LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Committee stage briefing on the Protection of Freedoms Bill (Supplementary provisions) in the House of Lords

January 2012

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

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
http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml

Contact

Isabella Sankey
Director of Policy
Direct Line 020 7378 5254
Email: bellas@liberty-human-rights.org.uk

Rachel Robinson
Policy Officer
Direct Line: 020 7378 3659
Email: rachelr@liberty-human-rights.org.uk

Sophie Farthing
Policy Officer
Direct Line 020 7378 3654
Email: sophief@liberty-human-rights.org.uk

Introduction

1. The Protection of Freedoms Bill addresses a number of key areas in need of reform. With its predominant focus on privacy, Liberty welcomed many of its provisions. However this Bill has an ambitious and expansive title; accordingly we consider there is ample opportunity in this Bill to go beyond its current provisions to address other areas for which reform is also long overdue. Accordingly in this briefing we outline a number of new or related areas which fall within the long title of this Bill and its ambition. We propose a number of changes, many of them simple repeals of single provisions, including to

- allow for the offence of soliciting under the now repealed section 32 of the *Sexual Offences Act 1956* to be included in the offences able to be disregarded by the Home Secretary on application **(Amendment 1)**;
- repeal discriminatory exemption of civil partnerships from pension benefits **(Amendment 2)**;
- reinsert the forum bar back into the UK's extradition arrangements to ensure procedural fairness for someone facing extradition **(Amendment 3)**;
- remove the expansive provisions allowing for exemption from freedom of information requests **(Amendment 4)**;
- remove restrictions on jury trial in order to further restore this fundamental right (beyond the amendment already provided for in the Bill) **(Amendments 5 and 6)**;
- remove and reduce restrictions on the right to peaceful protest **(Amendments 7 and 8)**; and
- to restore the rights of those claiming asylum and immigration **(Amendments 9 to 14)**.

DISREGARDING OFFENCES

Amendment 1

Clause **90**, page **78**, line **26**, at end insert '(c) section 32 of that Act, or' Clause **90**, page **78**, line **27**, leave out **(c)** and insert '(d)'.

Effect

Clause 90 provides for certain historical convictions or cautions under repealed criminal legislation, which discriminated against homosexual men, to be disregarded on application to the Secretary of State. A conviction or caution under section 12 of the *Sexual Offences Act 1956* (buggery), section 13 (gross indecency between men) and earlier corresponding offences will be disregarded on application if certain conditions are met.

This proposed amendment provides that offences under section 32 of the *Sexual Offences Act 1956* (soliciting) will also be able to be disregarded upon application on application to the Home Secretary.

Briefing

Section 32 of the *Sexual Offences Act 1956* made it *"an offence for a man persistently to solicit or importune in a public place for immoral purposes"*. The offence was repealed by the *Sexual Offences Act 2003,* alongside the offences of 'buggery' and 'gross indecency between men' already included within clause 90.

Following a comprehensive review of sexual offences in 1999, the Home Office published a consultation paper which set out the ways in which law treated gender issues and those of differing sexual orientation and made recommendations to Ministers on how to end this discriminatory treatment.[1] The Home Office concluded that the law should not treat people differently on the basis of their sexual orientation: consensual sexual activity between adults in private that causes no harm to themselves or others should not be criminal, and, therefore, the criminal law need not make particular provision for any same sex behaviour. For these reasons, the consultation paper recommended that the offences of gross indecency and buggery under the 1956 Act, and their corresponding predecessor provisions,[2] be repealed. The Home Office also recommended, for the same reasons, that there ought to be equal application of the law on soliciting to men and women: practice showed the section 32 charge, even though the provision originally intended to deal with men approaching female prostitutes, was being laid almost exclusively against men

[1] Home Office *Setting the Boundaries: Reforming the law on sexual offences* (July 2000).
[2] Under section 61 of the *Offences against the Person Act 1861* and section 11 of the *Criminal Law Amendment Act 1885*.

soliciting other men. The broad wording of section 32 enabled wide interpretation, and although not expressly discriminatory, the section had clearly become

> *a means of regulating behaviour between homosexual men which, if conducted between men and women would be seen as no more than 'chatting-up'. The reasoning on the meaning of 'immoral purposes' seems to operate from a presumption that homosexual behaviour is inherently immoral.*[3]

Accordingly, it was recommended that section 32 of the 1956 Act be repealed.[4]

Although section 32 was not expressly targeting homosexual men on its face, it was repealed for the same reasons that explicitly discriminatory offences like 'buggery' were repealed. Accordingly there is a logical case to give individuals the opportunity for this offence to also be disregarded under clause 90, and it is unclear why section 32 has not been included in this reform. Liberty urges Peers to incorporate the section 32 offence and allow those individuals convicted under it the opportunity to have this unfair blight on their record disregarded.

PENSIONS FOR CIVIL PARTNERSHIP

Amendment 2

Part **7** (Miscellaneous repeals of enactments), page **94**, line **24**, at end insert

() Omit section 18(1) of Schedule 9 of the *Equality Act 2010.*

Schedule **10 (Repeals and Revocations)**, page **197**, line **25**, at end insert

'Part ()

'Benefits dependent on marital status, etc

Short title	*Extent of repeal*
Equality Act 2010	Paragraph 18(1) of Schedule 9.

Effect

[3] Ibid, at para 6.6.15.
[4] Ibid, at page viii, 103-104.

This amendment will remove the exemption from the *Equality Act 2010* which allows employers to treat married couples and civil partners differently as regards pension rights attributable to service prior to 5th December 2005.

Briefing

While there have been many advances made for civil partners in recent years, there are a number of areas where differential and discriminatory treatment remains. One such area is the exemption in the *Equality Act 2010* allowing employers to treat married couples and civil partners differently as regards pension rights attributable to service prior to 5th December 2005 (when the *Civil Partnership Act 2004* came into force).[5] The exemption means that if you are in a civil partnership and your partner has an occupational pension, and they retired before 5th December 2005, you are not entitled to spousal benefits under the pension when they die. A married person in exactly the same position would be entitled to that benefit (which is normally half the value of the pension).

