

## medConfidential Amendment and Briefing on the Coronavirus Bill (Commons Stages)

### medConfidential – Draft Amendment 1

On page 1 (line 14), in clause 1(3), leave out words “clear of” and insert:  
“have subsequently recovered from”

Explanatory Statement:

The notion of being “clear” is medically, legally, and culturally unclear. An alternate approach would be to define “clear” in clause 1(1) in medical terms as approved by the Chief Medical Officer.

---

### medConfidential - Draft (probing) Amendment 2

On page 3, line 36, before “mental health”, insert:  
“Abortion Act, ”

Explanatory Statement:

While the Bill relaxes the two doctors rule for Mental Health decisions, it does not do so for Abortion decisions. Both should be treated identically. Consequential amendments should be made in Committee.

---

### Briefing on the Bill

The Bill was published over a week after the tech companies met at Number 10,<sup>1</sup> and yet the single change proposed to the Data Protection Act 2018 is one necessary step allowing DEFRA to protect the food chain more effectively.

We welcome this decision by Her Majesty’s Government, matched by the Secretary of State for Health’s tweet,<sup>2</sup> that GDPR does allow data to be used appropriately in support of public health emergencies. In this Bill, HMG has given no indication that additional changes to our modern data protection laws are necessary – and any new amendments to them must be fully justified, based on what has changed.

Where data use is proportionate *and necessary for people’s care*, it is lawful during the current pandemic; should there be egregious data grabs that persist in the longer term, whatever current protections that may be claimed will fall away after the crisis has passed. Data use can be entirely appropriate when done properly and well,<sup>3</sup> but panic and sheer idiocy have few bounds – and no digital tyrant ever failed to justify their actions.

---

<sup>1</sup> <https://www.wired.co.uk/article/dominic-cummings-coronavirus-big-tech>

<sup>2</sup> <https://twitter.com/MattHancock/status/1240189379676712960>

<sup>3</sup> <https://www.gsma.com/mobilefordevelopment/resources/gsma-guidelines-on-the-protection-of-privacy-in-the-use-of-mobile-phone-data-for-responding-to-the-ebola-outbreak/>

While the Secretary of State may simply have been intending to replicate the advice of NHSX, the National Data Guardian and the Information Commissioner<sup>4</sup> (and medConfidential's view<sup>5</sup>) that data sharing for the legitimate purposes of direct care is lawful, the lack of citations to the appropriate guidance and evidence may mean his words are interpreted more broadly than intended. Noting also that temporary restrictions to people's liberties do not necessitate the removal of rights or protections.

## **Rule of Law and Access to Justice (Depts: Home Office & Justice)**

Schedule 20, Clause 17 allows for those detained under Coronavirus Bill powers to appeal to a magistrates' court. What steps has the Ministry of Justice taken to ensure there will be access to justice? All such cases *will* be heard remotely, since the reason for detention is the belief that at least one party is infectious. Will the hearings be held in a manner that ensures public health, transparency of justice, and a (later) assessment of equality under the law?

Since Schedules 25 and 26 of the Bill make unauthorised recording of a remote proceeding an offence, all remote proceedings *must* – not “may” as in, e.g. Schedule 25 57ZC (1)(b) – be recorded by the Court, so as to ensure access to justice. Later stages of the Bill's progression may wish to require a recording on the face of the Bill so as to maintain access to justice.

*If access to justice is not maintained, the powers of detention defined in the Bill are akin to internment at the sole discretion of one person working for the Home Office's Border Force or police.*

The powers to detain and test people for coronavirus are akin to those powers of detention under Schedule 7 of the Terrorism Act,<sup>6</sup> and should be subject to the same safeguards – and be regularly reported to Parliament. What confidence can HMG provide that the Home Office will conduct rapid and accurate testing as needed, including for citizens of other countries?

## **Social care**

Social care provision is clearly broken. The eternal delays to the 'social care white paper' show that HMG and DHSC have understood this for a long time. And the consequences of past inaction will shortly be felt by those who most need care.

In combination, clauses 8(2), 10(2) and 13 will allow the NHS to prioritise the most effective use of NHS care. The stark result of past (in)decisions around social care is that legislative provision is now required for those older and frailer people who will shortly die.

---

<sup>4</sup> <https://www.nhs.uk/key-information-and-tools/information-governance-guidance>

<sup>5</sup> <https://medconfidential.org/2020/the-coronavirus/>

<sup>6</sup> <https://www.libertyhumanrights.org.uk/human-rights/countering-terrorism/schedule-7>

The Bill attempts to minimise the number of people who will die in total, but that number will be much higher amongst those who have newly-emergent social care needs than it would have been, had the service been adequately resourced in the past. The final numbers and precise accounting will come in due course.

In order to minimise harm, the proposed 'contact tracing app' from NHSX should be prioritised for use by those who provide social care. Many of those providing social care currently lack digital devices that can run such an app – or even help administer the social care they provide, in the way we all have become used to using digital tools to run our lives. Such devices should be provided by or through DHSC.

As it seems inevitable that DHSC will end up taking over social care provision from those who have failed heretofore, the Department can at least save some lives, and ease the ending of others, by starting sooner rather than later.<sup>7</sup>

### **The Public Inquiry (Dept: Cabinet Office)**

After this is all over, there will be a public inquiry into all aspects of the pandemic response, in addition to the initial Parliamentary inquiries that have their own remits.

There are many clauses in this Bill where bodies, both public and private, will be required to take steps that necessitated the Bill to be passed – all such steps taken should be reported, in some form, to that inquiry. medConfidential trusts that these powers will all be used lawfully, but those families who lose loved ones deserve to be able to find out what happened afterwards, even if prioritising the living (clauses 11(2), 30(2), *et al.*) means that may not be for some time.

medConfidential  
coordinator@medConfidential.org

20 March 2020 (2pm)

---

<sup>7</sup> It is beyond medConfidential's remit to assess whether nationalising all social care providers would make this feasible, but it should at least be considered within the contingency plans of DHSC. It is surprising that there is no placeholder in this legislation for that contingency.