

The contact tracing app to be implemented in the UK: legal ground and the protection of personal data aspects

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1.) A brief overview of the measures adopted to combat Coronavirus that affect the right to protection of personal data

The Coronavirus Bill was published on the 19th of March. A few days later it was approved in Parliament and on the 25th the Bill received the royal assent. ¹The Act set out a series of measures intended to fight Coronavirus, but it does not give the power to government to impose restrictions related to lockdown. The lockdown along with the measures limiting fundamental rights such as freedom of movements was adopted by the Secretary of State through the secondary legislation under the Public Health (Control of Disease) Act 1984 as amended in 2008 in light of the SARS outbreak.² When it comes to the right to privacy the Coronavirus Bill introduces temporarily amendments to the Investigatory Powers Act 2016 authorizing the Secretary of State to adopt regulations to extend the time that biometric samples such as DNA and fingerprints may be retained for national security.³

On the 20th of March Department of Health and Social Care issued Notice under Control of Patient Information Regulations 2002 (COPI) calling for Organisations providing health services to process and share confidential patient information amongst health Organisations and other bodies engaged in disease surveillance for the purposes of research, protecting public health, providing healthcare services to the public and monitoring and managing the Covid-19 outbreak and incidents of exposure.⁴ In the paragraph 2.2 it is stated that the Organisations are only required to process confidential patient information where this is required for a Covid-19 Purpose. Paragraph 3 of the Note sets out Covid-19 Purposes, but it precises that they are not limited to those provided for within this paragraph. Processing of such information, according to the Notice will have duration from the date of this Notice (20th of march) until 30th September 2020. The UK data protection authority gave its

¹ Coronavirus Act 2020, available at: <http://www.legislation.gov.uk/ukpga/2020/7/contents>

² Right Restriction or Restricting Rights? The UK Acts to address Covid-19: available at <https://verfassungsblog.de/right-restriction-or-restricting-rights-the-uk-acts-to-address-covid-19/>

³ The Coronavirus(Retention of Fingerprints and DNA Profiles in the interest of national security) Regulations 2020, available at: <http://www.legislation.gov.uk/uksi/2020/391/regulation/3/made>

⁴ Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002: available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874509/Coronavirus_COVID-19_notice_under_regulation_3_4_of_the_Health_Service_Control_of_Patient_Information_Regulations_2002.pdf

support to such an activity stating that Data protection law allows for these extraordinary circumstances⁵

2.) Data protection aspects of the digital contact tracing deployed by the National Health Service

On the 4th of May The UK Government launched the first phase of the “test, track and trace programme” on Isle of Wight, based on the National Health Service (NHS) app.⁶ This app would use the centralized model for data storage and sharing on the voluntary basis. The data would be collected using the Bluetooth technique. According to Gould, Chief Executive of NHSX (Government Unit established to drive digital transformation and lead IT policy across the NHS), the data regarding ill people would be transferred from devices to the central server only if an ill person makes such choice.

On the 6th of May Joint Committee on Human Rights⁷ (hereinafter: Committee) issued Report on Human Rights and the Government’s Response to Covid – 19: Digital Contact Tracing.⁸ This Report analyzed in a detail the different models of the contact tracing app (voluntary or mandatory, decentralized or centralized storage of data) as well as impact of those models on the right to data protection.

The Committee has expressed critics related to the app put in place by the NHS as it rises privacy concerns. It pointed out that there is a lack of evidence that a contact tracing app would be an effective tool in suppressing the virus. Moreover, given the NHSX’s plan to update app, according to the Committee, there is a risk of creating systems that would change privacy protections upon which the data was initially collected and shared. The issues regarding purpose and data retention are problematic as well, as stated by the Committee. Finally Report points out the need for legislation and oversight. It calls for legislation to provide a clear legal basis regarding the use and storage of collected data. The Committee states as follow: “ The current data protection framework is contained in a number of different documents and it is nearly impossible for the public to understand what it means for their data which may be collected by the digital contact tracing system. Government’s assurances around data protection and privacy standards will not carry any weight unless the Government is prepared to enshrine these assurances in legislation”. It is also pointed out that The government must not apply contact tracing app until this requirement are met.

⁵ Care, social organizations and coronavirus-what you need to know: available at <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/health-social-care-organisations-and-coronavirus-what-you-need-to-know/>

⁶ Coronavirus test, track and trace plan launched on Isle of Wight, available at: <https://www.gov.uk/government/news/coronavirus-test-track-and-trace-plan-launched-on-isle-of-wight>

⁷ The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders. The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

⁸ Human Rights and the Government’s Response to Covid – 19: Digital Contact Tracing : available at: <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/343/343.pdf>

