

# Written evidence from Liberty (COV0130)

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## INTRODUCTION

1. Liberty welcomes the opportunity to provide evidence to the Joint Committee on Human Rights (JCHR) as part of its inquiry into the human rights implications of the Government's response to Covid-19. It is hoped that the inquiry will highlight the ongoing weaknesses in the Government's policy, guidance and legislative responses. Liberty believes that the Government's response to Covid-19 should have human rights at its core.
2. This submission focuses on policing, migrants' rights, disability rights and on privacy and surveillance. However, underlying the Government's response as a whole has been a failure to consider less restrictive alternatives of managing the pandemic and a trend to usher in unprecedented rights-restricting measures and enforcement without appropriate parliamentary scrutiny. That lack of scrutiny has resulted in arbitrary enforcement of under-scrutinised laws and guidance that has had a direct impact on the rights of BAME communities, migrants and disabled people.
3. The Covid-19 crisis has laid bare pre-existing inequalities and is having a disproportionate effect on people with protected characteristics, such as people of colour, older people and disabled people. This is discussed at length in Liberty's submission to the Women and Equalities Select Committee inquiry on the impact of the Covid-19 crisis on people with protected characteristics.

## GOVERNMENT RESPONSE

4. The Government has introduced two sets of sweeping police powers in response to Covid-19 which raise significant human rights concerns.

## LACK OF SCRUTINY

5. Liberty is concerned about the Health Protection Regulations 2020 and the Coronavirus Act 2020 because both contain policy that has not been properly scrutinised by Parliament, has not received consultation by civil society and has left many groups vulnerable to abuse or danger.
6. The enabling act for the Regulations is the Public Health Act 1984 (the PH Act)<sup>1</sup> As Lord Anderson QC, Lord Sandhurst QC, Anthony Speaight QC, Dr Hickman QC and others have

noted, there are serious questions around whether the PH Act provides an adequate legal basis for the provisions to confine people at home.<sup>2</sup> Furthermore, the process of parliamentary approval, which the PH Act mandates, is highly permissive and manifestly insufficient in light of the extraordinary nature of the restrictions the Regulations impose. The PH Act allows the Government to make regulations without any prior Parliamentary scrutiny or approval. Although the regulations will expire after six months, Parliament only has to approve them once within 28 days and the 28-day timeframe does not include days Parliament is not sitting.<sup>3</sup> As a result, sweeping restrictions around police powers and criminal offences – which were made the day after a four-week recess began – may be on the statute books in the absence of any formal Parliamentary scrutiny for several months.

7. To illustrate this point, at the time of writing there have been four different versions of regulations made to police the lockdown, all of which were made through emergency powers. The one time any of the lockdown regulations were debated by both Houses of Parliament, they were replaced on the very day those debates finished.
8. In Liberty's view, it is in the interests of meaningful parliamentary scrutiny and maintaining parliamentary sovereignty that the Regulations be put in primary legislation. Failing that, the Regulations should, at a minimum, be remade under the Civil Contingencies Act 2004 (CCA), which contains a series of mechanisms for regular parliamentary approval to hold the Government to account.<sup>4</sup> Emergency regulations made under the CCA lapse after seven days unless Parliament approves them. Fresh regulations requiring parliamentary approval would have to be laid before both Houses every 30 days. This would facilitate more robust Parliamentary oversight and allow the restrictions and enforcement powers to be regularly amended in response to the evolving circumstances. Liberty invites Parliamentarians to call on the Government to **put the powers in the Regulations on a clear and explicit statutory basis or, failing that, remake the Regulations under the CCA.**
9. Liberty observes that the Government is repeatedly using the emergency procedure under the Public Health Act even when the Government is easing the lockdown. It

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<sup>1</sup> The Regulations were made under the powers conferred by sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984.s

<sup>2</sup> <https://www.daqc.co.uk/2020/03/26/can-we-be-forced-to-stay-at-home/> and <https://www.prospectmagazine.co.uk/politics/guy-sandhurst-benet-brandreth-law-constitution-parliament-coronavirus-act-lockdown-covid-19>

<sup>3</sup> Section 90, Coronavirus Act 2020 <http://www.legislation.gov.uk/ukpga/2020/7/section/90>

<sup>4</sup> Part 2, Civil Contingencies Act 2004. <http://www.legislation.gov.uk/ukpga/2004/36/contents>

cannot be argued that easing the lockdown constitutes an emergency. Therefore, their repeated use is entirely unjustified.

