

LIBERTY

LIBERTY'S BRIEFING ON REPEALING AND REPLACING THE CORONAVIRUS ACT 2020

MARCH 2021

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

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 libertyhumanrights.org.uk/policy.

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INTRODUCTION

1. This March marks the anniversary of the passing of the Coronavirus Act 2020 (CV Act) — legislation which imposed the greatest restrictions on civil liberties in at least a generation. Twelve months ago, within the context of the global coronavirus pandemic, Parliament nodded through in a single day fast-tracked legislation which contained powers to postpone elections, close borders, detain people not suspected of a crime, ban gatherings, and remove vital safeguards for disabled people, with scarcely any amendment. One year on, any initial justification for the Act's exceptional powers has evaporated entirely.
2. Emergency situations necessitate quick and decisive action, and Liberty has always supported proportionate action to protect lives. However, the CV Act has proven to be a fundamentally flawed piece of legislation. It established a sprawling web of coercive powers – many of which have been used arbitrarily against members of the public or rendered redundant as evidence on the nature of the virus has crystallised and public authorities have sought to refine their approach. Crucially, the CV Act, and the Government's wider response, has left many people stranded without support. The CV Act has never been fit for purpose and, as the Government seeks to “build back better”, we need a new approach – one that supports people and protects civil liberties and human rights.
3. **Liberty, in consultation with 19 charities and organisations and with the assistance of expert drafters, has produced the Coronavirus (Rights and Support) Bill to replace the CV Act.** The Coronavirus (Rights and Support) Bill, also known as the Protect Everyone Bill, pursues measures that are effective and proportionate, respect civil liberties, and prioritise support for people to comply with health guidelines rather than punishment. The Bill repeals the aspects of the Coronavirus Act 2020 that are harmful, maintains its anodyne provisions, and creates a range of protections in the areas of immigration, housing, employment, health and social care, data protection, education, access to justice, and prisons that promote human rights, civil liberties and public health. To read the Bill and accompanying Explanatory Note, please see the full details of Liberty's Protect Everyone campaign.¹
4. In the coming weeks, MPs will have the opportunity to vote on a motion to renew the powers in the CV Act for a further six months. Extending the CV Act would be a missed

¹ Liberty, *Protecting everyone during the coronavirus crisis*, March 2021: <https://www.libertyhumanrights.org.uk/fundamental/coronavirus>.

opportunity to change course, and risks setting a dangerous precedent for untrammelled restrictions on the civil liberty of the general population in response to any future situation that could be construed as a crisis. If the motion is rejected, the Government is afforded 21 days before the CV Act lapses – a window that can be used to propose alternative legislation.² **Liberty urges MPs to vote against the motion to renew the CV Act and support the alternative, rights-based measures contained in the Coronavirus (Rights and Support) Bill.**

EMBEDDING A PUBLIC HEALTH APPROACH

5. The UK's response to the pandemic has turned on criminalising every-day conduct and giving the police significant powers to enforce those criminal offences. But the coronavirus pandemic is, first and foremost, a public health crisis. Indeed, the statutory purpose of the powers the Government has relied on to impose restrictions on movement, gatherings and businesses is to protect public health, not enforce public order.³
6. Public health research indicates that prioritising punitive approaches can be ineffective, or even counter-productive.⁴ In February, a briefing note authored by Independent Sage drew attention to international examples which highlight the risks of relying on coercion, including evidence from the response of West African governments to the Ebola outbreak in 2014 that coercive quarantine rules served to create fear and lack of trust in the authorities when the engagement of the public was needed.⁵ Similarly, a study which modelled the effect of different measures on reporting symptoms and self-isolating in the context of the coronavirus pandemic in the UK, published by a group of scientists which includes members of the Government's Scientific Advisory Group for Emergencies (SAGE), concluded that "policies such as fines and police enforcement of self-isolation

² Section 98 (1), Coronavirus Act 2020.

