

# **LIBERTY**

## **LIBERTY'S BRIEFING ON THE CORONAVIRUS BILL**

**MARCH 2020**

## **ABOUT LIBERTY**

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at [libertyhumanrights.org.uk/policy](https://libertyhumanrights.org.uk/policy).

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# INTRODUCTION

1. The UK is currently facing a public health crisis within the wider context of the global coronavirus pandemic. Faced with a mortality rate of approximately 3.4%,<sup>1</sup> concentrated in groups of people with specific vulnerabilities, and an average  $r_0$  number (the number of people who are on average infected with the disease by any one person) of 3.28,<sup>2</sup> governments across the world have made significant restrictions on individual liberty aimed at slowing and suppressing the spread of the virus and protecting life. Liberty recognises that the UK government has an obligation under human rights law to take steps to protect the lives of people within its jurisdiction and wholeheartedly supports this aim. At the same time, we are keenly aware that states of crisis and exception are often the ground on which long-term erosions of precious rights and liberties are seeded. We therefore urge Parliamentarians to carefully and fearlessly scrutinise this Bill, amending it to ensure that the exceptional powers that it sets out may be invoked only when necessary, and in a manner that is proportionate, time-limited, and in accordance with human rights law.

## A DRASTIC RE-SHAPING OF CIVIL LIBERTIES

2. While this coronavirus outbreak is new, public health crises, global pandemics, and situations of national emergency are not, and Parliament has previously legislated to provide for such scenarios. For example, the Public Health (Control of Disease) Act 1984, amended by the Health and Social Care Act 2008, sets out a range of powers exercisable by a range of authorities in the event of a public health emergency. Similarly, the Civil Contingencies Act 2004 sets out a range of emergency powers exercisable for a period of up to thirty days. **Liberty therefore urges the Government to clarify why, given the extensive powers already established under existing legislation, standalone legislation of a duration of potentially more than two years is strictly necessary in response to this public health emergency.**

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<sup>1</sup> WHO Director-General's opening remarks at the media briefing on COVID-19, 3 March 2020 <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020>

<sup>2</sup> Ying Liu, Albert A Gayle, Annelies Wilder-Smith, Joacim Rocklöv, *The reproductive number of COVID-19 is higher compared to SARS coronavirus*, Journal of Travel Medicine, Volume 27, Issue 2, March 2020, <https://academic.oup.com/jtm/article/27/2/taaa021/5735319>

3. Second, the extraordinary powers in this Bill are not subject to a firm two-year sunset clause, contrary to what has been reported. While clause 75 ostensibly sets out a two-year sunset clause on the Bill, several parts of the Bill are exempted from this provision. Crucially, clause 76 further grants Ministers the power to renew any part of the Bill for up to six months, and to make further renewals beyond this period. Clause 79(2) then establishes that regulations made pursuant to clause 76 will be subject to the made-affirmative procedure, meaning that any renewal of emergency powers would be immediately effective, but would not remain effective beyond 28 or 40 sitting days without parliamentary approval.
4. This Bill represents some of the most spectacular restrictions on individual and collective freedoms in a generation, including powers to detain people, to close the UK's external borders, to rearrange or cancel elections, to drastically cut NHS and local authority care standards, and to alter the arrangements for oversight of incredibly intrusive covert surveillance powers. The current public health crisis may have such a significant impact on state agencies that some of these measures meet the thresholds of necessity and proportionality. However, it is reportedly the view of Public Health England that the public health crisis is not expected to extend beyond spring 2021.<sup>3</sup> It would be an understatement to say that it is wholly inappropriate and in fact, deeply worrying, that the powers contained in this Bill could be invoked well beyond two years, and without the careful scrutiny afforded to primary legislation. The rights to leave or enter the country of one's nationality, to participate in free and fair elections, and to protection against arbitrary deprivation of liberty are the bedrock of a healthy democracy.
5. **Liberty therefore urges Parliamentarians to implement a firm three-month sunset clause on the Bill.** It is most appropriate that Parliament should scrutinise and renew any emergency powers as necessary through primary legislation following the expiry of this legislation.