Liberty believes that this differential treatment of like claimants may place the UK in breach of both the *Human Rights Act 1998* and EU law. In *Maruko v VddB* (1 April 2008), the Grand Chamber of the European Court of Justice considered the right of a same sex partner to receive a "widow's pension" when their partner dies. The court concluded that treating married and same-sex couples differently in this respect, where national law recognised the relationships as equivalent in other respects, breached the Framework Directive on Equal Treatment in Employment (2000/78/EC). Even setting this judgment aside, Liberty can see no justification for continuing to permit this type of discrimination. If the law remains as it is, it will be several decades before same sex couples achieve real equality in relation to pension provision. Liberty has already succeeded in persuading Foster Wheeler, a major multi-national company, to give civil partners of its employees the same pension benefits awarded to spouses. In this case the couple in question had lived together for 40 years and had entered into a civil partnership in 2006. Under Foster Wheeler's pension scheme surviving spouses were entitled to 50% of a member's pension upon their death, but, relying on the exemption in the Equality Act, civil partners were originally excluded. After filing an action on behalf of our clients in the Employment Tribunal the company

[5] At para 18(1) of Schedule 9 of the *Equality Act 2010.*

changed its policy. The case highlights the urgent need for legal clarification in this area.[6]

This exemption then in the Equality Act 2010 is out of step with the many areas which have been reformed to ensure that all couples are treated equally under the law. The repeal of this exempting provision would be a significant step forward. Further, given this change will affect only a small percentage of workers, and since pension funds' liability towards surviving spouses is incredibly speculative, it seems unlikely that a change in the law will have a significant detrimental effect on those funds.

EXTRADITION – THE FORUM AMENDMENT

Amendment 3

Part **7** (Miscellaneous repeals of enactments), page **94**, line **24**, at end insert:

'() Omit section 53(2)(b) of the *Police and Justice Act 2006*.

() Omit paragraph 6 of Part 1 of Schedule 13 of the *Police and Justice Act 2006.'*

Schedule **10 (Repeals and Revocations)**, page **197**, line **25**, at end insert

'Part ()

'Extradition – the forum amendment

Short title	*Extent of repeal*
Police and Justice Act 2006.	Section 53(2)(b). Paragraph 6 of Part 1 of Schedule 13.

Effect

This would amend the *Police and Justice Act 2006* to allow for the 'forum' amendment of the *Extradition Act 2003* to come into force by order by the Secretary of State subject to the negative resolution procedure for statutory instruments. This is achieved by removing the reference to the need for a resolution of both Houses of Parliament before the amendments inserting new provisions to the 2003 Act in paragraph 6 of Schedule 13 are able to commence. It is a simple way to ensure the

[6] See Liberty's Press release of 2 September 2011, available at http://www.liberty-human-rights.org.uk/media/press/2011/liberty-secures-pension-benefits-for-civil-partners.php.

Government can immediately and swiftly amend the Extradition Act to allow a Court to bar an extradition request in circumstances where it is in the interests of justice for the person to be tried in the UK.[7]

Briefing

Liberty has long been concerned with the lack of safeguards in the UK's extradition arrangements under the *Extradition Act 2003*.[8] In 2006 a provision was passed by Parliament – but never brought into force - which would allow a forum bar to be introduced. The forum bar amendment is an important potential safeguard, giving a British judge the ability to stop an extradition, where it would be in the interests of justice to do so, if all or a substantial part of the alleged criminal conduct took place in the UK.[9] This amendment would allow for the amendment to be swiftly brought into force with immediate effect.

Liberty believes that a decision about where a person faces trial should be informed by principles of basic fairness and due process in recognition of the serious impact extradition has on the person to be extradited and the lives of their family. The fast track system of extradition brought in by the 2003 Act has resulted in a number of safeguards being removed from judicial consideration, rendering vulnerable individuals exposed to injustice. There are also key practical considerations, such as the inevitable difficulties that arise when prosecuting in a foreign jurisdiction where many of the witnesses and evidence will be in the UK. Issuing a subpoena to a UK based witness from another jurisdiction may well prove difficult (or impossible) and seriously affect the defence's ability to mount a proper defence.

The forum amendment was tabled by the Conservative party while in Opposition, and was supported by the Liberal Democrats. A wrecking clause was later introduced by the last Government, requiring a resolution of both Houses before the forum bar could be brought into force. A simple repealing provision in the Protection of Freedoms Bill would make the forum bar much easier to activate and send a strong

[7] See Liberty's briefing on the 'Most Appropriate Forum' amendment for Report Stage of the Police and Crime Bill (October 2009), available at http://www.liberty-human-rights.org.uk/pdfs/policy09/liberty-s-report-stage-briefing-on-policing-and-crime-extradition-forum.pdf.

[8] For our latest briefing, see Liberty's submission to the Joint Committee on Human Rights' Inquiry into Extradition (January 2011), available at http://www.liberty-human-rights.org.uk/pdfs/policy11/liberty-submission-to-jchr-extradition-inquiry-january-2011.pdf; and an additional submission at http://www.liberty-human-rights.org.uk/pdfs/policy11/liberty-s-additional-submission-to-the-jchr-extradition-inquiry-april-2011-.pdf.

[9] Para's 4, 5 and 6 of Part 1of Schedule 13 to the *Police and Justice Act 2006*.

message to Government about Parliament's desire to prevent further injustices. The unfairness of the UK's extradition system has repeatedly been recognised by MPs across parties and in both Houses of Parliament. Most recently in December of last year backbench MPs from across the House passed a motion calling for urgent reform of our extradition arrangements.[10] Similarly polling commissioned by Liberty in 2010 shows that MPs are predominantly in favour of restoring fundamental safeguards to Britain's extradition laws. 83% of all MPs surveyed agreed, or agreed strongly, that if a significant part of the alleged crime took place in the UK then it ought to be left to a British court to decide if it is in the interests of justice to extradite the person or have them tried at home.[11] Speaking to the case of Gary McKinnon, who has been subjected to extradition proceedings for a decade, the Prime Minister stated in 2009,

> *Gary McKinnon is a vulnerable young man and I see no compassion in sending him thousands of miles away from his home and loved ones to face trial. ...If he has questions to answer, there is a clear argument to be made that he should answer them in a British court. This case raises serious questions about the workings of the Extradition Act...*[12]

The Baker Review,[13] which reported back in November 2011, unfortunately disagrees. However Liberty believes that the reasoning of the Review on the forum bar is deeply flawed.[14] It is vital that safeguards be put back into our extradition arrangements to prevent any further injustices. This was recognised by the Joint

---

[10] The Motion, which was passed without a division, calls upon the Government *"to reform the UK's extradition arrangements to strengthen the protection of British citizens by introducing as a matter of urgency a Bill to enact the safeguards recommended by the Joint Committee on Human Rights in its Fifteenth Report, HC 767, and by pursuing such amendments to the UK-US Extradition Treaty 2003 and the EU Council Framework Decision 2002 on the European Arrest Warrant as are necessary in order to give effect to such recommendations."* See House of Commons *Hansard*, 5th December 2011, at column 82.