³ Green, D.A., *How to improve the Coronavirus Regulations – some practical suggestions*, Law and Policy Blog, 6 April 2020, available at: <https://davidallengreen.com/2020/04/how-to-improve-the-coronavirus-regulations-some-practical-suggestions/>

⁴ Carter, H., Drury, J., Rubin, G.J., Williams, R. and Amlôt, R., *Communication during mass casualty decontamination: highlighting the gaps*, International Journal of Emergency Services, 2013, 2 (1). pp. 29-48: <https://www.emerald.com/insight/content/doi/10.1108/IJES-06-2012-0026/full/html>.

⁵ Independent SAGE, *Independent SAGE briefing note on use of punishments in the Covid response*, 16 February 2021, available at: <https://www.independentsage.org/independent-sage-briefing-note-on-use-of-punishments-in-the-covid-response>.

will either have little benefit or a negative effect” as they can create trade-offs by dissuading individuals from self-reporting.⁶

7. Coercive approaches can also distract from the real causes of why people may not be complying with public health regulations, and risk criminalising them for their circumstances. A Government-funded study on levels of compliance with self-isolation rules during the first six months of the pandemic found that not following the rules was associated with having a dependent child in the household, lower socioeconomic grade, greater hardship during the pandemic, and working in a key sector and suggested “practical support and financial reimbursement is likely to improve adherence”.⁷ Given the disproportionate vulnerability of people living in socio-economic deprivation to the virus, it is clear that those who are most at risk from falling ill are also those most in need of support to comply with public health advice. In April of last year, the Independent Scientific Pandemic Insights Group on Behaviours (SPI-B) advised that data indicated that people did not lack the motivation to adhere to current guidance, but that increased fines could disproportionately impact poor households.⁸ This accords with data from the first lockdown, which indicates that motivation for adherence to the regulations was based on social norms and a strong sense of community, rather than legal compulsion.⁹
8. The Coronavirus (Rights and Support) Bill repeals the police powers to detain potentially infectious people established by the Coronavirus Act 2020, limits Parliament’s scope to establish new criminal offences and police powers under public health legislation to where there are egregious and deliberate attempts to risk public health, mandates transparency about how these powers are being used, and requires rigorous human rights and equality impact assessments of any proposed restrictions. This clears the way for the Government to focus on providing clear public health guidance, increasing public

⁶ Lucas, T., Davis, E., Ayabina, D., Borlase, A., Crellen, T., Pi, L., Medley, G., Yardley, L., Klepac, P., Gog, J. and Hollingsworth, T.D., *Engagement and adherence trade-offs for SARS-CoV-2 contact tracing*, Philosophical Transactions of The Royal Society B Biological Sciences, 2020, at p.14: <https://www.medrxiv.org/content/10.1101/2020.08.20.20178558v1.full-text>.

⁷ Smith, L.E., Potts, H.W.W., Amlôt, R., Fear, N.T., Michie, S., Rubin, G.J., *Adherence to the test, trace, and isolate system: results from a time series of 21 nationally representative surveys in the UK (the COVID-19 Rapid Survey of Adherence to Interventions and Responses [CORSAIR] study)*, 2020, available at: <https://www.medrxiv.org/content/10.1101/2020.09.15.20191957v1.full.pdf>.

⁸ Scientific Pandemic Insights Group on Behaviours (SPI-B), *Theory and evidence base for initial SPI-B recommendations for phased changes in activity restrictions*, 2020, at pg.1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892031/S0470_Theory_and_evidence_base_for_initial_SPI-B_recommendations_for_phased_changes_in_activity_restrictions.pdf.

⁹ Jackson, J., Posch, C., Bradford, B., Hobson, Z., Kyprianides, A., Yesberg, J., *The lockdown and social norms: why the UK is complying by consent rather than compulsion*, LSE BPP, 27 April 2020, available at: <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms>.

understanding of what is required of them, and providing adequate support to facilitate compliance. In Liberty's view, this evidence-based approach will be more effective in promoting public health and safety than relying heavily on policing and the threat of punishment.

