LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Second Reading Briefing on the Protection of Freedoms Bill in the House of Commons

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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.

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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
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Introduction

1. The Protection of Freedoms Bill will be read for a second time on the 1st of March 2011. The long-awaited Bill aims to fulfil a Coalition commitment to roll back the authoritarian excesses of the last Government and reverse erosion of civil liberties. Heralded by the Deputy Prime Minister as the vehicle by which the Coalition would *"restore Britain's traditions of freedom and fairness"*,[1] Liberty had high expectations of the Bill and it has delivered in a number of areas in relation to which we have been campaigning for change for many years. We were particularly pleased to see progressive proposals on the collection and retention of biometric information, stop and search without suspicion, the right to trial by jury, restrictions on disproportionate and intrusive surveillance powers, a permanent reduction of pre-charge detention to 14 days and changes to the vetting and barring scheme to make it a more targeted, proportionate system. With a predominant focus on privacy, Liberty is disappointed that the Government did not take the rare opportunity presented by this Bill to address other areas of real concern such as the administrative detention of non-nationals,[2] the discriminatory and degrading 'Mosquito' device,[3] or overbroad counter-terrorism measures, such as expansively defined terrorism offences, not encompassed in the Home Office Counter-Terror Review.[4] The Bill would have also provided an excellent opportunity to reverse the unjustly restrictive interpretation of the right to freedom of religion adopted by the courts in the case of *Eweida v British Airways*.[5]

2. Liberty does however welcome a Bill which represents a significant step in the right direction and deals with a number of the core areas of concern set out in our response to last year's Your Freedom consultation. Part 1 of the Bill will make changes to the retention of DNA and other biometric information; Part 2 introduces changes to better regulate CCTV and surveillance under the *Regulation of Investigatory Powers Act 2000 (RIPA)*; Part 3 addresses disproportionate

[1] http://yourfreedom.hmg.gov.uk/.
[2] Liberty's Response to the Your Freedom Consultation (October 2010), available at http://www.liberty-human-rights.org.uk/pdfs/policy10/liberty-s-response-to-the-your-freedom-consultation-october-2010.pdf, at paragraphs 30-37.
[3] Liberty's Response to the Your Freedom Consultation, ibid, paragraphs 54-58.
[4] Liberty's Response to the Your Freedom Consultation, ibid, paragraphs 2–6.
[5] *Eweida v British Airways [2010] EWCA Civ 80*. In this case the Court of Appeal found that a decision to ban a British Airways employee from wearing a cross was not discriminatory because Christians 'generally' do not consider wearing a cross a requirement of their religion. This decision has led to a situation where group rights trump deeply personal individual freedoms.

enforcement action in relation to powers of entry and vehicle clamping; Part 4 brings into force already announced changes in relation to counter-terrorism, including reducing the pre-charge detention limit and reforming stop and search without suspicion powers; Part 5 addresses the vetting and barring scheme under the *Safeguarding Vulnerable Groups Act 2006*, makes changes to criminal record checks, and allows for certain convictions for buggery to be disregarded; Part 6 proposes changes to freedom of information legislation, and the role of the Information Commissioner; and Part 7 reinstates the right to trial by jury in relation to complex fraud trials.

Part 1 – Regulation of Biometric Data

Greater limits on retention of biometric information

3. Liberty has long campaigned for a more proportionate and targeted DNA and fingerprint retention regime to replace the current policy of blanket and indefinite retention of innocent peoples' DNA. We welcome proposals which will see the removal from the database of the DNA of all those arrested for or charged with a minor offence but never convicted.[6] We are further satisfied that the decision to retain the biometric information of those charged, but not convicted of a sexual or serious offence for three years represents a fair and proportionate approach. However, whilst this new legislative scheme will go some way towards remedying the deficiencies identified by the Court of Human Rights in *S and Marper v the United Kingdom*, we have a number of remaining concerns about the regime proposed in the Bill.[7]

A new scheme for biometric retention: outline of changes in Part 1

4. Part 1 of the Bill places some restrictions on the extent to which the DNA and fingerprints of innocent people can be indefinitely retained, providing in particular that where a person is arrested or charged but never convicted of a minor offence, their DNA or fingerprints (hereafter referred to collectively as 'biometric information') cannot be retained following the conclusion of investigations or proceedings against

[6] With removal to take place immediately following the conclusion of investigations or proceedings against the person in relation to the offence for which they were arrested.
[7] *S and Marper v UK*, Grand Chamber judgment, 4 December 2008, available at: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=marper&sessionid=22986969&skin=hudoc-en

them.[8] Biometric information taken unlawfully, or in connection with an unlawful arrest, they must also be destroyed.[9]

5. Under the scheme proposed in the Bill, the biometric information of those *charged but never convicted* of a serious offence can be retained for three years.[10] The retention period can be extended for up to two years if an order is granted by a District Judge.[11] Where an individual is *arrested but not charged* with a serious or sexual offence, there is a retention period of three years subject to the requirement that a newly appointed Commissioner agrees and retention complies with any guidance produced by the Secretary of State.[12]

6. Where an individual is convicted of a recordable offence, their biometric material may continue to be retained on the national database indefinitely, save where a first time offender is convicted of a minor offence whilst under 18.[13] Under the proposed legislative scheme, if a child receives a non-custodial sentence, their biometric material can be retained for five years from the date on which it was taken.[14] Where a sentence of less than five years is handed down, biometric information may be retained for a period made up of the length of the sentence plus an additional five year period.[15] If, however, a minor is sentenced to a period of imprisonment in excess of five years, their biometric information can be retained indefinitely.[16]

7. The Bill provides for a separate scheme in relation to material retained for national security purposes. A National Security Determination ('a Determination') is a written decision made by a chief officer of police that it is necessary for material taken in connection with the investigation of an offence to be retained for the

[8] Clause 2 inserting new s63E(2). This applies to all those convicted of a minor offence unless they have previously been convicted of a recordable offence that does not fall within a category of excluded offences, in which case material may be retained indefinitely.
[9] Clause 1 inserting new s63D.
[10] A qualifying offence, as defined at PACE s.65A spans serious and sexual offences, including acts of violence and more serious offences of dishonesty such as burglary.
[11] Either party can appeal against a decision on renewal made by a District Judge to the Crown Court.
[12] Clause 3 inserting new s63F(12)
[13] A penalty notice as defined by s2(4) of the *Criminal Justice and Police Act* is a notice offering an individual the opportunity, by paying a penalty, to discharge any liability to be convicted of the offence to which the notice relates. Where an individual receives a penalty notice, their biometric information can be retained for a period of 2 years.
[14] Clause 7(4).
[15] Clause 7(2).
[16] Clause 7(3).

purposes of national security.[17] Clause 22 of the Bill provides for guidance to be issued by the Secretary of State, following consultation, about making or renewing Determinations, but no detail is provided in the Bill as to the likely content of this guidance. A Determination can have effect for a maximum of two years, but may be renewed on an unlimited number of occasions.[18] A newly appointed Commissioner for the Retention and Use of Biometric Material ('the Commissioner') will have responsibility for reviewing all Determinations made or renewed by chief officers under the provisions of the Protection of Freedoms Bill as well as parallel Determinations made under the *Terrorism Act 2000* and the *Counter-Terrorism Act 2008*. The Commissioner will also be responsible for keeping under review the uses to which material retained for reasons of national security is being put.[19] It is for the Commissioner to decide whether it is necessary for the material in question to be retained for the purposes of national security.[20]

8. Schedule 1 provides for the operation of parallel regimes of retention for material subject to the *Terrorism Act 2000*. The regime largely replicates the provisions in relation to biometric material retained for the purposes of national security under the newly amended provisions of PACE, particularly in relation to provisions for unlimited applications for the renewal of retention periods, and similarly in relation to biometric data retained under section 18 of the *Counter-terrorism Act 2008*. More limited provisions are made for the retention of biometric data of those with no previous convictions and retention must be for the purposes of national security. The same regime applies in relation to the renewal of retention periods.

9. Clause 24 of the Bill puts the National DNA Strategy Board on a statutory footing and requires it to oversee the operation of the National DNA Database, including issuing guidance about the destruction of DNA profiles.[21] Chief police officers making decisions about the retention or destruction of this evidence must have regard to this guidance.[22]

[17] Clause 9 inserting new s63L(2)-(3).
[18] Clause 9 inserting new s63L(3)(c).
[19] In order to facilitate the performance of his reviewing function, the Commissioner must be provided with a copy of all Determinations or renewed Determinations issued (clause 20(3)).
[20] If he concludes that retention is not necessary, and the material in question is not otherwise capable of being lawfully retained, the Commissioner may authorise the destruction of the material (Clause 20(4)).
[21] Clause 24 inserting new s63AB.
[22] Clause 24 inserting new s63AB(3).

