Twitter Thread by George Peretz QC

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A quick thread about the legal issues surrounding the imposition of a "quarantine at a hotel" requirement for international travellers. These are initial thoughts: would welcome thoughts and contributions! NB I'm thinking about ■■■■■■■ only but this probably applies equally to ■■■■■■■.

The basic power is in section 45B of the Public Health (Control of Disease) Act 1984.

Subsection (2)(b) refers to the "detention, isolation, or quarantine of persons".

So the legal basis looks clear. But regulations will also have to meet requirements of rationality. And since detaining people in a hotel room engages fundamental human rights (Article 5 of the ECHR), HRA tests of proportionality are in play too.

Though NB that Art 5(3)(e) ECHR expressly contemplates lawful detention for the prevention of the spreading of infectious disease.

A couple of issues strike me.

First, the government will need a robust case to explain why isolation at home (eg using apps, geolocation, or even tracking bracelets) is not an acceptable alternative.

There has been some suggestion that the legal powers don't exist to permit that: but I have to say that I don't immediately see why it doesn't fit under (2)(b) - at least as a set of conditions compliance with which are an exception from the requirement to quarantine at a hotel.

(Eg, quarantine in a hotel unless you download the app/keep your phone on and with you at all times/wear a tag).

Another set of issues surrounds this point, from https://t.co/koelqtZELg

As I understand it, the requirement won't be imposed on eg road hauliers (because our supply chain would collapse if it did). And what about ministers and foreign dignitaries (the G7 is in the UK in June)? But then the logic of the Whitehall official

kicks in.

To adopt a metaphor, a requirement to make people stick their fingers in a hole in the dyke and stand there for 2 weeks looks questionable if water is flowing unchecked through another hole in the dyke.

There may be answers to that but they need to be articulated and thought through.

Another issue: Ireland. See earlier short thread. https://t.co/9Rfam0BG0S https://t.co/EV5NCLuDdu

> This also needs to be read by those advocating a \u201cseal the border, zero-COVID\u201d strategy for the UK. https://t.co/yoA9LCNacP
>
> — George Peretz QC (@GeorgePeretzQC) January 23, 2021

If NI is not being treated as “abroad” for quarantine purposes, what is being done to coordinate quarantine rules with the Irish Government?

Written before I saw this thread: but note the overlap here between the legal issues and the practical issues. https://t.co/OjoZQeYLsE

> The UK is heading for mandatory hotel quarantine - likely to be signed off for all arrivals to the UK by ministers tomorrow.
>
> But it\u2019s an incredible complex policy that is far from cost free. Much will depend on how tough the government decides to act. Some thoughts:
>
> — Sebastian Payne (@SebastianEPayne) January 25, 2021

To put the point shortly: if a : detention in hotel policy is backed by reasoning to show why nothing less intrusive will work, and if it is more than a “something must be done” gesture made pointless because of exceptions, it will probably be legally secure. But those are “ifs”.