ROLLING BACK POLICE POWERS

9. The Coronavirus (Rights and Support) Bill repeals Section 51 and Schedule 21 of the CV Act, which confer significant new powers on police and immigration officials to detain people they deem “potentially infectious” for testing, with “potentially infectious” being so broadly defined as to capture large parts of the population at any given moment.¹⁰ This Schedule also allows public health officers to demand that people provide biological samples¹¹ and other personal data relating to their health, personal relationships, and travel history.¹² It further allows a public health officer to require a person remain indefinitely in isolation in a specified place, without a firm upper time limit.¹³
10. The Government has not provided adequate justification to support the maintenance of these coercive powers, particularly given quarantine powers are already available to local authorities under the Public Health Act 1984, with the added safeguard of requiring judicial authorisation. Concerns about the misuse of Schedule 21 powers led the Crown Prosecution Service (CPS) to take the unprecedented step of launching a monthly review of every charge those provisions in May of last year.¹⁴ Every CPS review published to date has concluded that every single charge under Schedule 21 has been wrongful – 246 charges under the legislation; 246 of them incorrect.¹⁵ In sum, offences established by these provisions have been wrongly charged in one hundred percent of cases, and the powers the Schedule confers have been repeatedly used unlawfully against members of the public. These provisions are evidently so open to misuse as to be arbitrary and unjustified.
11. In addition to repealing Section 51 and Schedule 21 of the CV Act, the Coronavirus (Rights and Support) Bill establishes limits on the powers to impose restrictions under Part 2A of the Public Health Act 1984. These provisions have provided the statutory basis for

¹⁰ Coronavirus Act 2020, Schedule 21, Part 1, paragraph 2.

¹¹ Coronavirus Act 2020, Schedule 21, Part 1, paragraph 10(2).

¹² Coronavirus Act 2020, Schedule 21, Part 1, paragraph 14(3).

¹³ Coronavirus Act 2020, Schedule 21, *ibid*.

¹⁴ Karim, F., *CPS will review every charge under coronavirus law*, The Times, 2 May 2020, available at: <https://www.thetimes.co.uk/article/cps-will-review-every-charge-under-coronavirus-law-0l37rsg8f>.

¹⁵ Crown Prosecution Service, *January's coronavirus review findings*, 22 February 2021, available at: <https://www.cps.gov.uk/cps/news/januarys-coronavirus-review-findings>.

regulations which have established the most drastic restrictions on liberty ever seen in the UK – the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, and their counterpart regulations in Wales, Northern Ireland and Scotland. These Regulations established expansive new criminal offences and provided the police with intrusive, discretionary powers to enforce restrictions on people’s freedom of movement and disperse gatherings. As the Joint Committee on Human Rights commented, they have exposed many people to “the widest and deepest set of government interferences with their rights in their lifetimes”.¹⁶

12. Between March 2020 and December 2020, police issued 32,329 fines under these Regulations.¹⁷ Over time, the enforcement powers afforded to the police under the Regulations have increased – the maximum level of fines that may be imposed for purported breaches of the Regulations has risen from £960 to £10,000. Liberty has consistently raised concerns that the risk of misuse of the powers established by the Regulations has been exacerbated by inconsistent Government communications as regards the nature and extent of the restrictions. The police have repeatedly acted beyond the already staggeringly broad new powers they have been given.

CASE STUDY: POLICE OVERREACH

In January 2021, Jessica Allen and Eliza Moore drove five miles to take a walk at a reservoir.

¹⁸ Jessica suffers from anxiety and organised with Eliza to arrive in separate cars, park with two spaces between their cars and to bring their own drinks. After arriving, the women were surrounded by police and told the hot drinks they had brought along were not allowed as they were “classed as a picnic”. Both women were issued with £200 FPNs. Initially, the police force involved, Derbyshire Police, said driving for exercise was “not in the spirit of the national effort” during lockdown. After Jessica and Eliza shared their story, the force later apologised to the two women and withdrew the FPNs.¹⁹ Jessica said the experience

¹⁶ Joint Committee on Human Rights, *The Government’s response to COVID-19: human rights implications*, Seventh Report of Session 2019–21, September 2020, available at:

<https://committees.parliament.uk/publications/2649/documents/26914/default>.