Reservations about the proposals

10. In last year's Your Freedom Consultation, the Government pledged to introduce the Scottish model for DNA retention. The model in Scotland provides that a person who is *arrested but not charged or convicted* of any offence has their DNA profile destroyed as soon as possible following a decision not to charge. Further, if a person is *charged with but not convicted* of an offence, DNA will be destroyed as soon as possible thereafter, save where the charge relates to a sexual or serious violent offence where biometric data can be retained for a period of three years. Under the Scottish model, no person arrested, but against whom there is insufficient evidence to bring a charge, can have their DNA retained. In stark contrast, under the provisions of this Bill, those arrested but never charged with a serious or sexual offence can have their DNA retained for an initial period of three years (subject to the consent of the newly appointed Commissioner for the Retention and Use of Biometric Material) and thereafter an application can be made to renew the period of retention for a further two years. To retain – even for a limited period - the biometric material of those against whom no charges can be brought represents a significant departure from the Scottish model advocated by the Coalition partners in their *Your Freedom* consultation.

11. We are also concerned about the potential for retention to be extended by Court order. While initially the application procedure looks attractive, in as much as there is judicial oversight, we believe it is seriously flawed. The proposed model allows a Court to formally state that while a person has not been proven guilty of any offence, doubts remain about them which justify the retention of their biometric material after the blanket three year period. Those for whom such an application was successfully granted would be made to feel that there was greater suspicion over them than others against whom an application had been unsuccessful. To introduce an application procedure whereby a Court adjudicates on whether there is enough evidence against an accused to raise some doubt, but not enough evidence to prove guilt beyond a reasonable doubt, is a major, and we submit a dangerous, step. We believe that the mechanism for renewal introduced by the Bill easily lends itself to becoming a rubber-stamping exercise, creating a real risk that applications would become routine, as police seek to prevent blame being attributed if, in any given case, an application has not been made and an individual later goes on to commit a crime.

12. Liberty was disappointed to see the absence of any concession in relation to the position of children arrested or charged, but never convicted of a serious offence. We have grave concerns about a legislative scheme which allows for the retention of innocent children's biometric information. DNA retention disproportionately affects children who are particularly visible to police, partly because of a level of cultural demonisation. Liberty believes that the DNA of all children who have not been convicted of an offence should be removed from the database as soon as reasonably practicable in all but the most exceptional circumstances.[23]

13. Another significant concern on the face of the Bill is provisions permitting the indefinite retention of any biometric information which a chief officer concludes should be retained in the interests of national security, subject only to the reviewing function of the newly appointed Commissioner. There is nothing in the Bill to prevent a high proportion of DNA and fingerprints being retained on undefined notions of national security. Whilst the appointment of a Commissioner to oversee retention in this context is a welcome addition, the Bill provides no indication of the criteria that will be used by the Commissioner to assess the necessity of ongoing retention. The continuing presence of this exception allows DNA and fingerprints to be retained indefinitely on national security grounds regardless of the offence for which the person was arrested, and of course regardless of the fact that the person has not been convicted.

14. Under the scheme proposed in the Bill the DNA of adults convicted of recordable offences may still be retained indefinitely. Liberty believes that a proportionate system of DNA retention should have a built in mechanism to respond appropriately to very minor offending, or offences for which conviction was entirely unrelated to DNA evidence. A 'recordable offence' includes such trivial offences as begging, public order offences, failing to give advance notice of a procession and drunkenness in a public place etc.[24] Liberty does not believe that these are the types of offences for which a person convicted should remain indefinitely on the National DNA Database.

[23] See Liberty's Your Freedom Consultation, paragraph 21. Such circumstances could, for example, be where a 16 or 17 year old is arrested for a more serious sexual or violent offence, but is ultimately acquitted or has charges dropped. In this situation DNA removal could take place a year after acquittal or the dropping of charges.
[24] See the *National Police Records (Recordable Offences) Regulations 2000*, SI 2000/1139.

15. Limiting DNA retention in the case of children convicted of a first minor offence is a welcome development, but we believe that further changes must be made. There should be a presumption in favour of removing DNA profiles and fingerprints once a child reaches 18. Whilst this presumption could be rebutted (depending on the seriousness of the offence for which the child has been convicted), the onus should be shifted. Children should not be stigmatised as a result of things done before they reach full maturity. Childhood law-breaking is not necessarily indicative of future behaviour and recognition of developmental immaturity lies behind legislation providing for children's convictions to become spent in half the time of adult convictions.[25] Under the scheme proposed in the Bill a child cautioned once for shoplifting when aged 10 and again at 12 would remain on the DNA database for the rest of their lives. This is a disproportionate response once the special status of children in the criminal justice system is taken into account.

The biometric information of school children

16. Clauses 26 and 27 of the Bill provide that any school seeking to obtain the biometric information of pupils aged under 18 must first obtain the written consent of each of the child's parents, except in circumstances where the school is satisfied that a parent cannot be found, lacks capacity, the welfare of the child requires that a parent is not contacted or it is otherwise not reasonably practicable to obtain the consent of a parent.[26] Even in a situation where a parent consents, if a child refuses to participate in anything involving the processing of her biometric information, or otherwise objects, her information must not be processed.[27] Clause 26(6) requires that, in circumstances where a child or one of her parents objects to the processing of her biometric data schools and colleges must provide that child with reasonable alternatives to a biometric system in order that the child can gain access to any facilities she would have had access to if she had consented to the processing of her personal data.

17. The Bill marks a valuable step forward in terms of the retention of children's biometric information in schools. The fingerprinting and other biometric data collection of children in schools raises very real privacy concerns and yet, to date, there has been very little regulation of this practice. Liberty does not believe that it is

[25] *Rehabilitation of Offenders Act 1974*.
[26] Clause 26(2).
[27] Clause 26(4).

ever necessary for schools to obtain students' biometric data. The taking and retention of biometrics raises far more concerns than can be justified by any supposed convenience of a child not having to carry a library card. We believe the casual use of biometrics in schools sends an extremely worrying message to our children about the value of personal privacy and can serve to desensitise children to increasing levels of data collection and surveillance. While we very much welcome the introduction in the Bill of proposals requiring parental consent, in addition to the need for the child's consent that already exists under the *Data Protection Act 1998*, we believe the Government should take the lead in dissuading schools from using biometrics at all.

18. In order to ensure that any consent given by a child and parent is informed consent, all schools (both private and state schools) should be statutorily required to provide students and parents with detailed information on what purpose the biometric data will be used for; who has access to the data; how secure the data is; and how long biometric data will be retained. It should also clearly set out that consent can be withheld by either the parent or child and that appropriate alternatives to accessing services must be provided by schools. We further believe it is essential to ensure that the fingerprints and other biometric data already taken from students should be subject to the requirement of consent, and if it is not gained within a set timeframe this existing biometric data must be destroyed.

19. It is difficult to ascertain just how many schools have already implemented fingerprinting systems as schools are not currently required to report whether they hold children's biometric data to the local authority or Department of Education, and only sporadically notify the Information Commissioner's Office (ICO). We believe it is important that such information is centrally collected and monitored and believe the Bill should include a statutory requirement for all schools to notify the ICO if it takes any of its students' biometric information. Further, if public funds are to be spent on biometric technology in schools this information should be made publicly and centrally available. We do not believe that public funds should be spent on the use of such unnecessary, and intrusive, technology. Liberty further believes that this Bill provides an excellent opportunity to place the Department of Education under a statutory duty to produce guidelines on the use of such technology and a school's obligations under the *Data Protection Act 1998*.

Part 2 – Regulation of Surveillance

20. Liberty welcomes provisions in the Protection of Freedoms Bill which are aimed at increasing regulation of the use of CCTV cameras by local authorities. We have long been concerned that CCTV has been able to be so freely used, with such devastating consequences for our privacy generally and in specific cases where the technology has been abused. Steps towards regulation are consequently extremely welcome. So too are changes to the use of local council powers under RIPA. Reform of this area is long overdue as is starkly evidenced by the case of Jenny Paton, a mum of three whose local council used their RIPA powers to monitor her family to determine if they were in the right school catchment area.[28]

Regulation of CCTV

21. Clause 29 of the Bill requires the Secretary of State to prepare a code of practice including guidance about the development or use of surveillance camera systems and the use or processing of information obtained by such systems.[29] The Bill provides a non-prescriptive, non-exhaustive list of issues which the guidance may address including considerations to be taken into account when deciding whether to use surveillance cameras, the appropriate types of system or apparatus to use and where cameras should be located.[30] Under the provisions of the Bill, whilst preparing her code, the Secretary of State must consult with a number of named authorities, including the Association of Chief Police Officers, the Information Commissioner and the newly appointed Surveillance Camera Commissioner.[31] The resulting code must be approved by both Houses of Parliament, and if the Secretary of State wishes to amend it that amendment too must be passed by Parliament.[32] The Bill requires that

[28] http://www.liberty-human-rights.org.uk/media/press/2010/victory-in-school-mum-snooping-case.php.
[29] Clause 29(1)-(2).
[30] Clause 29(3), with the full list including guidance about technical standards for systems or apparatus, standards applicable to persons using or obtaining apparatus or processing information collected, access to or disclosure of information obtained and procedures for complaint or consultation.
[31] Clause 29(5), the requirement of consultation also extends to persons appearing to the Secretary of State to represent the views of the persons likely to be required to have regard to the code, Welsh Ministers, the Chief Surveillance Commissioner and such other persons as the Secretary of State considers appropriate.
[32] Clause 30-31.

the code be published and that all of a list of 'relevant authorities' including policing bodies and local authorities must have regard to it.[33]

22. Clause 34 requires the appointment of a new Surveillance Camera Commissioner, charged with encouraging compliance with the surveillance camera code, reviewing the operation of the code and providing advice about its requirements.[34] The Commissioner is required to produce annual reports about the exercise of his functions.[35]

23. Having recommended the appointment of a Commissioner to regulate this field and enforce compliance with legal requirements, we further welcome provision for the appointment of a Surveillance Camera Commissioner in the Bill. We remain, however, concerned that an obligation on the Secretary of State to issue guidance is an inadequate safeguard in an area where strong and definite regulation is so urgently required. We note, in particular, that aside from requirements that the code provide guidance dealing with the development or use of CCTV and the use or processing of images or other information gained by CCTV cameras, the Bill provides no further definite requirements as to the content of the code.[36] Liberty believes that the critical issue of CCTV legislation should be addressed, in substance, in primary legislation rather than being left to statutory instrument, without even the benefit of clear and comprehensive dictates set out in enabling legislations as to the substance of the proposed code.