[11] The survey data was independently collected by ComRes, 2 to 17 September 2010. There were 151 MPs surveyed, with data weighted to reflect the exact composition of the House of Commons in terms of party representation and regional constituency distribution.

[12] As reported in "Don't take my son, mother of computer hacker Gary McKinnon appeals to Obama" The Times, Richard Ford (1 August 2009), available at http://www.timesonline.co.uk/tol/news/uk/crime/article6735557.ece.

[13] Sir Scott Baker was tasked with reviewing the UK's extradition arrangements. Details of the Review and its report can be accessed at http://www.homeoffice.gov.uk/media-centre/news/extradition-report.

[14] See Liberty's letter of 11th November 2011 to the Home Secretary outlining our concerns about the conclusions reached by the Baker Review, available at http://www.liberty-human-rights.org.uk/campaigns/extradition-watch/ltr-to-home-sec-re-baker-extradition-review-11-nov-2011-.pdf.

Committee on Human Rights, which recommended in its recent extradition inquiry that the forum bar ought to be enacted and a presumption put in place to hold a criminal trial in the state where the alleged conduct took place.[15] Given the clear political will for change in our extradition system, taking a step closer to bringing the forum bar into force through the Protection of Freedoms Bill would send a clear message and we urge the House of Lords to consider this amendment which would ensure that British residents will only be sent off for trial in a foreign jurisdiction where it is in the interests of justice to do so.

FREEDOM OF INFORMATION

Amendment 4

Part **6** (Freedom of Information and data protection), page **91**, line **20**, at end insert

() In section 23(1) of the *Freedom of Information Act 2000* at end insert 'and exemption is required to safeguard national security'.

() In section 26(1) of the *Freedom of Information Act 2000* omit 'prejudice' and substitute 'cause substantial harm to'.

() In section 26(3) of the *Freedom of Information Act 2000* omit 'prejudice' and substitute 'cause substantial harm in relation to'.

() In section 27(1) of the *Freedom of Information Act 2000* omit 'prejudice' and substitute 'cause substantial harm to'.

() In section 27(2) at end omit the full-stop and insert 'and where disclosure would cause substantial harm'.

() In section 27(4)(a) omit 'prejudice any' and substitute 'cause substantial harm in relation to'.

() In section 28(1) omit 'prejudice' and substitute 'cause substantial harm to'.

() In section 28(3) omit 'prejudice' and substitute 'cause substantial harm to'.

() In section 29(1) omit 'prejudice' and substitute 'cause substantial harm to'.

() In section 29(2) omit 'prejudice' and substitute 'cause substantial harm to'.

[15] See the Committee's Fifteenth Report, The Human Rights Implications of Extradition Policy (published 7th June 2011), available at http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/156/15602.htm.

() In section 30(1)(c) at end omit the full-stop and substitute ‘,and’ and at end insert

‘access would, on balance, be contrary to the public interest’.

() In section 30(2)(a)(iv), at end remove ‘and’.

() In section 30(2)(b), at end remove full-stop and insert ‘,and’ and at end insert ‘access would, on balance, be contrary to the public interest’.

() In section 31(1) omit ‘prejudice’ and substitute ‘cause substantial harm to’.

() In section 31(3) omit ‘prejudice’ and substitute ‘cause substantial harm in relation to’.

() In section 33(2) omit ‘prejudice’ and substitute ‘cause substantial harm to’.

() In section 33(3) omit ‘prejudice’ and substitute ‘cause substantial harm to’.

() In section 36(2)(a) omit ‘prejudice’ and substitute ‘cause substantial harm to’.

() In section 36(2)(c) omit ‘prejudice’ and substitute ‘cause substantial harm to’.

Effect

This amendment would amend Part II of the *Freedom of Information Act 2000* (FOI Act) to remove blanket exemptions to the release of information under the Act. Instead it will allow for exemption of certain information or bodies based on a substantial harm test.

Amendment to section 23(1) will provide that information will be exempt from disclosure under the FOI Act if exemption is required to safeguard national security. This will bring the provision in line with section 24, which provides that information which does not fall within section 23(1) will be exempt for the purpose of safeguarding national security. The amendments to sections 26, 27, 28, 29, 31 and 33 will put in place a ‘substantial harm’ test rather than a blanket exemption to disclosure regarding matters in relation to defence, international relations, relations with the UK and the economy. The amendment to section 30 would put in place a public interest test before information held by a public authority in relation to investigations and proceedings is held to be exempt.

Briefing

Liberty welcomed the commitment of the Coalition Government to extending the scope of the FOI Act to provide greater transparency in government,[16] reiterated earlier last year by the Deputy Prime Minister who stated that the Government is *"ending the practices of closed and secretive government"*.[17] The enactment of the FOI Act gave, for the first time, a general statutory right of access to official records and information, and was an extremely important step towards transparency and accountability. These aims, however, have been undermined by the excessive number of exemptions from the general right to access information. Accordingly while amendments to the FOI Act proposed by Part 6 of the Protection of Freedoms Bill (widening the definition of a publicly owned company for the purpose of FOI requests and ensuring that copyright owned by the public authority in question does not provide a bar to disclosure) are welcome, there are further steps that Parliament could take to deal with the broad brush exemptions to the release of information under the FOI Act.