¹⁷ National Police Chiefs’ Council, *Update on national Crime Trends, and Fixed Penalty Notices issued under Covid Regulations*, 8 January 2021, available at: <https://news.npcc.police.uk/releases/update-on-national-crime-trends-and-fixed-penalty-notices-issued-under-covid-regulations>.

¹⁸ Lowbridge, C., *Covid: Women on exercise trip ‘surrounded by police’*, BBC News, 8 January 2021, available at: <https://www.bbc.com/news/uk-england-derbyshire-55560814>.

¹⁹ Murray, J., *Derbyshire police withdraw two women’s £200 fines for lockdown walk*, The Guardian, 11 January 2021, available at: <https://www.theguardian.com/world/2021/jan/11/derbyshire-police-withdraw-two-womens-200-fines-for-lockdown-walk>.

was “very intimidating” and had left her feeling scared of the police in general.²⁰

13. The impact of the Regulations has not been evenly felt across communities. Patterns of use have mirrored long-standing disparities in who experiences the sharp end of police power. An investigation of national-level data by Liberty’s editorially independent journalism unit, Liberty Investigates, and the Guardian revealed that people of colour were 54% more likely to be fined than white people.²¹ Liberty is profoundly concerned by the racially uneven enforcement of the Regulations, as well as the specific harms faced by Gypsy, Roma, and Traveller communities, disabled people, homeless people, people with mental health needs and children who are targeted by these powers. During the coronavirus pandemic, the consequences of heavy-handed and uneven policing are magnified – eroding trust in the authorities, putting our public health at risk, and rendering communities both over-policed and under protected during the biggest public health crisis in a generation.

CASE STUDY: HEAVY HANDED POLICING

Kusai is a charity youth worker for the 4Front Project. In April 2020, he was called to act as an appropriate adult for a teenager who had been arrested on suspicion of possessing drugs. Kusai was called as the teenager had previously been involved with 4Front.²² Upon arrival at the scene, Kusai was wearing a 4Front uniform t-shirt as well as a lanyard displaying his ID. He also identified himself to the police as a youth worker and a key worker. Kusai was arrested by four police officers²³ for failing to produce a driver’s licence. He was subsequently issued a fine for breaking the lockdown rules.

Kusai commenced legal action against the Metropolitan Police with his solicitors sending a pre-action letter²⁴ arguing that Kusai did have a reasonable excuse for being outside his home as his support work required him to attend incidents in person and, as a key worker,

²⁰ Lowbridge, C., *Covid: Women on exercise trip ‘surrounded by police’*, BBC News, 8 January 2021, available at: <https://www.bbc.com/news/uk-england-derbyshire-55560814>.

²¹ Busby, M. and Gidda, M., *BAME people fined more than white population under coronavirus laws*, May 2020, available at: <https://www.theguardian.com/world/2020/may/26/bame-people-fined-more-than-white-population-under-coronavirus-laws>.

²² Ash, S. and Kraemer, D., *Coronavirus: Charity worker challenges ‘unlawful’ lockdown fine*, BBC News, 16 June 2020, available at: <https://www.bbc.co.uk/news/uk-53044320>.

²³ The4FrontMedia, *The 4Front Project – Police Abuse of Power Against 4Front Staff*, Youtube, 15 June 2020, available at: <https://www.youtube.com/watch?v=1rffh702Qhg>.