24. Liberty has never opposed the targeted use of CCTV cameras where it can be shown to be necessary and proportionate. It is undeniable that in certain limited well placed locations the use of CCTV cameras can be of assistance in crime detection (although research has not demonstrated any discernible link with crime prevention). But to date the use of such technology, which is ever changing and increasingly intrusive, has largely taken place outside of formal regulation. The provisions of the Bill which make few substantive prescriptions as to the content of the proposed code of practice do little to assuage our concerns.

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[33] Clause 33, with 'relevant authorities' listed at Clause 33(5).
[34] Clause 34(2).
[35] Clause 35.
[36] The areas set out at Clause 29(3)(a)-(i) are necessary requirements of effective guidance, but it is disappointing that the Bill does not make the provision of guidance in these areas compulsory.

25. It is clear that the UK has far too many cameras – and the Protection of Freedoms Bill provides an excellent opportunity to place definitive limits on the number of cameras that a public body is able to operate. We believe this would have the effect of encouraging public bodies to consider more carefully where cameras are best placed. If a local authority considered that it needed more cameras in a particular location over and above the set cap it should be required to apply for an exception. Such an application should be made to the newly appointed Surveillance Camera Commissioner. We also believe that further explicit limits should be placed on the location of CCTV cameras. We do not, for example, believe it appropriate that cameras can be placed in changing rooms or inside school buildings. Whilst the Bill provides that a future code of practice *may* include provision about the location of surveillance systems, no substantive or formal obligations are placed on the Secretary of State who may decide not to make reference to this crucial element of CCTV regulation in her code of practice. The Information Commissioner's Office has produced voluntary guidance on the use of CCTV systems and the need for appropriate signage to make it clear where cameras are located. This type of guidance should be set out in law to make compliance compulsory. There is also a clear need for the CCTV camera operators to be better trained and supervised; a stipulation that the Secretary of State *may* provide guidance about *"the standards applicable to persons using or maintaining systems or apparatus…or processing information obtained by virtue of systems"*, offers inadequate protection for the public.[37]

26. We are also extremely concerned that only listed authorities and bodies are required to have regard to the provisions of the code. There have been pronounced problems with the use of private CCTV systems and there is currently an almost complete lack of regulation governing these cameras; the Bill does nothing to alleviate these concerns. We believe that private use of CCTV cameras - when directed at areas used by the public - should require licensing and registration and should form part of local authority planning controls. Strict limits should be set on the use of private CCTV, with applicants being required to make out the case to the local authority as to why they require a CCTV camera or camera network. Breach of this requirement could be a breach of relevant planning or licensing laws.

[37] For further analysis of provisions relating to the use of images obtained from CCTV cameras see Liberty's Your Freedom Consultation Response, paragraph 53.

Surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA)

27. Liberty has long held concerns about the use of covert surveillance powers under RIPA. Many of these techniques are highly intrusive and should be independently authorised. A public official within a public authority that may not exercise such powers on a regular basis is not best placed to determine when conduct will or will not unnecessarily or disproportionately interfere with a person's right to a private and family life.[38] On this basis Liberty welcomes a proposed legislative scheme which will see ultimate authority for approving the use of communications data, directed surveillance and the recruitment of covert human intelligence sources (CHIS), rest with the judiciary.

A new system of judicial approval

28. Clause 37 inserts a new safeguard into RIPA which requires authorised persons to secure judicial approval before acquiring communications data. Communications data refers to data containing the record of a communication, such as a telephone call, email or website visited, but not the content of communication. RIPA divides communications data into three categories:

(a) Traffic data: this tells you where the mobile phone, internet connection etc was located at the time the communication took place – e.g. where a mobile phone was when it received or made a call, or the website visited;
(b) Service use: this tells you how a communication occurred (i.e. was it via email, a text or a phone call etc), the date and time it occurred and how long it lasted;
(c) Subscriber information: this tells you any information held by the person who has signed up to the communications service, for example the name and address and any direct debit details of the user.

29. Under the existing system governed by RIPA, the power to acquire service use data and subscriber information is available to numerous public bodies, including

[38] As protected by Article 8 of the European Convention of Human Rights.

law enforcement agencies, over 430 local authorities and around 110 other public authorities. Acquisition of traffic data is limited to bodies which can show they require it to fulfil their statutory functions; local authorities have no access to it. Where these powers are available to local authorities, this is on the basis of self-authorisation, meaning a designated person within the organisation authorises the use of such surveillance. The Protection of Freedoms Bill introduces a new safeguard into the authorisation regime, stipulating that no authorisation to obtain or disclose communications data can take effect until the Magistrates' Court has made an order approving the grant or renewal of authorisation.[39]

30. The grounds upon which judicial approval may be granted on application by a public body will remain the same as the grounds on which self-authorisations are made by public authorities, namely for one of a list of reasons including where it is deemed necessary in the interests of the economic well-being of the United Kingdom, for the purpose of preventing crime or of preventing disorder and for the purpose of collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.[40] Approval will not be granted by the Magistrates' Court unless there were and continue to be reasonable grounds for believing that obtaining communications data was necessary and proportionate to one of these aims.[41] Approval will also be conditional upon the relevant designated person fulfilling any additional conditions imposed by the Secretary of State.[42] There will be no obligation upon public bodies to give notice to those who are the subject of proposed surveillance.[43]

31. Clause 38 of the Bill introduces a significant new safeguard into the regime set up under RIPA for the regulation of the use of directed surveillance and covert human intelligence sources. Directed surveillance refers to covert surveillance carried out in public, for example covertly filming an individual in a public place. A CHIS is a person who, under direction from a local authority, establishes or maintains a personal or other relationship in order to covertly use the information gained from

[39] Clause 37, inserting new s23A(2).
[40] RIPA, s22(2). The list further includes data deemed necessary in the interests of national security, in the interests of public safety, for the purpose of protecting public health, for the purpose, in an emergency, of preventing death or injury, or any damage to a person's physical or mental health and for any purpose not already covered in the section but which is specified in an order made by the Secretary of State.
[41] Clause 37 inserting new s23A(3)(a)(i) and (3)(b).
[42] Clause 37, newly inserted s23A(5)(ii)-(iii).
[43] Clause 37, newly inserted s23B(2).

the relationship. Under RIPA both techniques can be self authorised by a local authority: the Codes on directed surveillance and the use of a CHIS provide that authorising officers should *generally* not be responsible for authorising their own activities but states that it is recognised that this is not always possible, *"especially in the cases of small organisations, or where it is necessary to act urgently or for security reasons*".[44]

32. Under the new model set out in the Bill, an authorisation may not take effect until judicial approval has been obtained.[45] Before granting approval Magistrates must be satisfied that there were and continue to be reasonable grounds for the designated person within the local authority to believe that using the techniques in question was necessary in pursuit of one of a number of listed purposes which include preventing or detecting crime or disorder and assessing or collecting any tax, duty or levy payable to a government department.[46] Any authorisation must also be proportionate to be aim it is designed to achieve.[47] Judicial approval will be subject to conditions provided for by order, including those making amendments to the list of bodies able to issue authorisations.[48]

33. Under RIPA any renewal of an authorisation for the use of a CHIS had to be reviewed by reference to the use previously made of the CHIS and information gleaned from him in the past.[49] Under the new scheme, reviews upon renewal will still be carried out by the body using the power, but the Magistrates Court will only renew after confirming that such a review has taken place and it has, in fact, been considered when deciding whether to seek approval of a renewed authorisation.[50]

Impact of the proposals

34. This move will lead to greater transparency and accountability, and independent consideration of issues of proportionality; for this reason we generally welcome these important changes. We remain concerned, however, about the broad

[44] See *Code of Practice on Covert Surveillance and Property Interference* at para 5.7 and the *Code of Practice on Covert Human Intelligence Sources* at para 5.7.
[45] Clause 38, newly inserted s32A(2).
[46] In the case of directed surveillance, RIPA s28(2)(A) read together with s28(3) and in the case of recruitment of a CHIS s29(2)(a) read together with s29(3).
[47] RIPA S28(2B).
[48] Clause 38 inserting new s32A(4)(a)(ii)-(iii) and 32A(6)(a)(ii)-(iii).
[49] RIPA, s43 (6)-(7).
[50] Clause 38, inserting new s43(60A).

and ill-defined range of circumstances in which the powers provided for under RIPA can be used. Notwithstanding the safeguard of judicial approval, the heads under which approval can be granted are unnecessarily broad and vague. No definition is given as to what is, for example, 'in the interests of national security' or the 'economic well-being of the UK'. The Protection of Freedoms Bill provides the ideal vehicle for greater clarity and more concrete guidance to be introduced into the legislative regime.