10. The lack of scrutiny over quickly drafted and changing legislation has led to poorly drafted law, with confusion from public authorities between the Act, the Regulations and the Guidance. When criminal law is confused and poorly communicated this becomes a rule of law issue. It becomes hard to enforce, difficult to hold authorities to account and problematic for individuals to understand the limits of the criminal law.

## HEALTH PROTECTION REGULATIONS 2020

11. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the Regulations) grant the police expansive powers to enforce restrictions on people's freedom of movement; close businesses, places of worship and community centres; and disperse gatherings. The following steps would curb some of the worst excesses of the Regulations and address their most consequential omissions.
12. While the Regulations explicitly exclude "homeless" people from the prohibition on staying overnight at a place that is not your home absent a reasonable excuse, Liberty is concerned that this exemption is unclear and fails to ensure homeless people are protected, not policed or criminalised simply for being homeless during a pandemic.<sup>5</sup> "Homeless" under the Regulations is not defined. In the absence of a definition, we are concerned that authorities are relying on an inconsistent or narrow interpretation of what homelessness is, which risks criminalising people because they have no home to return to.<sup>6</sup> **"Homeless" should therefore be defined in a broad and open-ended manner, to include anyone who could be classified as homeless under the statutory definition, as well as the "hidden homeless" and those with no recourse to public funds.** Moreover, Liberty recommends that **homeless people should also be excluded from the prohibition on gatherings**, to ensure they are not moved along, fined or criminalised in circumstances where they could not be expected to keep apart from groups of more than six people. At least four homeless people have been unlawfully prosecuted for breaking coronavirus lockdown laws.<sup>7</sup>

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<sup>5</sup> Regulation 6 (4) Health Protection (Coronavirus Restrictions) (England) Regulations 2020

<sup>6</sup> See, for example, the case of man with no fixed address being prosecuted for breaching the restriction on leaving home: <https://www.theguardian.com/uk-news/2020/may/12/judge-questions-coronavirus-case-against-homeless-london-man>

<sup>7</sup> <https://www.cps.gov.uk/cps/news/cps-review-finds-improvements-coronavirus-charging-compliance>

13. Secondly, we are concerned that the open-ended nature of these powers – coupled with inconsistent Government communication – is a recipe for arbitrary use.<sup>8</sup> A heavy-handed approach may come at the expense of public health. It risks reducing trust in the authorities – trust that the authorities rely on to sustain compliance with the lockdown.<sup>9</sup> In order to prioritise public health over enforcement, the Government should **amend the restrictions on movement and gatherings so that it only constitutes a criminal offence to breach them when it reaches a threshold of seriousness, repeal the criminal offence of failing to follow instructions and clarify it is not an offence to refuse to answer a question.**
14. Thirdly, while children cannot be issued with a Fixed Penalty Notice, they are not exempt from criminal sanction under the Regulations. It has been reported that children as young as 13 have been arrested and charged for failing to give their personal details.<sup>10</sup> Liberty is particularly concerned that children who are in care or who do not have a safe place to stay may be disproportionately impacted. We urge the Government to **exempt children from criminal sanction under the Regulations.**
15. Fourthly, the Government must urgently take meaningful steps to address the disproportionate use of the police powers against people of colour. An investigation by Liberty Investigates and the Guardian revealed that people of colour in England are 54% more likely to be fined under the Regulations than white people.<sup>11</sup> The Government must **publish disaggregated data for uses of the power by each force.**
16. Finally, Liberty is concerned that people do not have an opportunity to formally challenge any Fixed Penalty Notice they believe was unfairly levied. Moreover, as the Government has eased lockdown – and made the offences under the Regulations so broad to be unenforceable – enforcement powers have been ramped up, with the maximum fine increasing from £960 to £3200. This may pose a particularly pernicious