²⁴ Hodge Jones & Allen Solicitors, *Urgent Judicial Review Pre-Action Letter [Re: Kusai Rahal]*, 15 June 2020, available at: https://15f5957d-0343-4107-b3ff-da50c1883854.filesusr.com/ugd/cb4798_21965acb68e74318a9b7704680e5e674.pdf.

he was not subject to the same lockdown rules. His legal team described it as an "example of the rushed, overzealous application of the coronavirus regulations" and raised concerns that he had been racially discriminated against.²⁵

14. The Coronavirus (Rights and Support) Bill provides that the Part 2A powers can only be used to establish new criminal offences where an individual intentionally causes immediate harm to another person. It limits the fines that can be imposed to £200 and makes clear that these powers cannot be used at all against people who are homeless or rough sleeping. All other public health advice can be delivered by way of clear, coherent, and accessible guidance and support. The Bill also requires the publication of weekly data on enforcement, disaggregated according to age, ethnicity, gender, disability, the location of the enforcement action, the context of the enforcement (for example, if it took place while someone was engaging in a protest) and whether it was reactive, proactive or serendipitous action.²⁶ **Liberty recommends the powers to make regulations under Part2A under the Public Health Act 1984 are constrained to prioritise public health over coercion and control.**

ADDRESSING HUMAN RIGHTS AND EQUALITY IMPACTS

15. Many measures implemented to stop the spread of coronavirus have disproportionately impacted marginalised groups. In Liberty's view, the Government has failed to account for and take sufficient steps to mitigate the far-reaching human rights and equality implications of the restrictions on liberty which have shaped our lives over the last year.²⁷ The Government is already under a duty pursuant to both the Human Rights Act 1998 and the Equality Act 2010 to have due regard to the human rights and equality implications of any measures they implement. The Coronavirus (Rights and Support) Bill supplements these duties, by requiring that the Secretary of State has particular regard for their human rights and equality duties when making regulations under the Public Health Act

²⁵ Ash, S. and Kraemer, D., *Coronavirus: Charity worker challenges 'unlawful' lockdown fine*, BBC News, 16 June 2020, available at: <https://www.bbc.co.uk/news/uk-53044320>.

²⁶ Allsopp, R., *Mapping the Data-Driven Landscape*, OMDDAC, 25 January 2021, available at: <https://www.omddac.org.uk/news/mapping-the-data-driven-landscape>.

²⁷ During the first national lockdown, it was only following the threat of legal action by two families with autistic children that the Government clarified in the official guidance that people can leave their homes for medical reasons and that learning disabled or autistic people may leave the house more than once a day if they need to. Other issues endure. For example, the Government has also failed to adequately consider children's ability to play when imposing restrictions on movement. It has also failed to consider the rights of disabled people in institutional settings in respect of its regulations regarding support bubbles.

1984. Liberty recommends Government rigorously assesses and addresses the human rights and equality impacts of proposed restrictions before they have effect.

HOLDING THE GOVERNMENT TO ACCOUNT

16. During this pandemic, the Government has wielded extraordinarily broad powers and repeatedly circumvented Parliament, stretching constitutional principles to their limits. They have, at times necessarily, passed laws at pace. But this inevitably poses risk as regards the quality of the law and governance, and risks normalising the erosion of democratic norms. The Coronavirus (Rights and Support) Bill institutes robust accountability mechanisms, which are critical in times of crisis.

FIRM SUNSET CLAUSE

17. The scrutiny mechanisms in the CV Act are an inadequate check on such exceptional State powers. Although it was widely reported that the legislation will lapse after two years, the government may extend any part of the legislation for a further six months and make further renewals beyond this period, without prior Parliamentary approval.²⁸ The Coronavirus (Rights and Support) Bill contains a firm sunset clause of six months. After this time period the Bill expires, and the Government will need to introduce fresh primary legislation for debate if it seeks to extend the powers it confers.

PROPER PARLIAMENTARY SCRUTINY

18. Rather than including a statutory basis for lockdown in the CV Act, the Government chose to introduce alongside it a succession of statutory instruments implemented under the Public Health (Control of Disease) Act 1984. Nearly 70 sets of regulations have been made, with ever-decreasing justification, under a super emergency procedure in the 1984 Act which delays Parliamentary debate on such measures until several weeks after their entry into force.²⁹ The Government has had to write to the Speaker at least twenty-five times to explain why legislation has come into force before it has even been laid before Parliament.³⁰ Hundreds of other statutory instruments have been laid before Parliament

²⁸Coronavirus Act 2020, Section 90.