35. We are concerned that the Bill does not go far enough to address other, longstanding concerns with the powers granted under RIPA. Most fundamentally, Liberty does not believe that local authorities are the appropriate bodies to implement surveillance operations. This is not to say that it is never appropriate that these methods of surveillance be used in order to investigate such offences, rather, it is not a power that should be given to the staff of local authorities. Surveillance powers are inherently intrusive and should only be used by persons who are properly trained in law enforcement. We believe that the case for local authorities to continue to have access to these intrusive powers has yet to be made out. If this approach is not adopted, at the very least we believe local authorities' powers must be heavily restricted to apply only to specifically listed serious offences for which local authorities have sole responsibility.

36. We were encouraged by the Government's *Yo*ur Freedom Consultation that the Bill might resolve the wider issue of the loose, confusing and unconsolidated nature of legislation dealing with access to communications data more generally. Many other statutes provide local authorities and other public bodies with means to access communications data. Liberty believes that RIPA, although it requires significant amendment, is the best place within which to locate the powers of all public authorities to access surveillance powers. It is confusing, not only for public authorities, but also for members of the public to try to understand what powers the State has to access sensitive personal information held about us all. Having such powers spread across the statute book also means appropriate supervision and safeguards are diluted and increases the likelihood that personal data is being accessed inappropriately.

37. We were disappointed, particularly after recent scandals surrounding a number of long-term and costly surveillance operations on peaceful environmental movements, that the Bill does not make provision for prior judicial authorisation of

undercover policing operations. While the Bill makes the approval of a Magistrate a pre-condition for the appointment of a CHIS by a local authority, this power does not extend to covert sources appointed by law enforcement agencies. Sir Hugh Orde, the President of the Association of Chief Police Officers, has called for an end to self-authorisation of police appointed covert human intelligence sources, stating that:

> *The current system of retrospective inspection is, in my judgment, no longer sufficient to secure the confidence of right thinking people that such interference with citizens' rights (with its foreseeable collateral intrusion on many) is appropriate. Therefore the solution must take the form of some independent pre-authority that is already a common feature in other areas of policing in this country.....It is not for me to suggest the level or form but I do believe that an additional element of judicial oversight in keeping with our traditions of accountability to the rule of law need not be over-bureaucratic and the benefit would far outweigh the additional administrative burden.*[51]

Part 3 – Protection of Property from disproportionate enforcement action

Powers of entry

38. Clause 39 of the Bill provides for a Minister to repeal any power of entry or associated power which he or she considers to be unnecessary or inappropriate. Schedule 2 to the Bill contains a list of provisions to be repealed on the basis that they allow unnecessary or inappropriate powers of entry. Clause 40 provides for additional safeguards to be added to powers of entry or associated powers by a Minister, and provides a non-exhaustive list of the safeguards which *may* be introduced, including restrictions on the type of premises in respect of which a power may be exercised and the times of day powers of entry may be operated, or requirements for the exercise of the power to be subject to authorisation.[52] Clause 41 provides for a Minister to rewrite a power exercisable by order, provided that the net effect of any change is to provide a greater level of protection. Before making an order under Clauses 39-41 a Minister is obliged to consult with representatives of bodies entitled to use the powers of entry or associated powers in question.[53] Clause

[51] http://www.liberty-human-rights.org.uk/media/press/2011/head-of-acpo-undercover-policing-should-be-authorised-by.php.
[52] Clause 40(2).
[53] Clause 43.

42 of the Bill obliges Cabinet Ministers to conduct a review of existing powers of entry and associated powers for which the Minister is responsible. In so doing, the Minister must consider whether to exercise the powers set out at Clauses 39-41.

39. Liberty welcomes provisions designed to better regulate powers of entry and repeal unnecessary or inappropriate powers. We note, however, that requirements for Ministers to review powers of entry and consider the implementation of safeguards, or the repeal of whole powers, are left to the discretion of individual Ministers. There is a distinct lack of prescription in this part of the Bill and Liberty believes greater substantive protection against disproportionate or obsolete powers of entry should be provided.

Vehicle clamping

40. Clause 54 of the Bill provides for an offence of clamping or otherwise immobilising a vehicle without lawful authority.[54] Clause 55 of the Bill extends the powers accorded to the Secretary of State to make regulations providing for the removal of vehicles illegally, obstructively or dangerously parked, abandoned or broken down. Under the new scheme where a vehicle is left on any piece of land the Secretary of State can make provision for it to be removed if left in contravention of any statutory prohibition or restriction or in such a way that it will cause obstruction or danger to another seeking to use the land. Provision is further made for the keeper of a vehicle to be held liable for unpaid parking fines arising under contract where the identity of the driver is not known.[55]

41. Liberty welcomes restrictions which will make it a criminal offence for private landowners to clamp vehicles or otherwise restrict their movement in the absence of lawful authority. Whilst it is important that private landowners should have the right to enjoy the use of their land, enforcement action, if it is to be carried out by private individuals should be carried out in accordance with official regulation. The Secretary of State should use her extended regulatory powers to ensure that minimum proportionate requirements act as a further check on rogue vehicle immobilisation businesses.

[54] Clause 54(1).
[55] Clause 56 bringing Schedule 4 of the Bill into effect.

Part 4 – Counter-terrorism powers

Pre-charge detention

42. Clause 57 of the Bill permanently reduces the maximum period of pre-charge detention from 28 to 14 days. There are two accompanying draft Bills designed to be laid before Parliament in the case of an emergency, both will allow for the extension of pre-charge detention to 28 days for a 3 month period.[56] The Office for Security and Counter Terrorism confirm that the Bill will be laid before Parliament in *"urgent situations where more than 14 days pre-charge detention is considered necessary"*.[57]

43. Liberty emphatically outlined the case for reducing the length of pre-charge detention in the UK in both its response to the Government's Counter-Terrorism Review[58] and its response to the Your Freedom Consultation. We are extremely pleased that the Bill provides for the length of pre-charge detention to be reduced to from a shamefully long period of 28 days. We note that this reduction represents the fulfilment of a Liberal Democrat pre-election pledge and urge the Coalition to build on this promising start and reduce further what is still a disproportionately lengthy period of pre-charge detention. Liberty appreciates that investigation of terrorism offences is complex. But our human rights and civil liberties should not, and need not, be sacrificed to deal with those suspected of terrorism. Both the Conservatives and Liberal Democrats while in opposition vigorously defended the right to liberty as the former Government continually ratcheted up pre-charge detention periods.

44. There is little evidence on which to base even a reduced 14 day extension. When the *Criminal Justice Act 2003* was passing through the House of Commons to extend pre-charge detention to 14 days the Liberal Democrats proposed an amendment which, as a compromise, would see pre-charge detention limited at 10 days, recognising that doubling the seven day period within three years of its implementation was *"a step too far".*[59] In his inquiry into terrorist legislation in 1996,[60]

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[56] The first to be used if the emergency arises before the Protection of Freedoms Bill is passed and the second thereafter.
[57] Statement attached to the Draft Bills.
[58] See *From 'War to Law': Liberty's response to the Coalition Government's Review of Counter-Terrorism and Security Powers 2010* (October 2010), available at http://www.liberty-human-rights.org.uk/pdfs/policy10/from-war-to-law-final-pdf-with-bookmarks.pdf.
[59] House of Commons *Hansard,* 20 May 2003, at column 953.
[60] Lord Lloyd of Berwick's *Inquiry into legislation against terrorism* (October 1996) (Cm 3420) (TSO: London).

Lord Lloyd recommended that terrorist suspects be detained for a maximum of 48 hours, before judicial authorisation is sought to extend the period for up to two further days, making *four days* maximum in total.[61] Lord Lloyd made this proposal in the context of a review in which he was tasked with making recommendations for permanent terrorism legislation after the temporary Northern Ireland legislation, and to ensure compliance with the UK's human rights obligations.[62]

45. Due to the injustices that will inevitably arise from lengthy pre-charge detention, UK law has historically required suspects to be charged within a matter of hours or days, rather than weeks or months. The pre-charge detention limit in non-terrorism cases, for example, is still four days and in terrorism cases the limit was just seven days until 2003. The proposed 14 days limit is still way out of line with this historic position and much longer than in other comparable democracies. Indeed, lengthy detention without charge is more commonly associated with oppressive, non-democratic regimes.