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<sup>8</sup> For a detailed analysis of arbitrary use of police powers during coronavirus, see:

<https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/05/Libertys-Briefing-on-the-Health-Protection-Coronavirus-Restrictions-Regulations-2020.pdf>

<sup>9</sup> As a letter from 800 public health and legal experts in the US made clear, “voluntary self-isolation measures are more likely to induce cooperation and protect public trust than coercive measures and are more likely to prevent attempts to avoid contact with the healthcare system.” Gregg S. Gonsalves et al., (2 March 2020), *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final\\_covid19\\_letter\\_from\\_public\\_health\\_and\\_legal\\_experts.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid19_letter_from_public_health_and_legal_experts.pdf)

<sup>10</sup> Raven Saunt, (29 March 2020), *Boy, 13, is arrested for breaking new coronavirus lockdown laws after refusing to give his name to police*, Daily Mail. Available at: <https://www.dailymail.co.uk/news/article-8164955/Boy-13-arrested-breaking-new-coronavirus-lockdown-laws.html>

<sup>11</sup> Mirren Gidda and Mattha Busby, (26 May 2020), *BAME people fined more than white population under coronavirus laws*, The Guardian. Available at: <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>

combination for marginalised and over-policed communities. We urge the Government to **establish a statutory right of review and reduce the maximum level of fine that may be imposed. We also recommend the police review all fines issued to date.**

## CORONAVIRUS ACT 2020

17. Schedule 21 of the Coronavirus Act confers extraordinary powers on police and immigration officials to detain people they deem “potentially infectious” for testing. Liberty does not believe the Government have provided adequate justification to support having these extraordinarily coercive powers on the statute books. Local authorities already have similar powers, which require the authorisation of a magistrate.<sup>12</sup> It is not clear why police officers and immigration officials needed to be vested with these powers, indeed without the oversight of a court. Indeed, the fact that a CPS review found that offences under Schedule 21 had never been lawfully charged indicates that these powers have not been needed and are open to misuse. Liberty has significant additional concerns about the powers conferred by Schedule 21 which are outlined in our briefing on the bill.<sup>13</sup>

## FUTURE POWERS

18. On 11<sup>th</sup> May, the Government published a roadmap for easing lockdown. It indicated they are considering further powers which would raise significant human rights concerns.<sup>14</sup> The Government suggested it is exploring increasing enforcement powers as the lockdown eases. Simply put, this is a recipe for injustice and risks significantly undermining public health. The Government also indicated they may impose restrictions solely on specific high-risk geographic areas. Any efforts to impose area-based restrictions must be subject to a rigorous equality and human rights assessment, to ensure that determinants of “risk” are not coded markers of ethnicity, class or migration status.

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<sup>12</sup> Section 45G, Public Health (Control of Disease) Act 1984. <http://www.legislation.gov.uk/ukpga/1984/22/section/45G>

<sup>13</sup> <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/03/Libertys-Briefing-on-the-Coronavirus-Bill.pdf>

<sup>14</sup> HM Government (11 May 2020) *Our Plan to Rebuild*, at p.22 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884760/Our\\_plan\\_to\\_rebuild\\_The\\_UK\\_Government\\_s\\_COVID-19\\_recovery\\_strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884760/Our_plan_to_rebuild_The_UK_Government_s_COVID-19_recovery_strategy.pdf)

## TECHNOLOGY, DATA AND SURVEILLANCE

### THE NHSX CONTACT TRACING APP

19. Liberty submitted an interim response to the JCHR's inquiry on 6 May 2020 outlining our concerns around the contact tracing app. We refer the Committee to that document for a detailed examination of the concerns raised by NHSX's centralised app, and the rights protections that must be put in place.
20. Since submitting our interim response, the JCHR has sent a letter to the Secretary of State for Health making it clear that legislation should be introduced in relation to the app, enclosing a draft Bill outlining a range of safeguards. Liberty welcomes this intervention but is disappointed that the Government rejected the call to adopt a bespoke Covid-19 tracing privacy bill. Given the scale of data gathering that the Government is planning to undertake, new legislation would have ensured there is accountability and scrutiny in the way these are used.