²⁹ Adam Wagner, *Table of COVID-19 Lockdown Regulations*, 10 February 2021: <https://docs.google.com/document/d/1ne4zhPYAZK8G867D1lz0Gg2ZJFLGmF2K/edit>,

³⁰ Joint Committee on Human Rights, *The Government's response to COVID-19: human rights implications*, Seventh Report of Session 2019–21, September 2020, available at: <https://committees.parliament.uk/publications/2649/documents/26914/default>.

subject to the negative procedure – where there is no parliamentary debate, but instruments may be annulled if a motion is passed by either House within 40 days of it being laid before Parliament – the majority of which breach normal parliamentary convention that made negative instruments are laid before Parliament 21 days before it comes in to effect.³¹ This is a startling erosion of normal democratic processes, which serves to further minimise the ability of Parliament to scrutinise and hold Government to account in its handling of the pandemic. The Coronavirus (Rights and Support) Bill requires Parliamentary debate before any regulations under the Public Health Act 1984 are made. **Liberty recommends the Public Health Act 1984 is amended to ensure that future regulations are subject to prior parliamentary scrutiny.**

19. The Coronavirus (Rights and Support) Bill also establishes a new specialist Joint Committee on Coronavirus to provide scrutiny of the Government's coronavirus response, consisting of members of the House of Commons and members of the House of Lords. The Bill requires the Committee to consider and report on the evidence base for any regulations made under public health powers, the exercise of powers provided for by regulations made under public health powers, the equality and human rights impact of the coronavirus pandemic, and any primary legislation relating to the coronavirus pandemic. This seeks to address the diminished role of Parliament during this crisis and subject the Government to rigorous scrutiny, ultimately promoting governance and increasing accountability. **Liberty recommends a Parliamentary committee is established to provide targeted scrutiny of the Government's handling of the pandemic.**

PROTECTING PROTEST

20. Protest – as protected by the rights to freedom of expression (Article 10 ECHR) and freedom of association and assembly (Article 11 ECHR) – is the lifeblood of democracy. During the pandemic, protest has been an important means for communities facing structural inequality, economic hardship and decisions which have immediate impacts on their freedoms and will fundamentally shape our society for years to come to make their voices heard. It is a crucial way of expressing dissent, actively asserting our membership of society and building movements to effect change and hold the Government to account. As power has been concentrated in the hands of the executive and democratic scrutiny

³¹ Hansard Society, *Coronavirus Statutory Instruments Dashboard*, 9 March 2021, available at: <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>.

mechanisms diminished, preserving the ability to safely protest and hold the authorities to account becomes more, not less, critical.

21. While necessary and proportionate restrictions on protest to protect public health are permissible under human rights law, no explicit protection has been made for protest in the CV Act 2020 or in many of the regulations made under the Public Health Act 1984 which impose restrictions on movement and gatherings. In November, the Home Secretary also made the very concerning claim that protests of more than two people are unlawful, and reportedly briefed police chiefs that they are expected to impose this effective blanket ban on protest.³² This has led to people being criminalised *en masse* for voicing opposition to state practices.³³ Scores of people have been arrested for taking to the streets to protest against lockdown restrictions,³⁴ and protest organisers who have done their best to comply with pandemic restrictions, such as carrying out a risk assessment, have been cowed into not going ahead.³⁵ This risk is not unfounded – earlier this month Greater Manchester Police fined a healthcare worker £10,000 at a small, socially distanced protest the Government’s decision on NHS pay.³⁶

CASE STUDY: PROTEST

Karen is a mental health worker and Unison representative.³⁷ In March 2021, Karen organised and attended a small, socially distanced protest over the government’s 1 per cent pay rise for NHS staff. Before the protest could go ahead, Karen was spoken to by police officers who explained that it would be illegal under the coronavirus regulations. Despite all attendees wearing masks and cones being marked out on the floor to help maintain social distancing, Karen explained the situation to those in attendance and informed them that the protest would have to end. The protest lasted less than ten minutes.³⁸

³² Hamilton, F., *Coronavirus lockdown: Priti Patel wants police to stop protests of more than two*, The Times, 3 November 2020, available at: <https://www.thetimes.co.uk/article/coronavirus-lockdown-priti-patel-wants-police-to-stop-protests-of-more-than-two-zdpv3xczx>.