Part 2 of the FOI Act sets out a broad category of 'exempt information' which need not be disclosed if requested by a member of the public. Section 23 provides that information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, a listed body dealing with security matters. These bodies range from the Security Service to a number of related statutory tribunals.[18] Information will also be exempt from disclosure obligations under Part 2 in order to safeguard national security[19] or prevent prejudicing the UK's defence forces,[20] Britain's international relations;[21] if it relates to any relations with any UK administration;[22] or in order to protect the UK's economic interests.[23] Section 30 of the Act exempts information held by a public authority *"if it has at any time been held by the authority for the purposes of"* investigating criminal offences. This broad exemption of information held 'at any time' can hamper attempts at investigating potential miscarriages of justice. Further, section 31 lists a wide number of areas where information is exempt if it would prejudice, or be likely to

16 See The Coalition: Our Programme for Government, May 2010, section 3 on Civil Liberties.
17 Speech by the Deputy Prime Minister on Friday, 7th January 2011, available at http://www.libdems.org.uk/latest_news_detail.aspx?pPK=7781a555-f93b-4818-b08f-f6382841dc89&title=Nick_Clegg:_Restoring_British_liberties.
18 See section 23(3) of the *Freedom of Information Act 2000*.
19 Section 24 FOI Act.
20 Section 26 FOI Act.
21 Section 27 FOI Act.
22 Clause 28.
23 Clause 29.

prejudice, law enforcement as well as certain civil proceedings or inquiries etc. Yet, one of the recommendations of the Inquiry into the death of Stephen Lawrence was that any FOI legislation *"should apply to all areas of policing, both operational and administrative, subject only to the 'substantial harm' test for withholding disclosure"*.[24] As Sir William McPherson stated in his Report

> *Essentially we consider that the principle which should govern the Police Services, and indeed the criminal justice system, is that they should be accountable under all relevant legislative provisions unless a clear and specific case can be demonstrated that such accountability would be harmful to the public interest… we consider it an important matter of principle that the Police Services should be open to the full provisions of a Freedom of Information Act. We see no logical grounds for a class exemption for the police in any area.*[25]

In addition, section 35 exempts all information held by a Government department if it relates to the formulation of Government policy, ministerial communications, advice by Law Officers or the operations of any Ministerial private office.

Liberty believes that the blanket exemption from disclosure in response to an FOI request, based on a very weak test of 'prejudice' undermines the essence of the Act itself. The current wording of the Part 2 provisions leaves an individual seeking access to the information covered having to rely on the discretion of the authority that controls the information in order to gain access – a situation FOI legislation was expressly intended to change. Providing access to processes of decision-making and other information held by public authorities is crucial for ensuring accountability and a fully functioning democracy. Accordingly we propose that instead of automatic and blanket exemptions the information in question should be subjected to a 'substantial harm' test, as is generally accepted in FOI legislation in other countries. Amending Part 2 of the Act to provide for a presumption that information will be released unless it would cause substantial harm to the public interest, in which case it could be redacted or withheld. Such an amendment would also focus the decision-making process in bodies across the UK who are deciding how best to deal with an FOI request.

[24] See recommendation 9 of "The Stephen Lawrence Inquiry - Report of An Inquiry by Sir William Macpherson of Cluny, Advised by Tom Cook, The Right Reverend Dr John Sentamu, Dr Richard Stone" Cm 4262-I.
[25] Ibid.

RIGHT TO TRIAL BY JURY

Amendment 5

Part **7** (Miscellaneous repeals of enactments), page **94**, line **8**, at end insert

'() Omit s 44 of the *Criminal Justice Act 2003* (application by prosecution for trial to be conducted without a jury where danger of jury tampering).'

() Omit s 45 of the *Criminal Justice Act 2003* (procedure for applications under sections 43 and 44).'

Schedule **10** (Repeals and revocations), Part **9**, page **197**, at line 2 omit 'FRAUD'.

Schedule **10**, Part **9**, page **197**, line **9**, at end insert 'Section 44'.

Schedule **10**, Part **9**, page **197**, line **9**, leave out 'In' and hyphen, and at end insert full-stop.

Schedule **10**, Part **9**, page **197**, line **10**, omit lines10 to 14.

Schedule **10**, Part **9**, page **197**, line **15**, omit line 15.

Schedule **10**, Part **9**, page **197**, line **16**, after "43," insert '44 or'.

Effect

This amendment will omit section 44 (application by prosecution for trial to be conducted without a jury where danger of jury tampering) from the *Criminal Justice Act 2003* (CJA). It is additional to the removal of section 43 of the CJA by clause 99 of the Bill. Amendments to Schedule 10 (Repeals and revocations) are consequential.

Briefing

Clause 107 of the Protection of Freedoms Bill repeals section 43 of the *Criminal Justice Act 2003* (CJA), which, had it come into force,[26] would have allowed judges on application from the prosecution to order that certain complex fraud trials be conducted without a jury. Liberty strongly welcomes this clause which effectively reinstates the right to trial by jury in this category of cases. We do, however, urge Members of Parliament to go further and address other provisions – already in force - which are eroding the right to trial by jury. The jury system is of fundamental importance, encouraging openness and transparency and boosting confidence and legitimacy in the criminal justice process. There are numerous provisions which restrict the right to jury trial other than section 43 of the CJA. Accordingly in order to fully *"protect historic freedoms through the defence of trial by jury"* as pledged in the

[26] The provision has yet to come into force and was subject to fierce opposition to its introduction when the Bill was passing through parliament.

Coalition Programme for Government[27] we propose that these other provisions be addressed in this Bill.

Section 44 of the CJA allows for an application by the prosecution for the trial to be conducted without a jury where it perceives a danger of jury tampering. Liberty does not believe that the risk of jury tampering is sufficient to warrant trial by judge alone. A number of applications for a trial without a jury under this section have already been made. One application has been successful resulting in a conviction and the imposition of a twenty year sentence by a single judge. The individual convicted now intends to take his case to the European Court of Human Rights on the basis the conviction was in breach of his right to a fair trial.[28] Concerns about jury tampering ought to be dealt with by properly protecting juries rather than removing them altogether. Indeed, the removal of juries on this basis sends an extremely disturbing message to future or existing witnesses about the ability of those working within the criminal justice system to protect them. Further, if there is evidence of a problem with jury tampering, replacing a jury with a single judge will not necessarily solve the problem. If twelve jurors who are kept away from the rest of the public for the duration of the trial can be subjected to intimidation, can the same thing not happen to a single judge? Perhaps most worrying of all, the application of this provision seriously undermines the presumption of innocence. Any trial judge who presides following the successful application for removal of a jury on the grounds of tampering will likely find such a finding difficult to ignore when hearing the case. In essence, the provision creates a two-tier system of justice which badly undermines the age-old protections afforded to those put on trial. In the alternative, if this restriction on the jury trial is to remain, we suggest that the provision be amended to allow for the affected jury to be discharged and a retrial be scheduled with a new jury.

