



LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

20th May 2010

Liberty's analysis of the Coalition Programme for Government

Today the new Coalition Government published its full Programme for Government. Many of the proposals – particularly those relating to civil liberties – had been previously announced as part of the initial Coalition Agreement. However the earlier document was notably silent on the Government's plans for the Human Rights Act – our modern-day Bill of Rights. In this Programme for Government we are told that a Commission will be established to investigate the creation of a "*British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law and protects and extends British liberties.*" We welcome the implication here that any future 'British Bill of Rights' would have to extend the protections in the Human Rights Act. It is however extremely troubling that this isn't made more explicit. We regret that a clearer commitment to the HRA wasn't made a non-negotiable in the Coalition negotiations and we fear therefore that the HRA may still be under threat. In the weeks, months, and years ahead Liberty will work tirelessly to ensure that the hard-won values and protections in our Human Rights Act are not weakened.

The Programme for Government also includes additional policy detail with implications for human rights and civil liberties. Below is our analysis of all relevant commitments.

Civil Liberties

Freedom Bill

While there is as yet no detail about the contents of this Bill we understand that the new Government intends to repeal unnecessary criminal and counter-terror laws and to address some of the recent erosions of fundamental rights and freedoms. This is a hugely welcome proposal and we intend to engage fully with the planned consultation to ensure that this much-needed Bill is robust and effective.

Identity Cards

We welcome the scrapping of the ID card scheme, the National Identity Register, the next generation of biometric passports and the Contact Point database.

We will be urging the new Government to ensure that these commitments are applied equally to all those in the UK regardless of age, race, nationality etc. In particular, the legislation which provides for compulsory ID cards for foreign nationals must be scrapped alongside the repeal of scheme for British citizens.

Outlawing the fingerprinting of children in school without parental permission

We welcome this development. For the past few years, Liberty has been campaigning against inappropriate use of biometric information. Nowhere is the compulsory use of biometrics more disturbing than in our classrooms. This new commitment from the Coalition Government is an important first step in ensuring that the younger generation is taught important lessons about trust and personal privacy.

Extending the scope of the Freedom of Information Act

As recent events have shown freedom of information is crucial for transparency and accountability – fundamental to democracy itself. The previous Government demonstrated political leadership when it introduced the Freedom of Information Act 2000. We welcome moves to strengthen this existing legislation.

Adopting the protections of the Scottish model for the DNA database

Liberty has long campaigned and litigated for a smarter and fairer DNA retention regime - one that does not discriminate on the basis of race or age and does not sweep the innocent up with the guilty. Although not perfect we welcome the commitment to adopt the protections in the Scottish model. We will be pushing to ensure that under the new model for DNA retention, innocents' DNA will not be able to be stored indefinitely via the backdoor.

Defence of trial by Jury

Jury trial has been an age-old method of boosting confidence and legitimacy in the criminal justice system. Without it, the professional classes appear to sit in permanent judgment over ordinary people. Legislation passed in 2003 fundamentally attacked this historic right. We welcome the Coalition Government's commitment to protect and defend trial by jury and we will be watching to see that the offending legislation is repealed forthwith.

Restoration of right to non violent protest

The 'War on Terror' saw repeated attacks on the right to peaceful protest. We hope that the new Government's commitment to restore this right will include –

- repealing provisions that restrict the right to protest around Parliament;
- restricting the scope of section 44 of the Terrorism Act 2000 (stop and search without suspicion) which has been used disproportionately against peaceful protesters;

- review of counter terror powers related to photography in public places which has had a chilling effect on free speech;
- review of the powers contained in the Public Order Act 1986 which restrict speech rights.

Review of libel laws to protect freedom of speech

Britain's outdated libel laws have had a dangerous chilling effect on free speech. We welcome the commitment to review our libel laws. In particular any review should look at strengthening the public interest defence and ensuring proper access to justice.