Stop and search powers

46. Clause 58 of the Bill repeals sections 44 to 47 of the Terrorism Act 2000. This action became necessary following Liberty's successful challenge in the European Court of Human Rights in the case of *Gillan and Quinton v United Kingdom*.[63]

47. Clause 59(1)-(2) of the Bill amends provisions for stop and search *with suspicion* in the Terrorism Act 2000. These provisions exclude a requirement found at section 43(3) of the Terrorism Act that any search be carried out by a person of the same sex. They further insert an additional power to search a vehicle where, in the course of stopping a person reasonably suspected to be a terrorist, a vehicle is also stopped.[64] A vehicle can only be searched for the purpose of establishing whether there is anything in or on it which may constitute evidence that a person searched for

[61] Ibid, at para 9.10. Lord Lloyd concluded that this limit ought to be in the permanent anti-terrorism legislation, but accepted that in the context of emergency legislation in place at the time the seven day limit could remain.
[62] Ibid, at para 1. Given he provided his report at the height of the conflict with Northern Ireland, Lord Lloyd did recommend that the then current seven day pre-charge detention period remain in place as a *temporary* measure: at para 9.22.
[63] (Application no. 4158/05), European Court of Human Rights.
[64] Clause 59(2) inserting new section 43(4A).

the purposes of s43(1) is a terrorist. Anything which may constitute evidence that a person is a terrorist can be seized and retained.[65]

48. Clause 59(3) provides for a vehicle to be searched on the grounds of reasonable suspicion that the vehicle is being used for the purposes of terrorism. Where such a search is carried out, it may include people within the vehicle and their possessions.[66] Such a search may only be carried out for the purpose of determining whether the vehicle in question is being used for the purposes of terrorism. Objects discovered during the search may be seized and retained if it is reasonably suspected that they constitute evidence that the vehicle in question is being used for the purposes of terrorism.

49. Clause 60 replaces sections 44-47 of the Terrorism Act in making provision for searches to take place *without suspicion* in particular designated areas. Whereas section 44 provided for an area to be designated where deemed expedient for the protection of acts of terrorism, new section 43B will limit designation to circumstances where a senior police officer *reasonably suspects* an act of terrorism will take place and where authorisation is *necessary* to prevent such an act. Under the Bill authorisations will be confined to an area *"no greater than is necessary to prevent"* an act of terrorism and a duration *"no longer than is necessary"* to prevent such an act.[67] The duration of a single authorisation can be no longer than 14 days and any authorisation can not last beyond a period of 48 hours unless it is confirmed by the Secretary of State before the end of that period.[68] When confirming an authorisation the Secretary of State is free to substitute a shorter time period or a smaller area than that specified in the authorisation and may cancel the authorisation at any time.[69] A senior officer has the same powers to reduce the duration and area of an authorisation or cancel it altogether.[70] There are no limits on the number of authorisations which can be made either consecutively or contemporaneously.[71]

50. Where an authorisation is in place uniformed constables may stop and search any vehicle, those inside it and their possessions without suspicion.[72] There is also a

[65] Clause 59(2) inserting new section 43(4B).
[66] Clause 59(3) inserting new section 43A(2).
[67] Clause 60, inserting new s43B(1).
[68] Schedule 5, inserting new Schedule 6B(7).
[69] Schedule 5, inserting new Schedule 6B(7)-(8).
[70] Schedule 5, inserting new Schedule 6B(9).
[71] Schedule 5, inserting new Schedule 6B(11).
[72] Clause 60, inserting new s43B(2).

power to search any pedestrian and his possessions within the confines of a current authorisation.[73] A search can only be carried out for the purpose of discovering evidence that the vehicle in question is being used for the purposes of terrorism or the person in question is or has been concerned in commission, preparation or instigation of an act of terrorism.[74] A constable carrying out such a search need not have any reasonable suspicion that any such evidence exists and any items discovered can be seized and retained if a constable reasonably suspects that it may constitute evidence that a vehicle is being used for terrorism or that a person is or has been involved with terrorism.[75]

51. Clause 61 requires the Secretary of State to prepare a code of practice containing guidance about the use of the stop and search powers set out in the Terrorism Act 2000 and specifically the exercise of powers to grant authorisations and powers exercised under an authorisation.[76] The code will not become operational unless an order bringing it into force is approved by both Houses of Parliament.[77] The code must be published and kept under review and any constable must have regard to the code when exercising any of the powers to which it relates.[78]

Liberty's response to the proposals

52. Liberty has always maintained that exceptional stop and search powers (i.e. stop and search without suspicion) may be justified in certain very limited circumstances – for example where, due to a particular event or the nature of a particular area, it is reasonably suspected that an act of terrorism may be planned; or where specific information linked to a place or event has been received which indicates the same. The measures proposed in the Bill represent a clear step in the right direction, particularly in providing for a higher threshold before an authorisation can be granted to permit the use of wide stop and search powers. Liberty has long called for a test to be introduced permitting authorisation only where this is reasonably believed *necessary* to prevent acts of terrorism, as opposed to the current provision which permits authorisation on the grounds of expediency. This approach accords with the decision of the European court of Human Rights in *Gillan*.

[73] Clause 60, inserting new s43B(3).
[74] Clause 60, inserting new s43B(4).
[75] Clause 60, inserting new s43B(5)-(6).
[76] Clause 61 inserting new s43C(1).
[77] Clause 61 inserting new s43D.
[78] Clause 61 inserting new s43E-G.

In providing that authorisation can only take place where there is a reasonable suspicion that an act of terrorism will take place and where an authorisation is considered necessary to prevent such an act, the Bill represents a commendable improvement on what was an over-broad and over-used power highly susceptible to arbitrary and discriminatory operational impact.

53. In other respects, however, Liberty is concerned that the Bill does not go far enough to ensure that highly intrusive powers to stop and search without individual suspicion only operate where strictly necessary to prevent acts of terrorism. Liberty has consistently called for the area designated within an authorisation to be no larger than reasonably necessary to respond to a terrorist threat, and specifically that it should be no more than a square kilometre in total. Whilst the Bill provides that the area of designation should be no larger than necessary and the Secretary of State is to be subject to an obligation to produce a code providing guidance about the exercise of powers to issue authorisations, the Bill contains no specific provisions stipulating the maximum area of an authorisation. Simply stating that an area should be no larger than necessary affords insufficient protection in the absence of a firm ceiling set out in primary legislation. Liberty believes that an area of 1 square kilometre will help to ensure that authorisations are made in a targeted fashion and only in response to specific threats.

54. Similarly Liberty has consistently advocated a maximum duration for authorisations of 24 hours, with any renewal within a 7 day period requiring the express written consent of the Secretary of State. We further believe that where the Secretary of State renews an authorisation on six or more occasions she must lay a copy of the authorisation before both Houses of Parliament as soon as reasonably practical. Unfortunately the Bill falls short of these proposals and Liberty is concerned that a maximum authorisation period of 14 days, whilst an improvement on the previous 28, is far too long for the exercise of intrusive powers which should be expressly reserved for use in the most exceptional circumstances. In providing that any authorisation ceases to have effect unless confirmed by the Secretary of State before a period of 48 hours has elapsed, the Bill tempers the 14 day limit, however, it would appear that after a period of 48 hours, an authorisation may continue for a further 12 days without any further involvement from the Secretary of State. There is apparently no limit on the number of consecutive authorisations which can be made, leaving the door open for a rolling process of authorisation with only limited ongoing requirements of consent from the Secretary of State and no prescribed mechanism

by which multiple authorisations can be subjected to Parliamentary scrutiny. We have further consistently called for public notice to be given of the fact that an authorisation has been made, and what area the authorisation covers. Such notice should be made as soon as is reasonably practicable and in any event no later than seven days after the authorisation is given. This would act as an important safeguard on the use of the power.

55. We were also disappointed to see that the Government did not take the opportunity presented by the Bill to review related counter-terror powers. Liberty has warned of the impact on freedom of expression of sections 58 and 58A of the Terrorism Act 2000, which have a disproportionate impact on journalists and photographers. The former creates an offence of collecting, making or possessing a record (including a photograph) 'of a kind likely to be useful to a person committing or preparing an act of terrorism', whilst the latter creates an offence of the eliciting, attempting to elicit, publish or communicate information about an individual who is or has been a member of HM forces, the intelligence services or a constable and which is 'of a kind likely to be useful to a person committing or preparing an act of terrorism'.

56. Neither offence requires the individual to have any actual intention that the information or record be used for terrorist activity: all that is required is that the material is of a kind 'likely to be useful'. This is an extremely broad definition: any photograph of a police officer might conceivably be considered useful to someone preparing for terrorism – it might enable someone planning terrorism from overseas to recognise an officer's uniform, for example. While both offences provide for some limited protection in terms of evidentiary requirements if a prosecution is brought,[79] the danger lies more in the implementation of the law by police officers on the ground, and the potential chilling effect of the legislation, than it does in any real fear of many prosecutions. Given these concerns, we consider proposals in the Home Office's Counter-terror Report to keep these provisions under review are insufficient.[80]

[79] Section 118 of the *Terrorism Act 2000* reverses the burden of proof, so that if a person presents some evidence that they had a reasonable excuse in acting as they did (e.g. there was a legitimate reason they took the photograph) the prosecution must prove beyond reasonable doubt, that that reasonable excuse does not exist.
[80] Home Office Review of Counter-terrorism Powers: review findings and recommendations. Paragraphs 14-16.