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<sup>3</sup> Dennis Campbell, *UK coronavirus crisis 'to last until spring 2021 and could see 7.9m hospitalised*, The Guardian, 15 March 2020, <https://www.theguardian.com/world/2020/mar/15/uk-coronavirus-crisis-to-last-until-spring-2021-and-could-see-79m-hospitalised>

## **WEAKENED SAFEGUARDS FOR PEOPLE IN MENTAL HEALTH SETTINGS**

6. Clause 9 and Schedules 7-9 make significant changes to the Mental Health Act 1983, rescinding a number of important safeguards for people experiencing mental health problems with a view to lessening pressures on the healthcare system.
7. The Bill rescinds currently applicable requirements to have two doctors approve the imposition of various powers. Accordingly, it would allow a single doctor to sign off on the detention of a person under the Mental Health Act where having an additional doctor's approval would be "impractical or would involve undesirable delay".<sup>4</sup> In England and Wales, court orders for the detention of accused or convicted persons in hospital – including powers to remand an accused person to hospital for treatment or to direct that a person sentenced to imprisonment be detained in hospital instead of prison – may be exercised on the evidence of just one medical report, rather than two.<sup>5</sup> In Scotland, treatment orders, compulsion orders, hospital directions, and orders for detention of acquitted persons for medical examination could be made by courts on basis of a single medical report.<sup>6</sup>
8. Liberty is concerned that the test for removing these safeguards turns on whether garnering the view of two doctors is impractical or may involve an undesirable delay. First, this test is not tied to the specific impact coronavirus may have on the NHS. Absent narrow tailoring to the current public health crisis, this provision may lead to the safeguard being circumvented due to existing resource pressures on the healthcare system. A lack of resources alone will rarely be sufficient to justify intrusions with people's human rights. Secondly, to ensure care remains person-centred, the test should also direct the decision making to consider whether removing the safeguard is, in the round, in the person's best interest.
9. These provisions also extend the period for which people may be detained in a range of contexts. Paragraph 5 of Schedule 7 extends the period under which voluntary patients may be detained to stop them leaving hospital pending an assessment. Concerningly, it would remove an upper-12 week limit on how long people could be detained in hospital for assessment if they are accused of a crime and in which mental health may be a

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<sup>4</sup> Coronavirus Bill 2019-21, Paragraph 3, Schedule 7.

<sup>5</sup> Paragraph 6, Schedule 7.

<sup>6</sup> Paragraph 13, Schedule 8.

factor in the offence.<sup>7</sup> Furthermore, under these proposals, people could be held on remand in hospital indefinitely. Liberty is extremely concerned by the prospect of someone being detained for assessment without any upper time limit. In addition to obvious risk to people's rights to liberty and to private and family life, the impact of indefinite detention could amount to inhuman and degrading treatment, which cannot be justified on any basis.

10. Paragraph 9(2) of Schedule 8 applies to Scotland and suspends both first and subsequent reviews for the following measures: compulsory treatment orders, compulsion orders, compulsion and restriction orders, hospital directions and transfer for treatment directions. It also suspends references to the Tribunal by Scottish Ministers.
11. Liberty is concerned that reviews of intrusive orders will be suspended. Such reviews are fundamental safeguards which ensure patients are treated with dignity and in line with their human rights. Such reviews require, for example, an assessment of whether a patient still meets these criteria for compulsory powers to be used in relation to their treatment, with the presumption always being in favour of revoking the order. Absent such a review, a patient could be subject to unnecessary compulsory treatment – a flagrant breach of their rights. Treatment for mental ill-health should be genuinely participative and person-centred, and these approaches are put under serious threat by the removal of these safeguards.
12. Of additional concern is the removal of provisions requiring the Scottish Ministers to refer cases to the Tribunal for review. This erodes essential accountability in situations where patients have been under compulsory treatment for two years – a considerable period rightly identified as the point at which an independent review is strictly necessary.
13. Liberty recognises that some of the measures may be necessary to provide proper care to people as the public health response to coronavirus strains the NHS. However, it is essential that the response to coronavirus does not come at the expense of the health and fundamental rights of people experiencing mental health problems. Existing injustices in the mental health care system may be exacerbated by the use of emergency powers and, as the UN Special Rapporteur on the rights of people with disabilities stated earlier this week, States have a heightened responsibility towards

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<sup>7</sup> Paragraph 5, Schedule 7.

people with disabilities due to the structural discrimination they experience.<sup>8</sup> **Liberty urges Parliamentarians to amend the Bill to safeguard the fundamental rights of people in contact with mental health services, and especially their right to liberty.**