Amendment 6

Part **7** (Miscellaneous repeals of enactments), page **94**, line **8**, at end insert
'() Omit sections 17 to 21 *Domestic Violence, Crime and Victims Act 2004.*'
Schedule **10**, Part **9**, page **197**, line **17**, at end insert

[27] See page 11 of the Coalition Programme for Government, available at http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf.

[28] See statements of John Twomey's legal representatives at: http://www.saunders.co.uk/news/2011/10/19/saunders-questions-non-jury-trial-decision-after-phone-hacking/#more-74.

Domestic Violence, Crime and Victims Act 2004	Sections 17 to 21.

Effect

This amendment will omit section 17 (application by prosecution for certain counts to be tried without a jury) from the *Domestic Violence, Crime and Victims Act 2004*. The repeal of sections 18 to 21 is consequential.[29]

Briefing

Jury trial is also restricted by section 17 of the *Domestic Violence, Crime and Victims Act 2004*, which allows for the prosecution to apply for certain counts on an indictment to be heard without a jury if certain conditions are met. These conditions include (a) where the number of counts on the indictment will make a jury trial impractical; (b) where the counts to be tried with a jury are a sample of what counts will be tried without a jury; and (c) where it is in the interests of justice to do so.[30] Liberty does not accept that repeated and persistent offending conduct renders jury trial inappropriate or unfeasible. Trial by jury on sample counts only is a recipe for serious injustice and we believe that it should remain perfectly possible for a jury to be presented with evidence relating to a pattern of repeated behaviour in a clear and concise fashion.

RESTORING THE RIGHT TO PEACEFUL PROTEST

The Coalition Government committed in 2010 to restoring the rights to non-violent protest.[31] After years of steady encroachment on the right to freely protest this was a welcome development. Over the past year, protests abroad and at home have demonstrated the crucial link between peaceful dissent and the realisation and survival of democracy itself.

Repeal the offence of aggravated trespass

Amendment 7

Part **7** (Miscellaneous repeals of enactments), page **94**, line **24**, at end insert

[29] Section 18 provides for the procedure for applications under section 17; section 19 provides for the effect of an order under section 17(2); section 20 provides for the rules of court to make provision for the purposes of sections 17 to 19; section 21 outlines the application
[30] Subsection 17(3), (4) and (5).
[31] See the Coalition Programme for Government, ibid, at page 11.

() Omit section 68 of the *Criminal Justice and Public Order Act 1994*. () Omit section 69 of the *Criminal Justice and Public Order Act 1994*. Schedule **10**, page **197**, line **25**, at end insert 'Part () 'Removal of the offence of aggravated trespass	
'*Criminal Justice and Public Order Act 1994*	Section 68. Section 69.'

Effect

This amendment will repeal the offence of aggravated trespass in sections 68 and 69 of the *Criminal Justice and Public Order Act 1994*.

Briefing

A particularly restrictive provision which undermines the right to protest is the offence of aggravated trespass in sections 68 and 69 of the *Criminal Justice and Public Order Act 1994,* which has been used to shut down and silence protests in places where it is most effective for them to be heard. An amendment to repeal these provisions was tabled at Report stage in the House of Commons and selected for debate, however due to its later placing on the programme motion time ran out and the proposed amendment was not able to be discussed nor put to a vote.[32] Traditionally trespass, the act of entering private land without the permission of the occupier, is not a criminal offence but rather a tort (i.e. a civil wrong). The tort of trespass enables a landowner to take legal action against someone who unlawfully enters, or remains on, their land to remove them or claim damages. Recent changes however have created the criminal offence of aggravated trespass. Under section 68 of the 1994 Act a person will commit an offence of aggravated trespass if he or she unlawfully enters land on which a lawful activity is taking place and he or she does anything intending to intimidate, obstruct or disrupt that activity. Section 69 of the 1994 Act provides that a police officer may direct a person who is committing, has committed or intends to commit the offence of aggravated trespass to leave the

[32] New Clause 9 was tabled by Dr Caroline Lucas MP (Greens) and Dr Julian Huppert MP (Liberal Democrats): http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0189/amend/pbc1890610a.3387-3393.html.

land.[33] He may also issue a direction where two or more persons are trespassing on land and are present there with a common purpose of intimidating persons so as to deter them from engaging in a lawful activity or obstructing or disrupting the same.[34] When you add the suspicion of conspiracy to this already problematic offence in the 1994 Act, a broad discretion for pre-emptive arrests exists. Further, when restrictive police bail conditions are then imposed on those bailed without charge, the cumulative power of the police to stifle a potentially peaceful protest becomes alarmingly apparent.

The offence of aggravated trespass was created to address a specific issue at a particular point at time – i.e. disruptive protests against fox hunting on private land. As is often the case with overly broad legislation intended to provide a quick fix for a contentious issue, the powers have been used to criminalise all manner of hitherto lawful and legitimate activity. These provisions create broad and discretion-heavy offences, and by their very nature are able to be used to silence protesters at a time and place when most effective. Peaceful protest is a building block of our democracy and the offence of aggravated trespass is part of an increasingly hostile legislative context restricting this important right.[35]

Protests and demonstrations are frequently time-sensitive (for example protests with a purpose of preventing something from being built or to voice opposition to a visiting politician). Pre-emptive action in the protest sphere can therefore, by its nature, extinguish the effective exercise of the right to protest. In 2009 for example 114 environmental protesters were pre-emptively arrested at the Iona independent school in Sneinton, Nottingham, shortly after the G20 protests and immediately before a planned protest at an EON power station, for conspiracy to cause criminal damage and aggravated trespass under section 68 of the 1994 Act.[36] Protests and demonstrations are also increasingly location sensitive, and some of the most important protests on issues in the public interest will be most effective, or only effective, when held on private or quasi-public land. For example, the aggravated trespass offence was recently deployed against 120 individuals who were peacefully protesting with the UK Uncut organisation at Fortnum and Mason earlier in March of