57. Liberty is similarly disappointed that the opportunity to review the disproportionate provisions of Section 60 of the *Criminal Justice and Public Order Act 1994* has not been taken. Section 60 gives a police officer of the rank of inspector or above the power to authorise an area as one in which any police officer can stop and search a person for dangerous instruments or offensive weapons without the need for suspicion for up to 24 hours (which is renewable). The authorisation can be given whenever it is considered 'expedient' because there are reasonable grounds to believe that an incident involving serious violence may take place; or serious violence has taken place in the past and it is believed that dangerous instruments or weapons are being carried; or there is reason to believe people may be carrying dangerous instruments or weapons in the area without good reason. While to date the powers have not been used on the same continuous rolling basis as with section 44, the law itself grants an extremely broad discretion to police officers on the grounds of expediency, and just like with section 44, the powers "*are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse*".[81] These concerns are exacerbated by the recent passing of the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B and D) Order 2010, which significantly reduces monitoring of police powers where a person stopped but not searched under both the 1994 Act and the *Terrorism Act 2000,* and once again introduces within section 60 guidance the opportunity for discriminatory selection of individuals to be stopped and potentially searched.[82]

Part 5 – Safeguarding vulnerable groups, criminal records etc

Vetting and barring

58. Chapter 1 of Part 5 of the Bill amends the *Safeguarding Vulnerable Groups Act 2006* (SVG Act). The SVG Act created the Independent Safeguarding Authority (ISA) and set up what was hoped would be an effective independent vetting system which would ensure those not suitable for working with children or the vulnerable are barred from doing so, while ensuring that potential employers remained unaware of unfair, malicious or spurious allegations while a decision as to suitability for the role

[81] *Gillan* at paragraph 87.
[82] See *Liberty's briefing on the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B and D) Order 2010*, available at http://www.liberty-human-rights.org.uk/pdfs/policy11/liberty-s-briefing-on-the-pace-codes-of-practice-revision-of-codes-a-b-and-d.pdf.

was made.[83] There are three barring procedures: the first is automatic, triggered by conviction or caution for certain offences; [84] the second is for less serious offences and cautions where an individual may still represent a risk but is able to make representations to be taken off the list;[85] and the third is for situations where a person has engaged in certain behaviour (which may relate to convictions or cautions, or may only relate to arrests or allegations), where the ISA considers the individual is a risk, but which allows an individual to make representations before being placed on a barred list. [86] The SVG Act also provides for a 'Vetting and Barring Scheme' (VBS), which encompasses the compulsory registration of individuals undertaking a regulated activity on a frequent basis which necessitates enhanced criminal record checks, and proactive monitoring of those individuals. The VBS was in fact halted by the new Coalition Government before it was due to come into force on 26th July 2010, the Home Secretary stating that the criminal records and VBS needed to brought *"back to common sense levels"*.[87]

59. Liberty has always maintained broad support for the creation of an independent body whose remit is to determine the suitability of individuals to work with children and the vulnerable. In practice however the SVG Act has proven both *ineffective*, preventing people from taking up employment even though there is no direct threat to children or vulnerable adults, and *unfair*, unnecessarily invading the privacy of individuals and blighting careers where they either are not a threat or they are not in contact with targeted groups. That there needs to be a more proportionate response was the key conclusion of the Independent Advisor for Criminality Information Management in her February 2011 report:

> *The public protection system is a fundamental part of society's response to the threat posed by a small number of individuals. It is vital that this protection*

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[83] The SVG Act gave effect to a number of recommendations – including the creation of the ISA – made by the independent inquiry in 2004 of the murders of Jessica Chapman and Holly Wells conducted by Sir Michael Bichard.
[84] See the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009. The Regulations trigger automatic barring where a person has been convicted or cautioned for a serious criminal offence, a consequence of which is that they are a clear risk to children or vulnerable adults.
[85] Para 2 of Part 1 of Schedule 4 of the SVG Act.
[86] Para's 3, 4 and 5 of Part 1 of Schedule 4 of the SVG Act.
[87] Statement of the Home Secretary, House of Commons *Hansard*, 15th June 2010 at columns 46WS to 47WS. See also the review of Sir Roger Singleton, *'Drawing the Line': A report on the Government's Vetting and Barring Scheme*, December 2009, available at http://www.ccpas.co.uk/Documents/VBS%20Draw%20Line%20Report.pdf.

remains in place, yet operates at a level that allows the greatest opportunity to work with those in need.[88]

A more targeted approach

60. Clause 63 of the Bill amends the definition of 'regulated activity' in relation to children, the net effect being to greatly reduce the scope of employment from which barred individuals will be prohibited.[89] A number of specified roles will no longer require vetting from the ISA, for example specified supervised activities;[90] voluntary work in a specified place (such as a school) where that work is supervised;[91] and work of an occasional or temporary nature such as carrying out building maintenance (although occasional or temporary teaching, training, instruction, care for or supervision of, or advice to, children will still be included).[92] Similarly clauses 64 and 65 will reduce the scope of regulated activity in relation to vulnerable adults. Clause 64 inserts a new definition of 'vulnerable adult'[93] to mean a person who has attained the age of 18 and for whom a 'regulated activity' is being provided. Clause 65 restricts the scope of 'regulated activity'[94] to a defined list of activities, for example the provision of health care treatment by a health care professional or a person being supervised by one.[95] Certain activities are excluded from the need for vetting, such as an activity in a care home for vulnerable adults (which is not the provision of health or personal care).[96]

61. Clause 66 alters the procedure by which an individual may be referred by the Secretary of State to the ISA for potential inclusion on the children's barred list[97] or the vulnerable adults' barred list.[98] A person will only be included in a barred list where the individual is, or has been, or might in future be, engaged in a regulated

[88] *A Common Sense Approach: A review of the criminal records regime in England and Wales (Report on Phase 1)*, Sunita Mason, Independent Advisor for Criminality Information Management (February 2011), at page 52.
[89] The clause provides for exceptions to the 'regulated activity' definition in para 1(1) of Part 1 of Schedule 4 of the SVG Act. Clause 63(7) amends the definition of activities referred to in para 1(1). See also para 256 of the Explanatory Memorandum to the Bill.
[90] Clauses 63(3) and 63(7).
[91] Clause 63(5), new clause (2B) in para 1(2) of Schedule 1.
[92] Clause 63(5) new clause (2A) to para 1(2) of Schedule 1.
[93] Repealing section 59 of the SVG Act.
[94] Amending Parts 2 and 3 of Schedule 4 of the SVG Act by repealing the current definitions under paragraphs 7(1) to (3) of Part 2 of Schedule 4 and replacing them with a new definition
[95] Clause 65(2), new section 7(1)(a), and 7(2).
[96] Clause 65(3).
[97] Under Part 1 of Schedule 3 of the SVG Act.
[98] Under Part 2 of Schedule 3.

activity. Clause 70 provides for the circumstances under which a person's inclusion in a barred list can be reviewed. It allows the ISA to, at any time, review the person's inclusion in the list if there is not already a review ongoing or an application made, which has not been determined.[99] On such a review the ISA will be able to remove the person from the list if satisfied in light of new information, any change of circumstance or error on its behalf such that it is not appropriate for the person to be included on the list.[100] Clause 76 omits section 87(2) of the *Policing and Crime Act 2009* which, had it come into force, would have amended the SVG Act to require that an employer or potential employer be notified if the ISA was intending to add a person to a barred list prior to receiving any information from that person and prior to the final decision as to whether to place the person on the list. [101]

62. Liberty greatly welcomes changes to the vetting and barring regime. The new targeted definition of 'regulated activity' under clauses 63 to 65 – currently so broadly defined that it captures all manner of employment requiring vetting of individuals who may not in fact be working closely or frequently with children or vulnerable adults – is certainly a far more proportionate approach which will not diminish the protective role the Act plays. Similarly targeting the vetting system only for those who are, have been or might in future be, engaged in a regulated activity is a logical step which should prove in practice a more focussed and sensible approach to protection. Individuals with no intention of working with or near children such that they do not pose a risk of harm will not go on to the list.

63. The repeal under clause 76, meaning that a potential employer will not receive notice that their future employee is being considered for barring by the ISA without the individual first having an opportunity to address disputed information, is greatly welcome. Liberty has called for the repeal of these provisions, given they seem to entirely defeat the purpose of the creation of an independent vetting body and its procedure of allowing an individual to make representations. So too is the abolition of the 'controlled activity' category under clause 67.

[99] Clause 70, new para 18A(1) and (2).
[100] Clause 70, new para 18A(3).
[101] Proposed sections 34A and 34C.

Abolition of 'controlled activity' provisions

64. Clause 67 removes the 'controlled activity' category from the SVG Act.[102] Currently under the Act a person has to be registered with the ISA under the Act where they are partaking in a 'controlled' activity, which include activities ancillary to but not included within the definition of 'regulated' activity; a person who is barred from doing a 'regulated activity' may be able to partake in a 'controlled activity', albeit with employer introduced safeguards. Many people within this group may not previously have required vetting. Examples of jobs that were proposed to require vetting include cleaners, caretakers, shop workers and receptionists who provide frequent or intensive support in general health settings and the NHS, further education, or adult social care settings, as well as individuals who have frequent access to sensitive records about children and vulnerable adults.[103]

65. Liberty welcomes the removal of the 'controlled activity' concept, something we called for in our response to the *Your Freedom* consultation. If it can be demonstrated that certain positions require vetting in order to properly protect children and vulnerable adults, such categories should become a regulated activity. In many instances it is likely that the kind of jobs which fall would fall within the 'controlled activity' definition will not require vetting as they involve no actual contact with children or vulnerable adults, or, if there is contact, it is in a controlled and relatively risk-free environment. The abolition of this category fits with the increased focus of the definitions of 'regulated activity' outlined above.

