily relates to local authority activities including emergency services. However, local planners within the justice system who are part of government agencies should ensure that they engage with other relevant agencies in their area or region to confirm communication arrangements (these arrangements already exist for 'business as usual' and other forms of disruption).

110. It is suggested that local criminal justice boards should identify key officers as contact points for information sharing and review during a pandemic, with suitable cover in the event of illness. It is suggested that the police representative should then be able to represent any issues to the Local Resilience Forum and alert the LCJB members to any emerging LRF issues.

111. If, following declaration of a flu pandemic, an issue arises relating to family cases, the matter will be escalated to the HMCS regional office by the local HMCS manager in conjunction with the appropriate designated family judge. The local HMCS manager will also liaise with other agencies involved in the delivery of family justice as required.

Reporting to the Civil Contingencies Secretariat

112. Departmental leads will submit summary returns to the Civil Contingencies Secretariat to inform the Common Recognised Information Picture (CRIP) that is presented to the Civil Contingencies Committee, which it is expected will be meeting regularly during a pandemic.

Return to normal – post pandemic

113. In all areas, it is likely that the prioritisation of cases will mean that a backlog of lower priority work will build up. Decisions will also be needed as to when any contingency solutions should cease and normal practice resumed.
114. It is therefore important that management teams maintain arrangements for monitoring the build up of backlogs and are able to prioritise.
115. The post-pandemic phase should also include a review of arrangements: what worked well and what did not. This is particularly relevant for pandemic flu where there remains a risk of a second or subsequent waves, where arrangements may need to be re-activated at short notice.

Annex A: Powers enabling flexibility to manage impacts

Custody Time Limits

1. In response to a pandemic flu outbreak, it may prove necessary to seek an extension of the time a defendant remains in custody prior to court disposal².
2. The Prosecution of Offences (Custody Time Limits) Regulations 1987 set out maxima (for example, from committal to trial it is 112 days).
3. The preferred option is use of Section 22 (3) of the Prosecution of Offences Act 1985. This enables application to a court on a case by case basis, to extend these limits, if the court is satisfied there is good and sufficient cause, and the prosecution has acted with all due diligence and expedition. It is anticipated that a pandemic flu outbreak is likely to be judged as good and sufficient cause for delay.
4. The Secretary of State might also change the limits in a general way through new regulations made under the 1985 Act.
5. The option to use emergency legislation to extend custody time limits (where Civil Contingency Act requirements are met – emergency, necessity, urgency and proportionality) is not considered necessary. Judges will continue to deal with custody time limit applications on a case by case basis.

CPS Issues

Simple and Conditional cautioning

6. During an outbreak of pandemic flu, the DPP could consider whether to extend the power to conditionally caution without the need for a court appearance. CPS Prosecutors currently have the power to conditionally caution in summary and specified either way offences as set out in the Director's Guidance.
7. Conditional cautioning applies where the prosecution can prove and the defendant admits an offence. In this regard, Crown Prosecutors have the power to decide whether a person is to be made the subject of a conditional caution and the conditions applicable under section 23 of the Criminal Justice Act 2003 and section 37B(3) of the Police and Criminal Evidence Act 1984.
8. In circumstances such as an outbreak of pandemic flu, the DPP could extend prosecutors' powers to include a wider range of either way offences, if this was considered to be in the public interest. This could be done without the need for legislative amendment.

² See also paragraph 55 – charging advice within custody time limits

9. In any circumstances the guidance contained in Home Office Circular 016/2008 on Simple Cautioning of Adult Offenders would have to be followed before a simple caution is issued. It should be remembered that simple cautions are not an alternative to prosecution and are only appropriate where it is not in the public interest to prosecute. The decision to issue a simple caution for an indictable-only offence must always be taken by the Crown Prosecution Service.

Charging advice within custody time limits

10. During an outbreak of pandemic flu, CPS Direct could be extended to supplement the provision of charging advice within custody time limits.
11. The CPS currently provides an out of hours advice service to Police (CPS Direct) through prosecutors working at home via telephone/networked computer. The CPS may decide to extend this service during an outbreak of pandemic flu to enable more prosecutors to provide a remote advice service, thereby supplementing the provision of charging advice to Police within time limits.

