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COMMENT

# For hotel quarantines to be lawful, the Government will need to answer some hard questions

Even in the face of a deadly pandemic, state power, and particularly the power to imprison, must have its limits

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"These measures represent a step change," says barrister Adam Wagner CREDIT: Getty

Among the many harrowing scenes in Russell T. Davies' *It's a Sin* is one where a young man, recently diagnosed with Aids, lies alone in a hospital ward. He attempts to leave to use the toilet. The door is locked and guarded. His terrified mother is told he has been detained under the "Public Health Act of 1984".

Over three decades later the self-same law has been used since March to impose over 65 different lockdown laws in England, using an emergency procedure which requires little or no prior Parliamentary scrutiny.

The latest measure will use ‘quarantine hotels’ to detain potentially thousands of UK residents entering from ‘hotspots’ of various new Covid-19 variants. Government approved security staff will patrol inside and outside the hotel to “prevent unauthorised access”. Residents will have to pay to be detained.

Covid-19 variations, especially those which are resistant to existing vaccines, pose a severe risk to public health. But, even so, these measures represent a step change. For the first time, the Government will detain potentially thousands of people. The vast majority will be suspected, but not known, to be carrying a deadly virus.

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This may cause the Government difficulties in the courts. Imprisonment is the harshest sanction available to the state. This is why the English common law, and human rights law, require that detention is only used when necessary and its conditions are strictly controlled.

Article 5 of the European Convention on Human Rights allows detention if “for the prevention of the spreading of infectious diseases”. That sounds wide. But in a case called *Enhorn*, the European Court of Human Rights found that the year-and-a-half detention of an HIV positive man, not unlike the *It’s a Sin* character, breached Article 5 because it had not been the “last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest”.

So for the hotel quarantine measure to be lawful, the Government will need to answer some hard questions. Is hotel detention truly the last resort, or a means of patching up a test, trace and isolate system which has failed? Could the same impact be achieved in

private accommodation with regular checks? Is it justified to include on the 'hotlist' countries, or areas, where a person may be at no more risk of catching a new variant than in parts of the UK? And even if detention is justified, can it continue to be if someone tests negative for the virus?

None of these are comfortable questions. Hotel detention is a policy with a laudable aim of preventing the spread of dangerous Covid-19 variants. But even in the face of a deadly pandemic, state power, and particularly the power to imprison, must have its limits.

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