### THE NHSX DASHBOARD

21. On 28 March 2020 the NHS announced the largest ever handover of NHS patient data to private corporations.<sup>15</sup> However, a regrettable lack of transparency meant that additional information only came to light following an investigation by the Guardian.<sup>16</sup>
22. The involvement of the private overseas corporations in our health service raises serious questions about the power they wield and the monetisation of our data. The involvement of security companies is particularly concerning – for example, the Government has contracted with Palantir, a data-mining company with alleged involvement in human rights abuses and unethical practices.<sup>17</sup> It is reportedly running

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<sup>15</sup> <https://healthtech.blog.gov.uk/2020/03/28/the-power-of-data-in-a-pandemic/>. Note that there is a long history of this kind of conduct, with the NHS illegally handing the Google firm DeepMind 1.6m sensitive patient records, without patients' knowledge or consent, back in 2015.

<sup>16</sup> <https://www.theguardian.com/world/2020/apr/12/uk-government-using-confidential-patient-data-in-coronavirus-response>. It has been public knowledge for some time<sup>16</sup> that the Government intended to contract with private companies in relation to a datastore project – the 'NHS Dashboard' – designed to "inform the national response to COVID-19".

<sup>17</sup> These include involvement in the US Immigration and Customs Enforcement's brutal regime of deportations (<https://www.businessinsider.com/activist-group-targets-palantir-over-controversial-ice-raid-2019-10?r=US&IR=T>) and secret use of controversial predictive policing programs (<https://www.theverge.com/2018/2/27/17054740/palantir-predictive-policing-tool-new-orleans-nopd>). Palantir employees are also implicated in the Cambridge Analytica scandal (<https://www.theguardian.com/uk-news/2018/mar/28/palantir-employee-cambridge-analytica>). In late 2019, it took up a military contract with the Pentagon previously abandoned by Google after employees protested it was unethical (<https://thenextweb.com/artificial-intelligence/2019/12/11/report-palantir-took-over-project-maven-the-military-ai-program-too-unethical-for-google/>). It is also notable that previous Palantir clients are reported to have faced extreme difficulties accessing the analysis produced by Palantir when trying to end a contract – resulting in 'vendor lock-in' (<https://www.openrightsgroup.org/press/releases/2020/nhs-must-explain-role-of-surveillance-company>).

the new NHS contract for £1,<sup>18</sup> indicating a potentially concerning expectation of securing further work within the public service sector.<sup>19</sup> Additionally, it is concerning that a company that specialises in anti-terrorism and other security concerns is being used to address health policy. Security and health are different policy objectives and the merging of policy responses to these two distinct areas will ultimately undermine the public's trust in the healthcare system by putting our right to privacy at risk.

**23. Liberty urges the Government to reconsider whether contracting with such companies is in the best national interest. It is also essential that a data collection activity of this magnitude is subject to rigorous Parliamentary scrutiny before any company is contracted to deliver it.**

**24. If such a system is to be used, then it must:**

- **Process personal data only when strictly necessary and proportionate, with rigorous retention and deletion policies, full transparency, and consultation with the public and Parliament prior to them going live.**
- **Be transparent, with Data Protection Impact Assessment (DPIAs) made available for scrutiny.**
- **Be non-discriminatory – particularly relevant when using crude profiling for data analysis and predications.<sup>20</sup>**
- **Be time limited to the public health crisis, and not duplicated and sold to other government departments for use in other contexts (including law and immigration enforcement).**

## MIGRANTS' RIGHTS

25. Liberty is particularly concerned by the impact of Covid-19 and the Government's response to it on migrants of all statuses. People subject to immigration control are facing destitution, unsafe working conditions, eviction, exclusion from healthcare and

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<sup>18</sup> Oscar Williams, (27 April 2020), *Revealed: Palantir commits 45 engineers to NHS coronavirus data project, earns £1*, New Statesman. Available at: <https://tech.newstatesman.com/coronavirus/palantir-45-engineers-to-nhs-Covid-19-datastore>

<sup>19</sup> Ibid.