[33] Section 69(1)(a)
[34] Section 69(1)(b).
[35] The right to assemble and association is protected by Article 11, and the right to freedom of expression by Article 10, of the European Convention on Human Rights, as incorporated into domestic legislation by the Human Rights Act 1998.
[36] http://www.guardian.co.uk/environment/2009/apr/13/nottingham-police-raid-environmental-campaigners

this year, as part of the widespread march against government spending cuts taking place that day. At an early stage in the criminal proceedings an adjournment was granted to enable screening of the mass of aggravated trespass charges, resulting in over 100 charges being dropped as the prosecutions were not considered in the public interest.[37]

Accordingly Liberty believes these offences, which disproportionately impact on the rights to free speech, protest and assembly, ought to be repealed. Property owners have a right to protect and enjoy their own property.[38] Indeed they have ample opportunity, including to take practical measures such as hiring security guards to remove trespassers from their land. However these property rights must be balanced with the right to freely and peacefully assemble and protest. The aggravated trespass offence sidesteps this balancing exercise, and experience has shown how widely it has been used to silence protesting voices. Given the remedies that are available to land owners, under civil law in the tort of trespass and in relation to other offences under the *Public Order Act 1986* to deal with disruptive and violent protest,[39] there is no demonstrable need for yet another criminal offence. The Coalition Government pledged in its Programme for Government to restore the right to non-violent protest.[40] Removing this criminal offence from the statute book would be an important step to shore up this resolve.

Expansive provisions in the Public Order Act 1986
Amendment 8

Part **7** (Miscellaneous repeals of enactments), page **94**, line **24**, at end insert () Omit section 5 of the *Public Order Act 1986.* () Omit 'insulting words' from section 4A(1)(a) of the *Public Order Act 1986*. () Omit 'or insulting' from and before 'abusive' insert 'or' in section 4A(1)(b) of the *Public Order Act 1986.*

[37] The remaining activists' trial will reportedly proceed in November 2011. See http://www.guardian.co.uk/society/2011/may/10/uk-uncut-targets-banks; http://www.guardian.co.uk/uk/2011/sep/07/uk-uncut-spartacus-defence; http://www.guardian.co.uk/uk/2011/jul/18/fortnum-mason-uk-uncut-charges-dropped.
[38] Article 1 of Protocol 1 of the European Convention on Human Rights provides for the protection of property. The ECHR has been incorporated into UK legislation by the Human Rights Act 1998.
[39] E.g. section 1 Criminal Damage Act 1971; section 5 Public Order Act 1986.
[40] The Coalition: Our Programme for Government, at page 11, available at http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf.

Schedule **10**, page **197**, line 2**5**, at end insert ‘Part () ‘Removal of the offence of causing harassment, alarm or distress	
‘Public Order Act 1986	Section 5.’

Effect

The first part of Amendment 8 will repeal the offence of causing harassment, alarm or distress by using threatening, abusive or insulting words or behaviour or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening, abusive or insulting (section 5 of the Public Order Act 1986).

The second part of Amendment 8 will remove the vague notion of ‘insulting’ behaviour from the offence of intentionally causing harassment, alarm or distress, under section 5 of the *Public Order Act 1986* (POA).

Briefing

Section 5 of the *Public Order Act 1986* (POA) provides for a wide-ranging offence if an individual, with or without any intention, uses any “threatening, abusive or insulting” words or behaviour or displays any writing, posters or signs to that effect which is likely to result in another person feeling “harassed, alarmed or distressed”. Liberty has long been concerned with the impact on legitimate protests that these overbroad provisions have, which we believe has a chilling effect on free speech. Section 4A of the POA is basically the same offence as that in section 5 but requires that the person saying the words, or acting in a particular way, should intend to cause harassment, alarm or distress.

These POA provisions are so widely drafted and rely on the inclusion of the very subjective term of ‘feeling insulted’. The offences form part of a trend under the former Government to so restrict the freedom to protest that it either silences dissenting voices or minimises or eradicates their effectiveness. Both sections 5 and 4A potentially criminalise an expanse of activities such that legitimate forms of protest at the lowest end of the scale can be swept up with offences causing disorder or threaten the safety of an individual. The term ‘insulting’ has been held not to bear an unusual legal meaning, but has its ordinary meaning. Lord Reid in a House of Lords decision in 1972, (in respect of an equivalent provision in the *Public Order Act 1936*) stated:

> *We were referred to a number of dictionary meanings of 'insult' such as treating with insolence or contempt or indignity or derision or dishonour or offensive disrespect. Many things otherwise unobjectionable may be said or done in an insulting way. There can be no definition. But an ordinary sensible man knows an insult when he sees or hears it.*[41]

This effectively means that an insult is in the eyes or ears of the 'reasonable' beholder. While the courts may be reluctant to convict a person in relation to using 'insulting' words or signs, the mere fact that this is a criminal offence is enough to stifle freedom of expression. A recent example of this was the case of a young man (for whom Liberty provided legal advice) who was threatened with prosecution under section 5 for peacefully holding a placard[42] that read "Scientology is not a religion it is a dangerous cult".[43] While no prosecution ultimately went forward the fact that a peaceful protester who was merely expressing his opinion could be threatened with prosecution demonstrates the clear need for this offence to be more tightly restricted.