Prioritisation of court cases

12. During an outbreak of pandemic flu, a Court might seek to manage its case load with a reduced capacity by, for example, not listing minor summary offences (eg: road traffic matters).
13. A court is under a duty actively to manage its cases (e.g. identification of needs of witnesses, monitoring progress of case, discouraging delay). In fulfilling this duty, it has various powers and it may therefore “fix, postpone, bring forward, extend or cancel a hearing”: rule 3.5(f). Criminal Procedure Rules 2005.
14. This is a broad power and gives room for Courts to focus on those cases that need prioritising in an emergency (the court still however has to respect the interests of witnesses, victims and jurors in carrying out its duty). The power may be exercised locally by judges.
15. From a legal perspective, Article 6 of the Convention rights under the Human Rights Act will be relevant. This provides for a right to a fair trial “within a reasonable time” and as such, cases cannot be left hanging indefinitely.
16. Where deciding between prioritising cases involving detained defendants and other cases, the rights of all parties under Article 6 will need to be considered alongside the right to liberty of detained defendants under Article 5. In general this would lead to priority being given to cases involving a detained defendant.

Prison issues

Sentencing

17. During an outbreak of pandemic flu, defence lawyers may argue against their client being sentenced to a prison with infected offenders. To counter any such argument, the relevant authorities should be seen to have followed reasonable steps in trying to minimise the risks to prisoners, whilst having regard to the risk to the public. If arguments based on human rights are raised, advice should be sought from the MoJ Human Rights Division in considering how to respond to them. In general, however, a robust response should be given to such arguments, given that imprisonment is an important tool by which the Government fulfils its obligations to ensure public protection and to prevent crime.
18. Decisions as to which institution a prisoner should be committed to, are made by the Prison Service, following sentencing. This is therefore primarily an issue for the prisons rather than the judiciary.
19. In deciding whether/where to send a person to a prison, and in trying to minimise the risks, points to consider are:
 - Does the flu pandemic create a real and immediate risk to the life of that person (e.g. the prisoner)?

This will involve establishing whether there is an outbreak at the prison; and if someone catches the virus what is the risk to their life?
 - What steps can be taken to protect the life and health of the prisoner/s and are those steps going to be judged appropriate/reasonable in the circumstances?
20. The Prison Service accepts that it will not be possible to keep pandemic flu out of prisons and the emphasis will therefore be on using Department of Health guidance and local primary care trust expertise to treat cases.
21. In deciding upon any particular prison, account may have to be taken of travel restrictions. It should also be noted that pressure on the prison population is also likely to be a factor to militate against a capacity to move prisoners to flu- free areas.
22. From a legal perspective, the State has a common law obligation to take reasonable steps to protect those in its custody. Article 2 of the Convention rights (the right to life) is also engaged. This will apply during a pandemic to conditions in prisons and to sentencing decisions, which lead to individuals being sent to prison.
23. Article 3 of the Convention rights (freedom from torture, or inhuman or degrading treatment) might also be engaged. Prisoners sometimes rely on this, alleging poor conditions and/or lack of access to treatment. There is a minimum threshold of such treatment before Article 3 is engaged, which will depend on the facts.

Under 19s

24. Legal issues - surrounding ECHR and public safety - will apply equally for under-19's as opposed to full adults.
25. Similarly current advice would indicate that there would be no additional human rights considerations for under-19s than adults - in terms of human rights the obligations to those in custody apply equally.

Annex B: Criminal Justice System – Process Chart

Process stage	Offence	Arrest	Magistrates court	Crown Court	Sentence
Note	Level and pattern may change during pandemic	Some released on Bail; others in police custody (possibly courts under operation safeguard)	1 st appearance and hearing		Custodial and community based sentences
Stakeholders		Police CPS (charging advice) Defence Solicitors / LSC Bail-tag contractors Courts if held in court cells.	Magistrates & staff Defendant Police PECS (if remanded) CPS Defence Solicitor Legal Aid Probation (reports) Interpreters Local authorities (secure youth accommodation)	Judiciary & staff Defendants PECS (surrender to bail or transport from prison) Prison Service/PFI CPS Defence Solicitors/Bar Jurors Witnesses Witness service Victim Support Interpreters Loggers/stenographers Probation	
Dependency		Availability of advice	Police build file and pass to CPS. Availability of parties and reports.	Availability of all parties (defendant doesn't need to attend all hearings)	
Strategy		Use of CPS Direct. Use of cautions and fixed penalties.	Cases prioritised	Cases prioritised (unlikely to start long jury trial at peak of pandemic). Prioritise court appearances	Reduced prison regimes

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Further paper copies of this guidance can be obtained from this address and it is also available online at www.justice.gov.uk and on the UK Resilience website: www.cabinetoffice.gov.uk/ukresilience/pandemicflu.aspx

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