<sup>20</sup> The Government must be mindful of how the use of our personal data to track and monitor us, make predictions about our lives and determine access to services was already deeply embedded into our society prior to the pandemic, entrenching existing socio-economic inequalities (see, for example, use of 'predictive policing' in law enforcement).<sup>20</sup> These models of data surveillance lead to discriminatory outcomes, often shielded from interrogation by the 'black box' of indecipherably complex technology.

even death because of the Government's inadequate response to Covid-19. The health of the wider public is being put at risk because the Government has so far failed to properly protect migrants from Covid-19.

## HOSTILE ENVIRONMENT

26. The **continuing hostile environment** means that undocumented migrants are left at the mercy of unscrupulous landlords and employers, without access to welfare benefits or banking, potentially barred from work or forced to work in unsafe conditions to survive. Crucially, migrants face significant barriers to accessing healthcare through NHS charging,<sup>21</sup> and data sharing with the Home Office.<sup>22</sup> Liberty welcomes the Government's decision to scrap the surcharge for NHS staff and care workers from overseas<sup>23</sup> and recommends that it is scrapped for all migrants.

27. Documented migrants also suffer because, like undocumented migrants, many are excluded from welfare benefits due to the **No Recourse to Public Funds (NRPF)** condition, leaving people with no safety net of social housing, emergency homelessness accommodation,<sup>24</sup> or welfare benefits to fall back on should they need or be forced to stop working. While some concessions have been made – for example, some children with NRPF have been granted access to free school meals – these are not always universal (undocumented children are excluded) and there are scant guarantees against onward data sharing with the Home Office. The High Court has recently held that aspects of the Home Office policy implementing the NRPF condition are unlawful, highlighting the profound negative impact on those subject to it.<sup>25</sup>

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<sup>21</sup> The fact that COVID-19 has been placed on the list of exempt conditions for the purposes of charging is not sufficient to ensure access to healthcare or to preserve public health during the crisis. The exemption for COVID-19 only applies up until a person receives a negative diagnosis, at which point charging commences for any other condition they may have that does not meet another exemption. For many people, the potential exposure to large bills if they are found not to have coronavirus is likely to be a significant deterrent to them seeking care in a timely way.

<sup>22</sup> The Department of Health and Social Care has given no assurance that NHS data will not be shared with the Home Office and used for immigration enforcement, including for those people with a confirmed coronavirus diagnosis. In 'normal times', fear of being reported to the Home Office is a significant deterrent for migrant populations from seeking healthcare or access to public services. In the context of a pandemic, this deterrent becomes a significant threat to public health.

<sup>23</sup> BBC News, (21 May 2020), *NHS fees to be scrapped for overseas health staff and care workers*, BBC News. Available at: <https://www.bbc.com/news/uk-politics-52761052>

<sup>24</sup> PILC and Migrants' Rights Network have written to the Secretary of State for Housing, Communities and Local Government protesting MHCLG's failure to fund and properly empower local authorities to support rough sleepers and other single homeless people with NRPF through COVID-19. Local authorities have been informed by MHCLG that they are not required to accommodate homeless people with no recourse to public funds and will not be reimbursed for doing so. Leaving people with NRPF homeless during this crisis is not only a moral failure, but is incompatible with the need for everybody to stay at home and avoid all unnecessary contact with others, as outlined in the Government's own social distancing guidance: <https://www.pilc.org.uk/blog/Covid-19-mhclg-must-protect-nrpf-homeless-people/>.