## **NEW DETENTION AND BORDER CLOSURE POWERS**

### **EXTRAORDINARY POWERS TO CLOSE PORTS AND BORDERS**

14. Clause 48 and Schedule 19 empower the Secretary of State to direct the operator of any airport, port, hover-port or channel tunnel port to suspend operations wholly or in part where there is a real and significant risk that there are insufficient resources to adequately secure the border as a result of coronavirus. Borders can be closed for six hours in the first instance. This can be extended by a further six hours and then for any number of additional twelve-hour periods. Failure to comply with a port direction or supplementary direction without reasonable cause would constitute a criminal offence.
15. Even in a public health emergency, this is an extraordinary power, which will have a significant impact on the right to private and family life under Article 8 of the European Convention on Human Rights (ECHR). **Liberty urges Parliamentarians to implement a 72-hour maximum limit on the period for which the UK's external borders in their entirety can be continuously closed.**

### **OPEN-ENDED DETENTION POWERS FOR A RANGE OF STATE AGENTS**

16. Clause 49 and Schedule 20 of the Bill confer powers on public health officials, police constables and immigration officers to impose requirements and restrictions on “potentially infectious persons.” Potentially infectious people are defined in part 1, paragraph 2 of this schedule as those who are or who may be infected or contaminated with coronavirus where there is a risk that the person might infect or contaminate others, as well as those who have been in an infected area within the 14 days preceding that time.
17. It is also important to note that a “public health officer” does not necessarily mean a person who is medically trained, and may include any person so designated by the Secretary of State, Scottish Ministers, Welsh Ministers for any

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<sup>8</sup>Catalina Devandas, *COVID-19: Who is protecting the people with disabilities?*, 17 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E>



or all of the purposes listed under Schedule 20, or acting under the direction or advice of the Director of Public Health in Northern Ireland.<sup>9</sup>

18. The power to trigger this Schedule is devolved. At any time the Secretary of State (England), the Scottish Ministers (Scotland), the Welsh Ministers (Wales) or the Department of Health (Northern Ireland) may make a declaration that a “transmission control period” is in effect, which means the powers outlined below may be deployed. While the paragraph references below refer to powers exercisable in England specifically, it should be noted that these powers are replicated across the devolved nations by subsequent provisions of this schedule.
19. A transmission control period is simply defined as one during which “the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health” in the relevant jurisdiction, and during which the powers conferred in the relevant part of the schedule “will be an effective means of delaying or preventing significant further transmission of coronavirus” in the relevant jurisdiction. There is no time limit on how long a transmission control period may last distinct from the broader expiry provisions of the Bill.
20. Paragraph 7, Schedule 20 permits police constables and immigration officials to direct or remove any person they reasonably suspect to be potentially infectious to a place for screening and assessment, if they assess it is necessary and proportionate in the interests of the potentially infectious person, protection of other people or for the maintenance of public health. They must consult a public health officer “to the extent that it is practicable” before exercising this power. Paragraph 6 (2)-(4) creates a similar power for public health officers, who may direct or remove a potentially infectious person to a place for screening and assessment or request a police constable does so.
21. Paragraphs 8-12, Schedule 20 permit public health officers to require a person they reasonably suspect of being potentially infectious to remain at a screening and assessment place for those purposes for up to 48 hours, where they determine it is necessary and proportionate in the interests of the potentially infectious person, protection of other people or for the maintenance of public health. They may compel the person to provide a biological sample or allow a healthcare professional to take a biological sample, and to answer questions or

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<sup>9</sup> Schedule 20, part 1, paragraph 2

disclose information about their health or other relevant matters, including their travel history and other individuals with whom they may have had contact, or any other documents that may be of assistance.

22. Paragraph 13, Schedule 20 allows immigration officers or constables to detain a person at a place for screening and assessment until a public health officer can perform the functions outlined above. A police constable may detain someone for up to 24 hours, which may be extended by another 24 hours with the consent of a superintendent. Immigration officers can detain someone for 3 hours, which can be extended by a further 9 hours with the consent of a senior immigration official. These powers may only be deployed where they assess it is necessary and proportionate in the interests of the potentially infectious person, protection of other people or for the maintenance of public health.
23. Paragraphs 14-17, Schedule 20 empower public health officers to impose a host of requirements and restrictions on people who have either tested positive for coronavirus or whose test results were inconclusive. These include requirements to disclose any personal information and to remain at a specified place in isolation and restrictions on their movements, work and contact with people. The requirement to remain at a specified place in isolation may be applied and extended indefinitely.
24. These powers effectively replace the Health Protection (Coronavirus) Regulations 2020 (S.I. 2020/129), which are revoked by paragraph 24 of Schedule 20. It should be noted that according to the NPCC, it hasn't been necessary to use them once in the time that they have been in force.
25. Liberty has significant concerns as regards the coercive powers contained in this schedule. First, the case for this significant new power for police and immigration officers has not been made out. Under existing law, a local authority may apply to a magistrate for an order requiring a person to submit to medical examination, remove them to a hospital or other establishment, is kept in quarantine, is subject to restrictions as regards who they are in contact with or abstains from working. This will be granted where the magistrate is satisfied the person may be infected with something which could present significant harm to human health and the restrictions are necessary to reduce the risk others may be contaminated.
26. Liberty accepts that coronavirus is likely to place significant pressure on the justice system. There is, of course, a risk that Magistrates' Courts may be