Abolition of monitoring

66. The Bill also sees a change to how individuals who may pose a risk, or may do so in future, are prevented from partaking in a regulated activity. Instead of requiring proactive monitoring by the state (the VSB – which, as outlined above, involved mass continual state monitoring and was halted before it began), the onus will now shift to employers to ensure that any staff or potential staff are not on the barred list held by the ISA. Clause 68 will repeal the provisions – not yet in force – which would have required anyone involved in a regulated activity to make an

[102] The clause will omit sections 21 to 23 of the SVG Act.
[103] See section 23 of the SVG Act; and ISA Fact Sheet: *Regulated and Controlled Activities* available on the ISA website at : http://www.isa-gov.org.uk/PDF/283896_ISA_A4_FactSheetNo3.pdf.

application to and be proactively monitored by the Secretary of State.[104] Clause 71 abolishes sections 30 and 32 of the SVG Act which, if brought into force, would have entitled an employer or eligible person[105] to be informed if a person registered for Secretary of State monitoring becomes barred. Instead there will be a new system, under a new section 30A, by which regulated activity providers and certain regulatory bodies[106] will be able to apply to the Secretary of State to obtain information indicating that a person is barred from a regulated activity,[107] where the person concerned has consented.[108] It will also be possible for a provider of a regulated activity (i.e. employers) or a regulatory body to register an interest in a person engaged in an activity to be notified by the Secretary of State if that person does become barred. Again the person will have to consent to being monitored.[109]

67. There are also enhanced mechanisms increasing the flow of information between the ISA and the Secretary of State, as well as the information the ISA will be able to access. Clause 69 will widen ISA's ability to obtain information in relation to individuals regarding records of convictions or cautions. Currently ISA can obtain from any person holding such records where the relevant paragraphs in Schedule 3 of the Act "applies"; the Bill proposes to amend it by enabling ISA to require this information where these paragraphs "apply or appear to apply".[110] Clause 69(2) provides for a higher standard before relevant information is released. Currently a person can release this requested information where he or she "thinks" it will be relevant to the regulated activity. Under the Bill a person will now have to "reasonably believe" that the information will be so relevant.[111]

68. The information that the Secretary of State will be required to give to ISA when the prescribed criteria for automatic barring is triggered (i.e. under regulation, where a person receives a conviction or caution) will also be amended to ensure that the Secretary sends the prescribed information, that is, of convictions and

[104] Clause 68 will repeal section 24 to 27 of the SVG Act.
[105] So defined in Schedule 7 to the SVG Act.
[106] That is, those eligible under Schedule 7 of the SVG Act.
[107] New section 30A, inserted by clause 71(1).
[108] New section 30A(2), clause 71.
[109] New section 30B(5), and (3)(c), inserted by clause 71(1).
[110] Clause 69(1).
[111] Clause 69(2).

cautions.[112] Regulation will be available to further prescribe that information – e.g. so that not all convictions or cautions will be have to be provided to ISA.[113]

69. Clause 72 introduces a new duty to be imposed on any regulated activity provider to ascertain that an individual is not barred from engaging in a regulated activity before permitting them to do so.[114] This duty will be met by an application to the Secretary of State for information under section 30A (outlined above);[115] or an enhanced criminal record check certificate;[116] or an up-to-date enhanced certificate (which is an amendment under clause 80 allowing criminal record checks and enhanced criminal record checks to become portable) .[117] Clauses 74 places a duty on the ISA to inform a professional body, such as the General Medical Council, that someone on the register has been barred. A professional body is also able to apply to the ISA for information on the barred lists on an ad hoc basis. A professional body will also be able to be proactively notified by the Secretary of State in relation to their register if anyone on it were to become barred. Neither the Secretary nor the professional body is obliged to provide the information to ISA. Clause 75 introduces similar provisions in relation to supervisory authorities.

70. The repeal of the monitoring system under clause 71 – which would have required the creation of a massive database of private information – is welcome. The new system also appears to have appropriate safeguards in place, although it is important to be clear that if an employer or potential employer makes an application under the new provision, if the ISA is in the process of considering whether the person ought to be placed on a barred list the person concerned has the opportunity to make representations before that consideration is conveyed to the employer or potential employer.

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[112] Clause 69(2).
[113] Clause 69(2), para 274 of the Explanatory Memorandum. Under the new clause the Secretary of State must provide to ISA "any prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997)…". Section 113A of the 1997 Act governs Criminal Record Certificates; sub-section 113A(10) makes the section subject to the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010.
[114] New section 34ZA(1), clause 72. A similar duty is imposed on a person supplying personnel to engage in such activities (e.g. a teaching agency supplying relief teachers): new section 34ZA(2).
[115] Clause 72, new section 34ZA(4).
[116] Clause 72, new section 34ZA(5).
[117] Clause 72, new section 34ZA(6).

71. We remain principally concerned that the opportunity for an employer to obtain an enhanced criminal record check in addition to ISA vetting remains under the new duty on regulated activity providers proposed under clause 72. The retention of this kind of 'dual system' seems to defeat the purpose of having an independent body, particularly where this system will set up a new application procedure under the new section 30A. This is particularly so given the kind of information which can be revealed on an enhanced criminal record check – that is, information not only about convictions and cautions, but also 'soft' information including allegations, even where these have been disregarded by the police, or other relevant information on the Police National Computer. If the ISA has decided not to bar someone after hearing representations about disputed information, an application under section 30A should be sufficient to show that the person does not pose a risk to children or the vulnerable. Even with the improved criminal record check procedures, a employer should not still be able to gain access to 'soft' information through an enhanced criminal record check given an ISA vetting will obtain that information and establish whether or not it indicates the person constitutes a risk. If there is to be this additional layer, at the very least this ought to only be a standard criminal record check, which will show up all current and spent convictions, cautions, reprimands and warnings held on the Police National Computer. We do consider that the continued availability of enhanced disclosure for someone who has already been ISA vetted, or who may be ISA vetted, is in danger of breaching the right to privacy under the HRA.[118]

Criminal Records Bureau – standard and enhanced criminal record checks

72. Chapter 2 of Part 5 contains important changes to the procedure by which criminal record and enhanced criminal record checks are made. Clause 77 will ensure that a standard or enhanced check will not automatically be sent to a person's employer or potential employer but to the applicant.[119] Clause 77 will also ensure the Secretary of State will no longer be able to direct that information be provided to a potential employer by a police chief officer if that information may be relevant for the purposes of an enhanced check, but which the officer has decided not to put on the certificate.[120] It will still be open to the police using their common law powers to pass

[118] Article 8 of the *European Convention on Human Rights* protects the right to family and private life, as incorporated into UK law by the *Human Rights Act 1998*.
[119] Clause 77 will repeal s 113A(5) of the *Police Act 1997.*
[120] Clause 77. Information may not be provided on the certificate, when, for example, it interferes with the prevention or detection of crime.

such information to a potential employer where it is considered justified and proportionate.[121]

73. Under clause 79 the threshold test for inclusion of information on an enhanced criminal record check will be made slightly more onerous. Instead of including the information where the police officer considers it 'might be relevant' to the employer, the officer will have to 'reasonably believe' the information is relevant and that in his or her opinion it ought to be included.[122] The Secretary of State will be able to issue guidance for officers making this decision, and they will be required to have regard to such guidance. [123] There will also be a new review procedure where there is a dispute as to information included in an enhanced criminal record check by application to the Secretary of State, who must ask the relevant chief officer of police to review what has been included and whether it is relevant for the purpose for which the certificate was requested.[124]

74. Generally, these changes in relation to enhanced criminal record checks are certainly a step in the right direction. While we do welcome the increased threshold test for the inclusion of information on an enhanced check under clause 79, we do retain some concerns about the handling of such sensitive intelligence information in this context being retained by the police. Concerns about police operation of an effective and consistent weeding policy was a significant issue identified in the Bichard Report, which concluded that consensus of opinion and compelling argument supported that the decision of what should, and should not, be disclosed on an enhanced criminal record check ought to be taken out of police hands.[125] A 'reasonable belief' test remains a challenging test to meet, and we agree with the Bichard recommendations that police should not be kept in the position of having to make difficult decisions about what information to disclose on an enhanced criminal record check: this is a matter properly left to an independent body.[126] This is particularly so in the context of children and vulnerable adults given the ISA now has a strengthened ability to obtain information for the purpose of making barring decisions under clause 69 of the Bill, as outlined above.

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[121] As pointed out at para 295 of the Explanatory Memorandum.
[122] Clause 79(1).
[123] Under new section 113(4A), clause 79(2).
[124] Clause 79(4), new section 117(2B).
[125] See paragraphs 4.102 and 4.105 of *The Bichard Inquiry Report*, ibid.
[126] Ibid.