Safeguards against the misuse of anti-terrorism legislation

While the misuse of any legislation is of huge concern, the real problem with the application of our anti-terror laws lies in the scope and drafting of the laws themselves. Many of the myriad counter terror laws passed in the last decade are rotten to their core, particularly the unsafe and unfair control order regime which allows for indefinite house arrest without charge or trial.

To truly provide for safeguards against the misuse of anti-terror legislation we urge the new Government to consider and review the following:

- a raft of 'lower order' terror offences that are vague and broad and open to misuse;
- extended pre-charge detention;
- the ban on the use of intercept evidence in criminal proceedings;
- recent legislation rushed through Parliament in relation to Terror Asset Freezing orders;
- Schedules 7 & 8 of the Terrorism Act 2000 which allows for detention of foreign nationals without suspicion.

Further regulation of CCTV

Liberty has long been calling for the proper regulation of CCTV which has not kept pace with the explosion in the number of cameras and advances of technology. We look forward to primary legislation to better regulate the use and retention of images from CCTV cameras and Automatic Number Plate Recognition technology.

Ending of storage of internet and email records without good reason

This undoubtedly signals an end to any plans for further storing and processing of records of emails, phone calls and text messages and websites visited. We also look forward to the rowing back of sweeping and disproportionate retention schemes at British and EU level. As well as reassessing current data retention powers, we hope to see a review of the legislation that governs this and other surveillance capabilities (the Regulation of Investigatory Powers Act 2000) which both parties have previously committed to.

A new mechanism to prevent the proliferation of unnecessary new criminal offences

We have seen an unprecedented raft of new criminal offences created in recent times. Many of these offences are unnecessary and over-broad leading to unintended consequences and an erosion of freedom. We hope that any new mechanism will allow for more thoughtful lawmaking and less knee-jerk populism.

Commission to investigate the creation of a ‘British Bill of Rights’

The Human Rights Act is our modern-day Bill of Rights. We welcome the implication in the Programme for Government that any future ‘British Bill of Rights’ would have to extend the protections in the Human Rights Act. It is however extremely troubling that this isn’t made more explicit. We regret that a clearer commitment on this was not made a non-negotiable in the Coalition negotiations and we fear therefore that the HRA may still be under threat.

Communities and Local Government

Require council use of surveillance powers to be limited to ‘stopping serious crime’ and authorised by magistrates

We welcome the recognition in this commitment that judicial authorisation should be required before councils exercise powers under the Regulation of Investigatory Powers Act (RIPA) and that such powers should only be used when proportionate to do so. However the use of targeted surveillance powers needs a much more comprehensive review including a review of which public bodies have access to the powers; the purposes for which the powers can be used; and who authorises use of the powers.

Crime and Policing

Introduction of measures to make police more accountable through oversight by a directly elected individual, who will be subject to strict checks and balances by locally elected representatives

Liberty has consistently expressed concerns about the over-politicisation of the police and about plans for directly elected individuals or police authorities to exercise control over policing operations and functions. Both parties previously made commitments on the latter which gave us cause for concern. We welcome a change in language from directly elected “Police Commissioners” to directly elected ‘individuals’ and we hope that this implies that while democratic scrutiny might be exercised over police budgets this will not compromise operational independence. We look for further clarification about any potential plans for directly elected Police Authorities.

Review the operation of the Extradition Act and the US/UK extradition treaty

Liberty has long campaigned for a review of our current extradition arrangements. In particular those treaties (with Europe and several other countries, including the US) which have undermined necessary safeguards in the extradition process and the Extradition Act which implements those treaties. We believe:

- a person should not be extradited to stand trial in a foreign country without evidence being presented in a British court to prove there is a basic (prima facie) case against them;
- if the crime is alleged to have occurred in whole or in part in the UK, then the person should not be extradited if a court here decides it is not in the interest of justice to extradite;
- a person in the UK should not be extradited for something that is not a crime in the UK. British justice should not be circumvented.

We will be urging the new Government to incorporate these safeguards as part of its review.

Equalities

We welcome all of the commitments contained in the Programme for Government on equality and equal opportunity. In particular Liberty welcomes the commitment to “stop deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution.”