constrained in the exercise of their functions in the near future. However, it is not clear that the Government has considered more proportionate measures, for example for a duty judge to consider detention applications, either at a court, elsewhere or by phone. **Liberty urges Parliamentarians to maintain judicial authorisation of detention at the earliest possible opportunity, rather than deferring judicial consideration of detention to the point at which a person lodges an appeal.**

27. Second, Liberty is concerned that people may be detained in breach of their right to liberty. Article 5 ECHR permits people to be deprived of their liberty for the “prevention of spreading of infectious diseases”. However, for this basis to be lawful, a person must only be detained if it is 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. No reference is made, in any of the far-reaching detention powers contained in Schedule 20, to the need to consider alternative, less intrusive means of preventing the spread of coronavirus.

28. Third, Liberty welcomes the explicit recognition that the powers contained in Schedule 20 may only be used where they are a necessary and proportionate means of protecting the interests of a potentially infectious person or the wider public health. However, we are concerned that some of the powers are not properly time-bound. In particular, Liberty is gravely concerned by the police power to detain people for testing for up to two days and the scope for public health officials to require someone to isolate in a particular place for an indefinite period of time.

29. Fourth, these intrusive powers have significant implications for people’s right to private and family life under Article 8 ECHR. The right to be free from forced medical examination and treatment is protected by this right. Any interference with this right must be carefully assessed, on a case by case basis, to ensure it is strictly necessary and proportionate means of protecting public health. Furthermore, these provisions allow public health officers to demand that people provide biological samples – for example a blood or respiratory secretion – and other sensitive personal data relating to their health and personal relationships. Failure to provide this information, or knowingly providing false or misleading information is a criminal offence. Given the broad and open-ended nature of this provision – people may be compelled to provide any information or document

deemed relevant – this may pose a disproportionate interference with people’s right to privacy. Moreover, given the Home Secretary’s refusal to confirm that information sharing between essential public services and the Home Office for immigration enforcement purposes will be suspended for the duration of this public health emergency, a clear disincentive to information-sharing remains, for which people should not be criminalised.

30. Fifth, Liberty is concerned that these powers may be applied in a discriminatory manner. The Bill provides no guidance as regards what reasonable suspicion that someone may be “potentially infectious” amounts to. Given the categories of people who are most at risk, Liberty is concerned that the power could be used to target or discriminate against older people, disabled people, pregnant people or people on the basis of their nationality. Should the Government identify further risk categories of people – such as people who live in highly populated areas, unhoused people or people detained in close proximity in prisons or immigration detention centres – there is a real prospect that groups may be targeted on bases that are effectively proxies for characteristics such as income-level or race, and especially in light of existing patterns of discrimination in police-public interactions, as identified by the Lammy Review.
31. Sixth, Schedule 20 creates a host of new criminal offences, punishable by a fine of up to £1000. This includes failing to comply, without reasonable excuse, with any direction, reasonable instruction, requirement or restriction given to or imposed on the person, leaving or attempting to leave while being removed to or kept at a place, knowingly providing false or misleading information in response to a requirement to provide information and obstructing a person who is exercising or attempting to exercise their powers. Liberty believes these penalties are disproportionate and mischaracterise the current pandemic as a criminal justice issue, rather than a public health matter.
32. Last, Liberty is concerned that the imposition of mandatory restrictions may carry unintended consequences for public trust and marginalised communities – such as low wage workers or undocumented people – who may avoid the authorities and healthcare system altogether for fear of the consequences. As a letter from 800 public health and legal experts in the US stated, “voluntary self-isolation measures are more likely to induce cooperation and protect public trust

than coercive measures and are more likely to prevent attempts to avoid contact with the healthcare system.”<sup>10</sup>