We also believe that section 5, which doesn't require any need for a person to intend to cause harassment, alarm or distress, is far too expansive and unnecessary in light of the same offence in section 4A (which requires intention). Liberty has long believed that many of the provisions of the POA are worryingly broad and that there should be a wholesale review of these provisions. Liberty believes that section 5 must be repealed altogether and the section 4A provision must omit the 'insulting' aspect of the offence - thereby restricting it to one of intentionally causing harassment, alarm or distress by using threatening or abuse (and not insulting) behaviour. The difficulty of charging and prosecuting this offence, which relies on a subjective perception of the action or words spoken, is now well established, and there have been a number of high profile charges which have subsequently been dropped. Following frustrated efforts to amend section 5 during the Bill's passage in the House of the Commons, a Home Office consultation has now been published to

[41] *Brutus v Cozens* [1972] 2 All ER 1297, per Lord Reid at 1300.
[42] On 10 May 2008. See http://www.guardian.co.uk/uk/2008/may/20/1.
[43] See http://www.liberty-human-rights.org.uk/media/press/2008/free-speech-victory-as-charges-against-teen-anti-scientology-protestor.php; http://www.guardian.co.uk/world/2008/may/23/religion.

review whether the term 'insulting' in section 5 of the POA disproportionately impacts on the right to freedom of expression.[44]

ASYLUM AND IMMIGRATION

Refugees and asylum seekers are often extremely vulnerable and have significant restrictions placed on their rights and liberties. On the 60th anniversary of the Refugee Council last year, the Deputy Prime Minister expressed his commitment to fairness within our asylum system.[45] The Protection of Freedoms Bill provides an excellent opportunity to galvanise our resolve to provide refuge to those in genuine fear of persecution. This means not simply fairly determining the protection needs of the individual, but making sure that the vulnerable and the voiceless are treated with dignity and compassion throughout their time in this country.

There have been numerous pieces of immigration and asylum legislation passed in the last decade, including countless changes to the immigration rules, making for an extremely complex, confusing and punishing system. Accordingly there are a number legislative provisions relating to the treatment of asylum seekers within the legal and welfare systems which are ripe for repeal. We suggest a number of repeals below.

Offence not to have valid identification

Amendment 9

Part **7**, page **94**, line **24**, at end insert: '() Omit section 2 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*.'

Effect

This amendment would repeal the offence not to have valid identification contained in section 2 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*.

Briefing

Section 2 of the 2004 Act makes it an offence for a person at a leave or asylum interview not to have a valid immigration document which satisfactorily establishes

[44] See the Home Office Consultation on Police Powers to Promote and Maintain Public Order (October 2011), available at http://www.homeoffice.gov.uk/publications/about-us/consultations/police-powers/.

[45] See the Deputy Prime Minister's speech commemorating the 60th anniversary of the Refugee Council: http://www.dpm.cabinetoffice.gov.uk/news/60-years-refugee-council.

his or her identity and nationality/citizenship. It is a defence if the person can demonstrate that he or she had a reasonable excuse for not possessing such a document (so the burden of proof falls on the applicant). Many refugees have to flee their country in haste and do not have the luxury of careful preparation for departure. Asylum seekers are, by definition, often unable to approach the authorities of their own country in order to obtain passports or exit visas. As a result, asylum seekers are forced to resort to agents, forged documents or clandestine entry in order to seek asylum. Article 31 of the Convention Relating to the Status of Refugees (the 'Refugee Convention') states that refugees should not be prosecuted on account of their illegal entry. The creation of criminal offences plays into the hands of the traffickers. People will be encouraged (sometimes forced) to enter the country without formally claiming asylum, on the basis that if they go through proper channels but do not have documentation, they will be treated as criminals. In short, this offence is ill-conceived, inhumane and should be repealed.

Legislating scepticism

Amendment 10

Part **7**, page **94**, line **24**, at end insert:
'() Omit section 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*.'

Effect

This amendment would repeal section 8 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*.

Briefing

Section 8 of the 2004 Act provides that those responsible for determining an asylum or human rights claim,[46] whether a Home Office official or a member of the judiciary on appeal, must automatically categorise certain behaviours as damaging to an individual's credibility. The provision is wide-ranging, spanning, amongst other factors, the destruction, alteration or disposal of travel documents, the failure to produce a valid passport, and the production of a forged passport.[47] The provisions of subsection 8(4) concern those individuals who have passed through third countries en route to the UK. The subsection requires that decision-makers categorise, as

[46] Human rights claims to ascertain whether an individual shall be permitted to enter or remain in the UK.
[47] The Asylum and Immigration (Treatment of Claimants) Act 2004, s 8(3)(a)–(e).

damaging to an individual's credibility, a failure to claim protection in any country an individual has passed through en route to the UK. Subsection 8(5) requires that any failure to claim asylum before notification of an immigration decision or before arrest under an immigration provision be weighed against an applicant when assessing the truthfulness of her claim.

Liberty believes that many of the assumptions made in this section are unsafe and show a lack of sensitivity to the realities of life for those seeking international protection in this country. The assumption, for example, that genuine asylum seekers will claim asylum in the first 'safe' territory they reach fails, firstly, to take account of the fact that decisions are often made on behalf of asylum seekers operating under the control of agents and secondly the fact that a country classified as objectively safe by the UK authorities might, for the individual, represent a real, if subjective, source of fear. Liberty further believes that it is a misleading oversimplification to equate a failure to produce a valid document with an attempt to mislead. Many asylum seekers have no access to the appropriate travel documents; some, for example, have had documents confiscated, whilst others are faced with an impossibly strict exit visa system. There are further numerous practical barriers to making a timely asylum claim which need not be attributed to dishonesty on the part of an individual, for example the impact of fear, unfamiliarity with the system and language problems. Liberty believes that section 8 is a blunt and insensitive instrument as likely to adversely affect the claims of those traumatized by their experiences of persecution as it is those who have given a false account of their experiences.

Decision-makers and particularly members of the independent judiciary must be free to make an assessment of an individual's claim based on all the available evidence. What might look like dishonesty in one context may clearly indicate fear or confusion in another. A central part of the judicial function is the task of weighing up all the evidence and deciding whether it is internally coherent, consistent with other evidence and gives the appearance of truth when taken as a whole. This is a difficult and complex task which must be completed on a case by case basis - judicial discretion should not be fettered by a blunt provision which legislates skepticism.

Asylum Support

Amendment 11

Part **7**, page **94**, line **24**, at end insert:

'() Omit subsections 4(5) and 4(6)of the *Immigration and Asylum Act 1999*.'

Effect

This amendment would repeal subsections (5) and (6) of section 4 of the *Immigration and Asylum Act 1999*.