Families and Children

Review criminal records and the vetting and barring regime

The current regime for criminal record checks and vetting and barring fails to incorporate appropriate safeguards to protect those against whom unfounded allegations are made. It also allows for unnecessary duplication. We will be pressing the new Coalition Government to amend the current framework so that children and vulnerable adults are robustly protected while at the same time ensuring the lives and careers of innocent people are not destroyed.

Immigration

We welcome the commitment to end detention of children for immigration purposes.

However, extended immigration detention for adults is also unjustified. We will be pushing the new Coalition Government to go further in placing humanity at the heart of the system for all.

The fast-track system for decisions on asylum applications leaves those seeking our protection dangerously vulnerable. In order to properly fulfil our obligations to those fleeing persecution the new Coalition Government should urgently review the current framework.

Justice

Fundamental review of legal aid to make it work more efficiently.

There have been successive and deep cuts to legal aid in recent years. While efficiency is always important in the delivery of public services it should never be at the expense of access to justice and the right to a fair trial. Liberty will be closely watching the

development of this review and will be working to ensure that access to justice for all is at its heart.

National Security

Urgent review of control orders as part of a wider review of counter-terrorist legislation, measures and programmes. Seeking to find a practical way to allow the use of intercept evidence in court.

Liberty wholeheartedly welcomes this commitment. The admissibility of intercept evidence in criminal proceedings is long overdue. While recognising the difficulties and sensitivities involved, we believe that it is entirely possible for a practical approach to the use of intercept to be found – drawing on the experience of other common law jurisdictions that do the same the world over.

While we welcome a review of the control order regime and the wider counter-terrorism framework we urge the new Coalition Government to press ahead with transferring the case files of those currently subject to control orders to the Crown Prosecution Service. Once decisions have then been made either to charge or release those individuals the unsafe and unfair control order regime must then be urgently repealed. A Coalition Government that has bound itself together with the language of civil liberties and the need to restore the rights of individuals cannot conceivably support punishment without trial. While in Opposition, both the Conservatives and the Liberal Democrats made clear their principled objections to this illiberal regime. The Liberal Democrats pledged to scrap control orders in their 2010 Manifesto. We urge both parties to stay true to their previous commitments on this issue.

As regards the wider review – another early major test for the new Government will be its approach to extended pre-charge detention periods. The current 28 day period will revert to 14 days in July 2010 if a Ministerial Order is not made. The 28 day period was never intended to be permanent and the Liberal Democrats, in their 2010 Manifesto, committed to reducing the period to 14 days. The current 28 day period is entirely out of keeping with comparable democracies and is an international embarrassment.

The wider counter-terrorism review should also include the amendment of the power to stop and search without suspicion contained in section 44 of the Terrorism Act 2000. Earlier this year the European Court of Human Rights found that this power was unlawful. The power is too broadly defined and gives unfettered discretion for blanket stop and search which can and has been used in a discriminatory manner as well as undermining the right to peaceful protest. In light of this outstanding judgment, review and reform of this power should be an urgent priority for the new Government.

Continued deportation of foreign nationals to places of torture with “verifiable guarantees that they will not be tortured”. An extension of these ‘guarantees’ to more countries.

This commitment is hugely troubling and flies in the face of much of the rhetoric of the new Coalition. There is no greater civil liberty than the right not to be tortured. There is also very little difference in moral terms between extraordinary rendition of individuals to be tortured abroad and the deportation of individuals to torture regimes. If we abhor the former we surely cannot condone the latter. Individual decisions about whether or not to

deport must be adjudicated in the court room and based on evidence about the likely treatment of individuals should they be returned. Diplomatic assurances or 'verifiable guarantees' with countries that are known to practice torture are hardly worth the paper they are written on. Such 'guarantees' if broken will certainly be little comfort for anyone tortured, maimed or killed after the fact.

Elsewhere in the Programme for Government, the Government states that it "will never condone the use of torture". For this statement to have any meaning in practice the Government should look again at its proposal to do grubby deals with known torture regimes.