<sup>25</sup> <https://www.theguardian.com/society/2020/may/07/home-offices-denial-of-benefits-to-migrant-families-unlawful-court-rules> and <https://www.project17.org.uk/policy/strategic-litigation/intervention-in-legal-challenge-to-the-nrpf-policy>.

28. Migrant workers are disproportionately represented in low-paid and insecure work. Being undocumented or having an immigration status that is tied to an employer means a person is likely to have less bargaining power than other workers in relation to their terms and conditions, and less access to the social safety net than others.
29. The vital financial support measures introduced by the Government since the outbreak fail to cover significant groups of workers, leaving them at risk of destitution, more vulnerable to exploitation and more likely to be pressured into accepting unsafe conditions, putting public health at risk.
30. **Liberty recommends that the Government must end the hostile environment. This would ensure that all migrants could access shelter and NHS care, and weather Covid-19 in dignity and safety, as well as protecting the wider public by reducing transmission.**
31. **Liberty believes that the Government must grant everyone access to public funds, irrespective of immigration status, and ensure that public funds cover average living costs. Essential services which still have employees going to work must provide adequate personal protective equipment for workers, in line with World Health Organisation standards.**

## IMMIGRATION DETENTION

32. Hundreds of people continue to be held in immigration detention, reportedly without access to adequate sanitation or the ability to socially distance.<sup>26</sup> 40% of those still detained are ‘adults at risk’.<sup>27</sup> In theory, detention should be solely for the purpose of imminent removal. Given the widespread bans on international travel, removal is an unlikely prospect, and there are strong grounds to argue on that basis alone that ongoing detention is unlawful.<sup>28</sup> The World Health Organisation has stated that detention itself makes people more vulnerable to Covid-19 than those who are not detained.

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<sup>26</sup> Following legal action by Detention Action in response to the COVID-19 crisis, the Government released more than 350 people, committed to system-wide case reviews and put a bar on many new detentions <https://detentionaction.org.uk/stories/Covid-19-in-immigration-removal-centres-info-pack/>. More have been released since: <https://www.bbc.co.uk/news/uk-52560093>.

<sup>27</sup> <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/06/IRC-SSVweb-2020.pdf>

<sup>28</sup> Since the start of lockdown, Bail for Immigration Detainees (BID) has reported a 95% success rate in bail applications, undermining the Government’s position that ongoing detention is justified in most cases <https://www.freemovement.org.uk/home-office-tries-to-lean-on-judges-deciding-immigration-bail-cases/>.

33. Liberty recommends that public health and migrants' rights would be best protected by the Home Office releasing everyone currently detained under immigration powers<sup>29</sup> and implementing community-based alternatives.

## DISABILITY RIGHTS

34. For disabled people the negative impacts of Covid-19 are exacerbated by pre-existing social and economic inequalities and the pandemic threatens to aggravate these inequalities further. There are many areas of concern for disabled people; this short section focuses on just three:

- The use of Care Act 'easements'
- Health care deprioritisation
- SEND education.

35. Liberty believes that the Government should remove options for Local Authorities to weaken protections for people in need of care (Schedule 12 of the Coronavirus Act). Access to support services can be essential for some to lead safe, healthy and independent lives. The potential impact of these 'easements' could see many disabled or older people unable to live independently, and many will be put in danger. Even if the easements are subsequently withdrawn, the removal of vital protections sets a dangerous precedent in law.

36. Charities are overwhelmed with reports of disabled people struggling to access food or medicine,<sup>30</sup> of people hiring private carers only to have them quit when they realise they will not be able to access PPE, of others whose carers had to self-isolate and are now left without support.<sup>31</sup> It is also concerning that of the seven councils that implemented the easements, many of them have not provided transparent evidence that thresholds have been met, indicating that the Government guidelines are not rigorous enough to prevent abuse of the power and that it should be removed altogether.