³³ Liberty, *Liberty calls for protest protections*, 22 January 2021, available at: <https://www.libertyhumanrights.org.uk/issue/liberty-calls-for-protest-protections>.

³⁴ BBC News, *Covid: More than 150 arrests at London anti-lockdown protest*, 28 November 2020, available at: <https://www.bbc.co.uk/news/uk-england-london-55116470>.

³⁵ Liberty, *Liberty challenges police on cancelled trans rights protest*, 11 November 2020, available at: <https://www.libertyhumanrights.org.uk/issue/liberty-challenges-police-on-cancelled-trans-rights-protest>.

³⁶ Robson, S., *Organiser of NHS pay protest in city centre facing £10,000 fine*, Manchester Evening News, 7 March 2021, available at: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/nhs-pay-protest-fine-manchester-19984620>.

³⁷ Ibid.

³⁸ Robson, S., *GMP stand by £10,000 fine over NHS pay protest that lasted less than 10 minutes - as organiser says she will contest it*, Manchester Evening News, 8 March 2021, available at:

Once the gathering disbursed, Karen was informed by the police that she was being issued with the maximum £10,000 FPN for organising a gathering of more than 30 people. Greater Manchester police claimed around 40 people had attended. Superintendent Caroline Hemingway said in a statement from the force that fines had been issued as there had been a “*degree of non-compliance*”.³⁹ Karen is disputing the FPN as she believes she was negotiating with the police and complied once ordered that the protest could not go ahead.

22. Liberty is acutely concerned that this indiscriminate approach has failed to account for the risks specific outdoor protests pose and the State’s duty to facilitate the fundamental right to protest, disproportionately infringing on the rights to freedom of expression and assembly. There is also a real risk that these extraordinary powers may provide the foundation for longer term erosions of civil liberties – as the pandemic eases the State may be tempted to establish restrictions which hinder our ability to take to the streets long after this crisis ends. The Coronavirus (Rights and Support) Bill repeals section 52 and Schedule 22 of the CV Act, which empower the Secretary of State for Health to prohibit either specific events or gatherings, or those of a specified description. It also provides that powers conferred by the Public Health Act 1984 cannot be used to prohibit participation in protest. **Liberty recommends that the right to protest is explicitly protected under the CV Act and Public Health Act 1984.**

PROTECTING ACCESS TO JUSTICE

23. The pandemic has resulted in significant and rapid changes in the operation of the justice system, which have a significant bearing on access to justice and the rule of law. The Coronavirus (Rights and Support) Bill safeguards these principles in the context of coronavirus fines and remote hearings.

ESTABLISHING A UNIFORM RIGHT OF APPEAL

24. There is no formal appeal process to appeal against a fixed penalty notice issued under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

<https://www.manchestereveningnews.co.uk/news/greater-manchester-news/gmp-stand-10000-fine-over-19987460>.

³⁹ Greater Manchester Police, *Updated statement on Manchester City Centre protest*, 7 March 2021, available at: <https://www.gmp.police.uk/news/greater-manchester/news/news/2021/march/updated-statement-on-manchester-city-centre-protest>.

Inconsistencies exist between local authorities as regards the scope to informally appeal against fixed penalty notices. As the Justice Secretary has acknowledged, this means that some people who wish to challenge a fine they believe was unfairly levied will have no option but to refuse to pay and risk prosecution.⁴⁰ Liberty believes that people's ability to appeal against a fine issued under the Regulations should not be a postcode lottery, or require people to risk a criminal record, with the potentially life altering consequences that carries. The imperative to establish an appeal mechanism has acquired added importance as the amount of money people can be fined has risen exponentially, but fines are not means tested. There is a real risk that this system will push people into poverty when they are already facing economic hardship. The Coronavirus (Rights and Support) Bill establishes a uniform right to appeal against any fine issued under the Regulations. Any person issued with a fine has a right to appeal against it to a magistrates' court in England within seven days, without risking criminal penalties. **Liberty recommends a uniform right of appeal against fixed penalty notices issued under coronavirus powers is established.**