## **NEW POWERS TO RESTRICT EVENTS, GATHERINGS AND PREMISES**

33. Clause 50 and Schedule 21 of the Bill establish a new power to restrict or prohibit events and gatherings in any place, vehicle, train, vessel, or aircraft and to close or limit entry into any premises. Failing to comply with these restrictions without reasonable excuse is a criminal offence.
34. This power is extremely broadly drafted, leaving a huge degree of discretion to the Secretary of State and their counterparts in the devolved administrations. The exercise of this power may have the effect of preventing family and friends’ meetings, preventing acts of collective worship, limiting people’s access to services, limiting people’s ability to strike and demonstrate, and shutting down charities, community centres or businesses. These measures would engage a host of human rights, including peoples’ rights to protest and associate freely, private and family life, manifest religion or belief, work, education, and move freely.
35. The ECHR requires Government to satisfy the twin principles of necessity and proportionality in restricting these rights. Liberty is concerned that Schedule 21 does not explicitly state that restrictions imposed pursuant to it must be a necessary and proportionate means of curtailing the spread of coronavirus. Rather, any restriction may be imposed for the purpose of preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus, or facilitating the most appropriate deployment of medical or emergency personnel and resources.
36. Necessity requires that measures are demonstrably effective in achieving a specific aim. Further, they must be the least intrusive means of achieving that aim. Given the exceptionally broad nature of this power as currently drafted, Liberty is concerned that the Government may seek to impose sweeping restrictions where a less intrusive measure would have been sufficient.

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<sup>10</sup> Gregg S. Gonsalves et al., *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, 2 March 2020, [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final\\_covid-19\\_letter\\_from\\_public\\_health\\_and\\_legal\\_experts.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf)

37. Liberty is also concerned that without an express restriction on the face of the Bill, this power may be disproportionately applied. For example, it may lead to blanket bans where targeted measures would have sufficed. Moreover, there is no time limit on how long these measures could be imposed for. **Liberty urges Parliamentarians to amend this power to explicitly require decision-makers to exercise it only where necessary and proportionate.**

## **INCREASED STATE CAPACITY TO CONDUCT COVERT SURVEILLANCE**

### **APPOINTMENT OF TEMPORARY JUDICIAL COMMISSIONERS**

38. The Investigatory Powers Act 2016 outlines the UK Government's framework for the use and oversight of investigatory powers by both law enforcement and security services. The Act makes provision for Judicial Commissioners to provide oversight of warrants. While it is the Secretary of State alone who authorises surveillance warrants under the Act, a Judicial Commissioner reviews and "approves" warrants for a range of intrusive surveillance powers, including, for example, the interception of communications, retention of data and examination of information.

39. When a Judicial Commissioner receives a warrant for oversight, they will decide whether they agree that the warrant applied for is necessary, proportionate and lawful. In doing so, the Judicial Commissioner must apply the same principles as would be applied by a court on an application for judicial review.

40. There are currently fifteen judicial commissioners, made up of current and retired judges from the High Court, Court of Appeal and Supreme Court, each appointed for a three-year term. They are led by the Investigatory Powers Commissioner, Sir Brian Leveson.

41. Clause 21 allows for temporary Judicial Commissioners to be appointed where it is the Investigatory Powers Commissioner's opinion that such a power needs to be exercised in order to deal with a shortage of persons able to carry out functions conferred on Judicial Commissioners.

42. Liberty accepts that coronavirus may have an effect on the availability of existing Judicial Commissioners. However, the provisions contained within the Bill should

not be used to circumvent the current and more rigorous appointment processes to create a larger team of Judicial Commissioners. If there are pre-existing issues with capacity, it is inappropriate for these issues to be addressed under this emergency legislation, and this matter must be dealt with elsewhere.

43. Expanding capacity beyond existing levels would presumably allow for a greater number of warrants to be approved – even though the Government has not publicly offered any justification for an increase in levels of surveillance. Given the approach of other jurisdictions to data protection in the context of this pandemic,<sup>11</sup> news reports that anonymised telecommunications data may be used for the protection of public health,<sup>12</sup> and the Secretary of State’s recent statement on the application of the EU General Data Protection Regulation in the context of the current pandemic,<sup>13</sup> there are legitimate concerns about the secret expansion of covert surveillance under the guise of protecting public health.

