

Written evidence from Mr Alex Goodman et al (COV0002)

The following is an example of a clause that we consider should be inserted into the Coronavirus Bill to safeguard the principles of the Rule of Law and Fundamental Rights.

***Any interference with individual rights by the provisions of this Act including by clauses 9 and schedules 7 to 11 (mental health); 21 and 22 (investigatory powers); 28-30 (suspension of jury inquests); 35 and 36 and schedule 15-16 (school closures); 46 and 47 and schedule 17-18 (powers to act for public health purposes); section 48 and schedule 19 (power to suspend port operations); section 49 and schedule 20 (powers related to potentially infectious persons); section 50 and schedule 21 (powers to restrict gatherings); 57-64 (powers to postpone elections); must not be exercised otherwise than in accordance with the following principles.***

- A. In relation to any provision which to any extent may interfere with the exercise of any fundamental right or of any right in the Schedules to the Human Rights Act 1998:***
- 1. They shall be subject to sunset and review provisions at six monthly intervals and the provisions and powers shall lapse unless Parliament determines that the objectives of the provisions remain appropriate and that the provisions have proved to be effective and no more than necessary to meet those objectives.***
  - 2. They shall be strictly and narrowly construed and their exercise limited to measures that are necessary and which endure for the shortest time possible commensurate with the objective of the measure;***
  - 3. Their use must be demonstrably justified including by the provision to an individual affected of written reasons notifying and explaining the decision and the evidence upon which it was taken.***
- B. Any person shall have a right of access to the courts to challenge any interference within fundamental or human rights without court fees and without risk of unaffordable adverse costs.***
- C. The Coronavirus Act shall lapse as a whole two years after Royal Assent and may not be revived.***

Proposed by Alex Goodman, Russell Harris QC; Fiona Scolding QC; Samantha Broadfoot QC; Tim Buley QC; Kate Olley, and Graham Denholm of Landmark Chambers.

**Explanation**

The cornerstones of every democracy across the world have already been upturned by Covid-19: elections cancelled; safeguards of individual liberty abandoned, the rule of law suspended.

These parts of our societies are too precious to be lost in panic. Parliaments must now keep a level head and bring government to heel. Parliaments must impose limits on emergency measures to ensure that they go no further and extend no longer than strictly necessary; entrench respect for fundamental rights; the rule of law and democracy and secure a return to the highest standards once the emergency is passed. The UK Parliament has its chance to do this in the coming week when it considers (and no doubt will pass) the Coronavirus Bill. I, and a growing group of constitutional lawyers are proposing a failsafe clause to be inserted in to the Coronavirus Bill to guarantee its utmost respect for fundamental rights and the rule of law.

As a measure of the autocratic fervour, elections for local authorities, the London Mayor and Police Commissioners have already been cancelled and re-set for 12 months' time by [government decree](#), yet the government is only now (after the fact) proposing new legislation in the [Coronavirus Bill](#) to give itself power to do this. The length of the suspension of elections is all the more extraordinary given that they go well beyond the electoral commission's recommended suspension of elections until autumn. There is little reason that postal voting and secure online voting mechanisms cannot be used.

Where most democracies have codified constitutions, the UK's constitution has developed through conventions and incremental steps, but many of these have been cast aside in days without a second look: the [budget](#) that was subject to parliamentary scrutiny has been supplanted in a press conference involving vast budgetary commitments. Not a question was raised about the constitutionality of all of this by the assembled journalists.

The UK government's strategy set out in a unilaterally declared [action plan](#) two weeks ago, followed up by press conferences, that it intended to allow most of the population to be exposed to the disease. That plan has now been replaced at the swoosh of a press conference by a diametrically opposed plan of suppressing the disease. Again, there has been no scrutiny by parliament, just assertions that both contradictory approaches are following the science. This is the rudderless excess of untrammelled power that democracy is designed to avoid.

The [Coronavirus Bill](#) presents Parliament with an opportunity to stand up for the great British traditions of respect for rule of law and fundamental rights, but the initial signs are the opposition has been cowed into saying it will waive it through. This may seem like the right thing to do in an emergency, but as the government's disastrous "herd-immunity" claims last week demonstrate, this is a time for debate, scrutiny, and challenge not for executive fiat and public obeisance. The Bill proposes extraordinary interferences with democratic norms: cancellation of elections; suspensions on time limits for the detention of the mentally ill; powers to close ports and airports; powers to prohibit events or gatherings in any place; allowing a single minister or civil servant to sign off budgetary allocations; and more powers for the intelligence services.

In constitutional democracies, emergency powers are usually constrained by a written constitution. In the UK, we must rely on parliament to ensure that measures are strictly time

limited and allow no more than is necessary. We hope our representatives have the courage to stand up for the rule of law and an enduring healthy society.

*23 March 2020*