Briefing

Since 2002 a person waiting for their asylum claim to be decided has been prohibited from working. As asylum seekers cannot lawfully work they often have to rely on Government support to live. Section 4(5) of the *Immigration and Asylum Act 1999* sets out when the Secretary of State can make provision for accommodation for failed asylum seekers and provides that the Secretary may specify criteria which must be satisfied in her determination whether or not to provide accommodation. The section also provides that Regulations can be made to make provision of accommodation conditional on performance of certain community activities.[48] Liberty believes that support, in circumstances where a person would otherwise be destitute, should not be conditional on the performance of compulsory community activities or otherwise and accordingly subsections 4(5) and 4(6) of this Act should be repealed.

Amendment 12

Part **7**, page **94**, line **24**, at end insert: '() Omit subsection section 55 of the *Nationality, Immigration and Asylum Act 2002*.'

Effect

This amendment would repeal section 55 of the *Nationality, Immigration and Asylum Act 2002*.

Briefing

Section 55 of the 2002 Act deprives an asylum seeker over the age of 18 (who is not accompanied by minor dependents) of support if he or she did not, in the view of the Home Secretary, claim asylum *as soon as reasonably practicable* after his or her arrival in the UK. As a result of this policy, thousands of asylum seekers have been rendered destitute. In 2005 the House of Lords ruled that denying support in this way

[48] Section 4(6): this provision was introduced by section 10 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*.

could breach the prohibition on inhuman and degrading treatment in the HRA. In *R (Limbuela) v Secretary of State for the Home Department,*[49] in which Liberty intervened, three asylum seekers had been refused National Asylum Support Services (NASS) support, leading to them becoming homeless, forced to sleep in parks and beg for food – which affected both their physical and mental health. The Court held that while withholding support would not in and of itself amount to inhuman or degrading treatment, it would do so once a person became destitute in circumstances where the person was seriously suffering, or was likely to face severe suffering, because of the denial of shelter, food or basic necessities of life. This of course requires the Secretary of State to make an assessment in each individual case and monitor whether each individual is likely to, or has, fallen into destitution of the kind specified by the court.

The policy when it was first introduced was to generally deny support if a person had not claimed asylum within at least three days of arriving in the UK. It takes little imagination to see how a person fleeing persecution who arrives in the UK may not speak any English, may have no knowledge of UK law, may be traumatised, tired, hungry and quite possibly in fear of authority figures, and may therefore not be in a position to lodge their claim for refugee protection as soon as they arrive in the country. When section 55 was first introduced it was not consulted on and had a rocky passage through Parliament. Once it was enacted it led to numerous court challenges and administrative burdens placed on UK Border Agency staff (who must determine if a person has lodged their application within the appropriate time, and whether a person has reached the required level of destitution). Most importantly, and unsurprisingly, it led to thousands of vulnerable people being left destitute at the hands of the State, many of whom were later recognised to be refugees. Liberty believes this provision should now be repealed in its entirety.[50]

Amendment 13

Part **7**, page **94**, line **24**, at end insert:
'() Omit Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*.'

Effect

[49] [2005] UKHL 66
[50] For further details see *Liberty's Response to the UK Border Agency consultation on Reforming Asylum Support*, (February 2010), available at http://www.liberty-human-rights.org.uk/pdfs/policy10/liberty-s-response-to-asylum-support-consultation.pdf.

This amendment would repeal Schedule 3 of the *Nationality, Immigration and Asylum Act 2002*.

Briefing

Schedule 3 of the 2002 Act establishes that certain persons are ineligible for welfare support. Other than children under 18, this applies to those who have refugee status abroad; citizens of an EEA State; failed asylum seekers; non-asylum seekers unlawfully in the UK; and failed asylum seekers with dependent children under 18 who have failed to take reasonable steps to leave the UK. As already stated, this policy of denying support has resulted in the destitution of thousands of people who are left without any lawful means of supporting themselves. There are countless stories of failed refugee claimants becoming homeless and forced to resort to begging, irregular working and even prostitution, simply to survive. While we recognise the importance of enforcing final decisions on asylum applications, Liberty believes that the combination of preventing someone from working and leaving people without any means whatsoever to support themselves is inhuman and degrading treatment. Liberty is also concerned that forcing parents to choose between keeping children with them on the streets or asking a local authority to provide the children with accommodation on their own is likely to give rise to a huge number of cases where Article 8 of the HRA[51] (right to a private and family life) is breached. Where a destitute failed asylum seeker chooses to keep his or her children with him, it is likely to be only hours or days before the condition of the family approaches the level of inhuman and degrading treatment necessary to prove a breach of the HRA.

Fast track detention

Amendment 14

Part **7**, page **94**, line **24**, at end insert:
() Omit section 94 of the *Nationality, Immigration and Asylum Act 2002*.

Effect

This amendment would repeal section 94 of the *Nationality, Immigration and Asylum Act 2002*.

Briefing

[51] Article 8 of the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998*.

Liberty has long held concerns about the fast track system of detention which allows a decision to be made on asylum applications within one to two weeks while the person is detained. Under the 'Detained Non Suspensive Appeal' (DNSA) procedure a person will be detained for between 10 and 14 days while their asylum claim is determined, and at the end of this process the person has no right of appeal in the UK to an independent court or tribunal. Section 94 of the 2002 Act provides that a person from a listed country has no right of appeal against an asylum decision while in the UK, unless the Home Secretary is satisfied the claim is not clearly unfounded. In such cases a person from such a country (which includes Gambia, Malawi, Kenya and Sierra Leone) will be detained for up to 10 days, their claim speedily determined and they will be returned without any right of appeal. Under the fast track process a person will be detained and will be required (usually the next day) to present their full case to immigration officials. A legal representative will be appointed and have less than one day in which to interview their client, potentially translate any relevant documents, commission any expert evidence and present the case. A decision on the asylum application is then generally given the following day. Under this procedure more than 90% of claims are refused. Liberty believes many complex claims are incorrectly sent through the fast-track process. Trafficked women, torture victims, sufferers of sexual abuse and domestic violence, have all been through this system. With claims being made, assessed, decided and appeals (if possible) determined in the space of around one week, many complex and sensitive claims are rushed through and genuine refugees are denied entry.[52] Denying a right of appeal in the UK to many people denies the right to procedural fairness and Liberty believes section 94 should be repealed in its entirety.

Rachel Robinson
Sophie Farthing

[52] See, for example, Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, February 2010, available at: http://www.hrw.org/node/88671