## **EXTENSION OF TIME FOR URGENT WARRANTS AND URGENT MODIFICATIONS TO WARRANTS**

44. Clause 22 allows for the Home Secretary, at the request of the Investigatory Powers Commissioner, to vary the time for which an urgent warrants or urgent amendments to warrants can be exercised before being reviewed by a Judicial Commissioner. The same clause similarly extends the period at the end of which urgent warrants cease to have effect or can be renewed. The maximum time allowed for a review will be increased from three days to twelve days.

45. It is entirely inappropriate to increase the duration of this period unless there are significant and irremediable issues concerning the capacity of Judicial Commissioners. This Bill should not seek to increase to numbers of warrants or levels of surveillance which can pass through the current oversight system, and only seek to retain the current level. If there are pre-existing issues with capacity, it is inappropriate for these issues to be addressed under this emergency legislation, and this matter must be dealt with elsewhere.

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<sup>11</sup> See, for example, the recent decision taken in Israel to allow authorities to track the mobile phones of people diagnosed with the virus as well as those who are just suspected of having contracted COVID-19. The technology used for this type of monitoring was developed for counterterrorism purposes.

<sup>12</sup> Mark Sweney & Alex Hern, *Phone location data could be used to help UK coronavirus effort*, The Guardian, 19 March 2020, <https://www.theguardian.com/world/2020/mar/19/plan-phone-location-data-assist-uk-coronavirus-effort>

<sup>13</sup> Matt Hancock, Twitter, 18 March 2020, <https://twitter.com/MattHancock/status/12401893796712960?s=20>

46. Liberty has previously highlighted that the original period permitted for urgent warrants to be exercised without review under the Investigatory Powers Act is already too lengthy. It is unacceptable for intrusive surveillance powers to be utilised for three days – let alone twelve – without independent oversight. Given that the Home Secretary has the power to appoint temporary Judicial Commissioners where there is a shortage, this additional power appears to be unnecessary.
47. A period of twelve days is an extraordinarily lengthy period and does not allow for prompt and urgent review of potentially highly intrusive measures. Under the Investigatory Powers Act, data collected under an urgent warrant which is later refused does not have to be automatically deleted – a Judicial Commissioner can “determine” what can happen to any material gathered under an urgent warrant that has not been approved. This allows for data to be retained and utilised in circumstances that were not found to be necessary, proportionate and in accordance with law. This makes the limitation of the duration of this period even more pressing.
48. The surveillance conducted under the warrants mentioned above could include intercepting digital communications *en masse*, hacking into computers, phones and tablets and creating vast ‘personal datasets’ without any subject being under suspicion of wrongdoing. This kind of surveillance can reveal our most personal and sensitive information – our religion, our sexuality, our political views our medical history – threatening our privacy, ability to express ourselves and live freely. **Liberty urges Parliamentarians not to authorise any extension to the existing warrant review period under the Investigatory Powers Act. Liberty further urges the Government to be transparent about the use of telecommunications data for public health purposes, and to ensure that any such use is strictly necessary and proportionate.**

## **PROTECTING MIGRANTS’ RIGHTS**

49. Liberty endorses the amendment and joint briefing drafted by the Joint Council for the Welfare of Immigrants, MedAct and others, and urges Parliamentarians to amend this Bill to suspend NHS charging for overseas patients, as well as data-



sharing between NHS Trusts and the Home Office for immigration enforcement purposes.<sup>14</sup>

## **CONCLUSION**

50. Human rights standards are a vital check on State power that become more relevant, not less so, in times of national emergency. It is right that the Government should take decisive steps to protect life in the context of this pandemic. However, this Bill would dramatically increase the capacity of a range of State agents to detain people, both in relation to coronavirus, and under the Mental Health Act 1983, with minimal safeguards. Furthermore, the Bill would increase State capacity to conduct covert surveillance. It would provide for our borders to be closed indefinitely, for elections to be cancelled, and for public and private gatherings to be prohibited. It also hollows out standards for social care in the community, while making no provision to ensure that migrants can access the same protections from coronavirus as British citizens. It does all of this without setting a firm sunset clause on the extraordinary powers it contains, which may be invoked beyond two years without the careful scrutiny afforded to primary legislation. Coronavirus has itself already changed the face of British society. This Bill will clearly do so further. Its potential consequences are too grave and far-reaching for it to be simply “nodded through.”

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<sup>14</sup> Joint Council for the Welfare of Immigrants, *Coronavirus Bill 2020 Briefing*, March 2020, <https://www.jcwi.org.uk/coronavirus-bill-2020-briefing>