Twitter Thread by Adam Wagner



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A short thread on why I am dubious that the government can lawfully impose charges on travellers entering the UK for quarantine and testing (proposed at £1,750 and £210)

1/

The UK has signed up to the International Health Regulations (IHA) 2005. These therefore create binding international legal obligations on the UK.

The IHA explicitly prevent charging for travellers' quarantine or medical examinations.

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PART VII – CHARGES

Article 40 Charges for health measures regarding travellers

1. Except for travellers seeking temporary or permanent residence, and subject to paragraph 2 of this Article, no charge shall be made by a State Party pursuant to these Regulations for the following measures for the protection of public health:

(a) any medical examination provided for in these Regulations, or any supplementary examination which may be required by that State Party to ascertain the health status of the traveller examined;

(b) any vaccination or other prophylaxis provided to a traveller on arrival that is not a published requirement or is a requirement published less than 10 days prior to provision of the vaccination or other prophylaxis;

(c) appropriate isolation or quarantine requirements of travellers;

(d) any certificate issued to the traveller specifying the measures applied and the date of application; or

(e) any health measures applied to baggage accompanying the traveller.

2. States Parties may charge for health measures other than those referred to in paragraph 1 of this Article, including those primarily for the benefit of the traveller.

3. Where charges are made for applying such health measures to travellers under these Regulations, there shall be in each State Party only one tariff for such charges and every charge shall:

(a) conform to this tariff;

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International law is not actionable in a UK court unless it has been implemented in law.

But it can be used as an aide to interpretation where a statute isn't clear as to what powers it grants.

See e.g. Lord Bingham in A v SSHD https://t.co/RXmib1qGYD

/3

[2002] UKHL 44, [2003] 1 AC 976. But they rely on the well-established principle that the words of a United Kingdom statute, passed after the date of a treaty and dealing with the same subject matter, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the treaty obligation and not to be inconsistent with it: *Garland v British Rail Engineering Ltd* [1983] 2 AC 751, 771.

The Quarantine regulations will, I assume, be made under section 45B of the Public Health (Control of Disease) Act 1984

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/4

[F1 45B Health protection regulations: international travel etc.

(1) The appropriate Minister may by regulations make provision—

(a) for preventing danger to public health from vessels, aircraft, trains or other conveyances arriving at any place,

(b) for preventing the spread of infection or contamination by means of any vessel, aircraft, train or other conveyance leaving any place, and

(c) for giving effect to any international agreement or arrangement relating to the spread of infection or contamination.

(2) Regulations under subsection (1) may in particular include provision—

(a) for the detention of conveyances,

(b) for the medical examination, detention, isolation or quarantine of persons,

(c) for the inspection, analysis, retention, isolation, quarantine or destruction of things,

(d) for the disinfection or decontamination of conveyances, persons or things or the application of other sanitary measures,

(e) for prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things,

(f) imposing duties on masters, pilots, train managers and other persons on board conveyances and on owners and managers of ports, airports and other points of entry, and

(g) requiring persons to provide information or answer questions (including information or questions relating to their health).]

That gives pretty broad powers but I can't see any power to charge for quarantine. Perhaps it will be inferred from somewhere else in Part 2A?

But...

... Part 2A of the 1984 Act was brought in by the Health and Social Care Act 2008 which was expressly (see the Explanatory Notes) intended to implement the UK's obligations under...

The International Health Regulations 2005

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/5

PART 3 – PUBLIC HEALTH PROTECTION

29. The Public Health (Control of Disease) Act 1984 ('the Public Health Act 1984') consolidates earlier legislation, much of it dating from the 19th century. Many of its assumptions, both about risks and about how society operates, are now out of date. Most concerns about health threats have, since the 19th century, related to infectious disease (plague, cholera and the like). This is reflected in the way that Part 2 of the Public Health Act 1984 focuses on infectious disease. It makes highly detailed provision on some matters (for example, it is a criminal offence to expose a public library book to plague, or to hold a wake over the body of a person who has died of cholera) but does not address other matters that are now of concern, such as contamination by chemicals or radiation. Part 3 of this Act updates the Public Health Act 1984 to take account of these points.

30. Internationally the case for taking an "all hazards" approach to dealing with such health threats was taken up by the World Health Organization ('WHO') and reflected in the International Health Regulations 2005 ('IHR'). The IHR are the means by which WHO aims to prevent and control the international spread of disease, by action that is commensurate with and restricted to public health risks, and which avoids unnecessary interference with international traffic and trade. The previous International Health Regulations (1969) were concerned with action at international borders in relation to three specific infectious diseases (cholera, plague and yellow fever), but increasingly were recognised as unable to deal with new threats, such as SARS. The new IHR are concerned with infectious diseases generally, and also with contamination. They also pay more attention than their predecessors to the arrangements needed in-country to deliver an effective response to health risks. The IHR came into effect in June 2007. This Act amends the Public Health Act 1984 to enable IHR to be implemented, including WHO recommendations issued under them.

Surely Parliament didn't intend for the powers under Part 2A of the Public Health Act 1984 to permit a minister to make regulations which breached the express requirements of the International Health Regulations 2005?

So how can the minister have power to impose charges?
/6

I may be missing something - let me know if I am.

I am also conscious govt may use a different power altogether to set this up, perhaps Schedule 21 of Coronavirus Act 2020? But that seems not quite right and still doesn't expressly allow for charging.

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/7

Thoughts welcome!

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