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<sup>29</sup> In March 2020, the Council of Europe Commissioner for Human Rights, Dunja Mijatovic, called on member states to release migrants currently in detention who cannot be removed <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-Covid-19-crisis-continues>.

<sup>30</sup> Disabilityrightsuk.org. (3 April 2020). *Thousands Struggle to Buy Food*, Disability Rights UK. Available at: <https://www.disabilityrightsuk.org/news/2020/april/thousands-struggle-buy-food>

<sup>31</sup> Many carers responding to a Carers UK survey reported feeling unable to put contingency plans in place, as they do not have family members or friends who can take on their caring responsibilities. 'Care behind closed doors', Carers UK, April 2020 [https://www.carersuk.org/images/News\\_and\\_campaigns/Behind\\_Closed\\_Doors\\_2020/Caring\\_behind\\_closed\\_doors\\_April\\_20\\_pages\\_web\\_final.pdf](https://www.carersuk.org/images/News_and_campaigns/Behind_Closed_Doors_2020/Caring_behind_closed_doors_April_20_pages_web_final.pdf)

37. The Government must take active steps to ensure that disabled people are not discriminated against when accessing healthcare. Examples of deprioritisation can be found in GPs issuing Do Not Resuscitate (DNR) orders or the original National Institute for Health and Care Excellence (NICE) guidelines, which suggested that some disabled people might not receive critical care if they contracted Covid-19.<sup>32</sup>
38. **Liberty also calls on the Government to assess and address the impact on disabled children's education. The current crisis will have exacerbated exclusion from education due to a lack of support, accessible software and learning materials. The Government must work to ensure that distance learning is inclusive of all students. Additional resources should be made available to schools and disabled children to provide them with an education on an equal basis with others.**
39. **Throughout all the issues mentioned, it is vital that disabled people and disabled people's organisations are meaningfully consulted and included in the response to Covid-19. Inaccessible messaging and the lack of BSL translation and easy-read versions of Government communications means that some disabled people lack the vital information they need.**
40. Covid-19 requires the scaling up of support and legal protections for disabled people. The response so far has been the opposite. The current impact of policy decisions will see care cut, education denied and, in the most severe circumstances, the loss of lives of disabled people.

## CONCLUSION

41. Covid-19 represents an unprecedented public health emergency. People have demonstrated that they are willing to take necessary steps to protect themselves and others. But times of crisis are also the very moments when protecting our rights becomes even more important. Knee-jerk calls for intrusive surveillance and under-scrutinised and broad criminal punishments are not the answer. Any measures that severely restrict our civil liberties must be time limited and used only as a last resort. The Government has time and time again missed opportunities to respond to this crisis in a rights-respecting manner.

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<sup>32</sup> While the guidelines have been clarified since, the Government must ensure that the new version is communicated clearly and followed.

42. Liberty is alarmed to see protections being taken away from people at a time when those protections need strengthening most. Our rights to life, to be free from inhuman and degrading treatment, to a private and family life, to free expression and association and freedom from discrimination are all engaged by the issues we have raised in the above submission. The fact that the stakes are so high makes the connecting threads of little to no parliamentary scrutiny, a lack of engagement and consultation with affected groups, and poor and unclear communication even more threatening to both our democracy and public health aims.
43. Finally, Liberty warns against the pandemic being used as cover for the normalisation and extension of intrusive surveillance measures. The UK already has the most invasive state surveillance regime of any democracy in the world. As such, Liberty has serious concerns about projects such as the NHSX contact-tracing app and the creation of the data-sharing NHS Dashboard. While these projects may seem to offer a short-term solution, parliamentarians must be aware to the danger that they also usher in greater restrictions on our rights both during the crisis and potentially in the long term.
44. Liberty believes that the Government has failed to put rights at the centre of their response and as such inequalities in society have been exacerbated. Liberty encourages Parliamentarians to call for greater scrutiny of Government policy and ensure that this emergency results in a strengthening, not a weakening, of human rights.

Stella Tsantekidou, Policy and Campaigns Officer

*16/06/2020*