Disregarding certain convictions for buggery

75. Clause 82 of the Bill provides for the Secretary of State to disregard convictions or cautions for defunct offences of buggery and gross indecency between men, in circumstances where the act was mutually consensual, the other party to the act was over 16 and the conduct would not constitute the existing offence of sexual activity within a public lavatory.[127] Disregard will only take place on an application being made by an individual for a past caution or conviction to be disregarded. The Secretary of State must give the applicant notice of a decision; if the Secretary of State decides to disregard the offence, that decision will take affect 14 days after notice is given.[128] If the Secretary of State decides otherwise on the grounds that the conduct to which the offence relates was non-consensual, involved a minor, or would constitute an offence under current law, the applicant can apply to the High Court for permission to appeal. Where the Secretary of State has decided to disregard an offence, she must direct, by notice, the relevant chief police officer or a person responsible for other relevant official records to record, with the details of the caution or conviction in question, the fact that it is disregarded and the effect of a disregard: this must be done as soon as reasonably practical.[129]

76. Where an offence has been disregarded, an individual will be treated, for all legal purposes, as if he had not committed, been charged with, prosecuted, convicted of, sentenced or cautioned for the defunct offence.[130] Specifically, when a person is asked, for any purposes including legal proceedings, to disclose previous convictions or cautions, he will not be required to disclose any disregarded conviction and will not face any legal prejudice as a result of a failure to do so.[131] A disregarded conviction or caution will not provide grounds for dismissing a person from any employment or prejudicing the person in respect of their employment.

77. It is high time that offences based on societal prejudices against gay men were struck from the record. Liberty strongly supports the insertion of provisions in the Bill designed to ensure that individuals no longer face prejudice in legal proceedings, or in any other aspect of their life, as a result of engagement in

[127] Ay representations made by the applicant going to these issues must be taken into account by the Secretary of State, together with the record of investigation and record of proceedings relating to the event.
[128] Clause 82(4).
[129] Clause 85.
[130] Clause 86(1).
[131] Clause 86(2)-(3).

consensual sexual activity with a partner aged over 16. We fail to see, however, why the Bill merely makes provision for offences to be 'disregarded'. It would appear that, under the new legislative scheme, the offence will still appear on an individual's criminal record, but accompanied by an entry to the effect that it is disregarded and should not prejudice an individual in any way, including in relation to employment. Liberty believes that references to such defunct offences should be struck from the record entirely. Even in circumstances where a disregarded offence does not adversely affect somebody's life chances, it reveals deeply personal information about him to those who have access to his records. This represents a continuing punishment for individuals who have already been made to suffer unjustly for their sexual orientation. Liberty urges Parliamentarians to call for disregarded offences to be removed from records in their entirety, finally righting a grave historic wrong.

Part 6 – Freedom of Information and data protection

Freedom of information

78. Clause 92 of the Bill makes provisions regarding the publication of 'datasets' by public authorities. A dataset is a collection of information (held in electronic form) most or all of which was obtained to provide a public authority with information relevant to the performance of its functions. A dataset comprises raw factual information (other than official statistics), rather than data derived from analysis or interpretation and is information which has not been materially altered since it was initially obtained.[132] Clause 92(3) deals with situations in which part or all of the information forming a dataset is subject to a copyright owned by the public authority; it requires that information nonetheless be disclosed to the applicant in accordance with the terms specified in the copyright licence. Under the Bill provision for the disclosure of datasets by public authorities must be included in the code of practice issued by the Secretary of State dealing with disclosures under the Freedom of Information Act.[133]

79. Clause 92(4) extends provisions of the Freedom of Information Act which oblige public authorities to adopt and maintain a scheme for the publication of information by the authority and which is approved by the Information Commissioner

[132] Clause 92 inserting new s11(4) into the Freedom of Information Act.
[133] Clause 92(5) inserting new section 45(2)(da).

(a publication scheme).[134] The Bill specifically requires a publication scheme to publish any dataset held by the authority when requested together with any updated version of the dataset, except where the public authority is satisfied that it would not be appropriate to publish the data. If requested, the data should be published in an electronic form which is capable of reuse where reasonably practicable.[135]

80. Clause 93 widens the freedom of information regime to include within the definition of a publically owned company any corporation provided each of its members is either a Minister of the Crown, a Government Department, a public authority or a company owned by a combination of all of these. The definition of publically owned company will now include those companies wholly owned by two or more public authorities.

81. Liberty has longstanding concerns surrounding exceptions to the general right to access information under the Freedom of Information Act (FOIA) and welcomes provisions in the Bill which widen the definition of a publically owned company for the purposes of freedom of information requests and ensure that copyright owned by the public authority in question does not provide a bar to disclosure. We remain extremely concerned, however, about the number of exceptions and derogations from the general principle of access. In many cases blanket exemptions are given for certain information. Section 23, for example, provides that information held by a public authority is exempt from the FOI provisions if it was directly or indirectly supplied by, or relates to, certain listed organisations. The listed organisations include the security service and secret intelligence service, the armed forces, the Serious Organised Crime Agency and others. Section 24 exempts material from the FOI provisions if exemption is required (in the opinion of a Minister) for the purpose of safeguarding national security. We are disappointed that the Bill did not take this opportunity to replace automatic and blanket exemptions with a requirement to demonstrate harm ('the harm test') as is generally accepted in FOI legislation in other countries.[136]

[134] Freedom of Information Act s19(1)(a).
[135] Clause 92(4) inserting new s19(2A).
[136] See paragraphs 73-73 of Liberty's Response to the Your Freedom Consultation for more information about blanket exemptions in the FOIA

The Information Commissioner

82. Liberty welcomes provisions of the Bill which will act to strengthen the role of the Information Commissioner and increase his independence from the executive. Clause 95 introduces new measures regarding the appointment and tenure of the Information Commissioner. The Data Protection Act provides that the Information Commissioner may be removed from office in pursuance of an Address from both Houses of Parliament.[137] The Bill effectively provides that the Commissioner may not be removed in this way unless a minister is satisfied (and has recorded this in a formal report laid before Parliament) of one of a number of factors including that the Commissioner has failed to discharge his functions for a continuous period of 3 months, he has failed to comply with the terms of his appointment or he has been convicted of a criminal offence.[138] The Bill also makes explicit that the appointment of the Information Commissioner is to be on the basis of merit and via a fair and open competition and provides that a Commissioner may only be elected for one term.

83. Clause 96 reduces the role of the Secretary of State in relation to the functions of the Information Commissioner, replacing obligations on the Commissioner to seek the approval of the Secretary of State before issuing specified codes of practice, with obligations to consult. Clause 97 similarly removes the requirement that the Information Commissioner obtain the consent of the Secretary of State before exercising powers to charge fees and Clause 98 removes the requirement of Secretary of State approval in the context of staff appointments to the Office of the Information Commissioner which had incorporated staff numbers and terms and conditions.[139]

Part 7 – General and Miscellaneous

Trial by jury

84. Clause 99 of the Bill repeals section 43 of the Criminal Justice Act 2003 which allows judges, on application from the prosecution to order that certain complex fraud trials be conducted without a jury.

[137] Data Protection Act 1998, Schedule 5, s.2(3)
[138] Clause 95(1) inserting new s 3A to Schedule 5 of the Data Protection ACt. No motion is to be made for an Address seeking to remove him from office unless a report is presented to the House establishing these listed factors.
[139] DPA, Schedule 5, paragraph 4(5).

85. Liberty strongly welcomes Clause 99 of the Bill which effectively reinstates the right to trial by jury in complex fraud cases. We have been deeply troubled by recent attacks on the constitutional bulwark of the right to trial by jury and hope that this provision marks the beginning of a reversal in this worrying trend. The jury system is of fundamental constitutional importance, encouraging openness and transparency and boosting confidence and legitimacy in the criminal justice process. Where a case is determined by twelve independent members of the public, justice is both done and seen to be done. Without trial by jury, the professional classes appear to sit in permanent judgment over ordinary people. We are disappointed that the Bill does not similarly remove restrictions on the right to trial by jury in other areas.

86. Section 17 of the *Domestic Violence, Crime and Victims Act 2004* provides for the prosecution to apply for certain counts on an indictment to be heard without a jury if certain conditions are met. These 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.[140] 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.

87. Section 44 of the *Criminal Justice Act* allows for a non-jury trial where there is a danger of jury tampering. This provision has been enacted and a number of applications under this section have already been made. At least one application has been successful with the subsequent trial taking place without a jury. Liberty does not believe that the risk of jury tampering is sufficient to warrant trial by judge alone. If this concern is found to exist, we believe that it 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,

[140] Section 17 *Domestic Violence, Crime and Victims Act 2004*.

can the same thing not happen to a single judge? Perhaps most worryingly 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.

88. We are disappointed that the Bill does not repeal these provisions which are similarly offensive to the constitutional principle of the right to trial by jury. In the case of section 44 above, in the absence of a decision to repeal, we are disappointed not to see a compromise along the lines set out in our response to the Government's Your Freedom Consultation.[141] The proposed amendment would see the provision substantially revised to provide that if compelling evidence of jury tampering is presented in interlocutory proceedings where both parties are able to be heard, the affected jury ought to be discharged and a retrial be scheduled with a new jury.

Conclusion

89. The Protection of Freedoms Bill offers a rare and valuable opportunity to take stock of unjust and illiberal laws and roll back powers which compromise the fundamental rights and freedoms of those living in this country. The Bill as drafted proposes some important and very necessary changes to the law, particularly in relation to the protection of the right to privacy, but it does not go far enough. This Bill has great potential and we urge Parliamentarians to push for a stronger and more comprehensive package of reforms.

Sophie Farthing
Rachel Robinson

[141] Paragraph 91.