ADVANCING EFFECTIVE PARTICIPATION AND OPEN JUSTICE

25. The pandemic has precipitated a significant shift to online justice. Remote hearings raise human rights concerns, because they may impede effective participation and create obstacles to open justice. Evidence indicates they may impair participants' ability to communicate with their legal representatives, follow proceedings or get the adjustments they need if they are vulnerable.⁴¹ The Coronavirus (Rights and Support) Bill requires the Secretary of State for Justice to undertake a human rights impact assessment to consider the impact of remote proceedings on the effectiveness of justice, the experience of participants, the availability of legal representation, and in relation to criminal proceedings, plea outcomes, conviction rates, and detention and sentencing rates. This assessment must also consider the extent to which remote proceedings enable open and transparent justice and effective participation, as well as uphold the health and safety of court users.⁴² Further, the long-term impacts of remote hearings,

⁴⁰ Dearden, L., *Coronavirus: Public must risk prosecution to challenge lockdown fines, justice secretary says*, *The Independent*, 20 April 2020, available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-lockdown-fine-challenge-court-police-robert-buckland-a9474926.html>.

⁴¹ Byrom, N., *What we know about the impact of remote hearings on access to justice: a rapid evidence review*, Nuffield Family Justice Observatory, 2020, available at: https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_vulnerable%20groups_rapid%20review_20200506.pdf.

⁴² Legal Sector Workers United, *Press release: 'Our courts are not Covid-secure' says Legal Sector Workers United as it calls for immediate halt to possession proceedings*, 11 January 2021, available at:

and the underlying reasons for those impacts, are poorly understood. It is important that the Government collects robust data to inform future policy making. The Bill requires the Government to collect and publish data on the impact of virtual hearings on participation, open justice and justice outcomes. **Liberty recommends the human rights implications of the shift to remote hearings are carefully considered and addressed.**

CURTAILING EXPANSIVE EXECUTIVE POWERS

26. The CV Act concentrated an enormous amount of power in the hands of the executive. The Coronavirus (Rights and Support) Bill constrains the provisions which establish powers to indefinitely close borders and postpone elections.

POWER TO CLOSE BORDERS

27. Section 50 and Schedule 20 of the CV Act empower the Secretary of State to direct the operator of any airport, port, hover-port or channel tunnel port to suspend operations wholly or in part where there is a real and significant risk that there are insufficient resources to adequately secure the border as a result of coronavirus. Borders can be closed for six hours in the first instance, and then on a renewable basis with no upper time limit. Failure to comply with a port direction or supplementary direction without reasonable cause would constitute a criminal offence. This power is wholly distinct from powers to require new arrivals to the UK to be tested or self-isolate for a specified time period.
28. Even in a public health emergency, this is an extraordinary measure, particularly if exercised continuously for an extended period of time. The Coronavirus (Rights and Support) Bill mandates the Secretary of State publishes a rigorous impact assessment before this power is used and to take steps to mitigate its impacts, including as regards the right to private and family life under Article 8 ECHR, the State's obligations under the Refugee Convention 1951, and on the provision of humanitarian aid. **Liberty recommends the provisions of the CV Act which afford the Government the power to close borders are amended to require the Government to mitigate the human rights implications of any proposed use of this power.**

POWERS TO POSTPONE ELECTIONS

29. Sections 59-62 of the CV Act not only postponed for a year the local, Policing and Crime Commissioner and mayoral elections that were due to be held in May, but also vested in the Minister for the Cabinet Office the power to make further changes to the timing and “manner” of an election by statutory instrument.⁴³ While local elections were postponed for a month in 2001 due to a foot-and-mouth outbreak,⁴⁴ and have been moved a number of times to coincide with European elections,⁴⁵ this year-long delay represents the longest period elections have been postponed for in the UK since World War Two.⁴⁶ The Coronavirus (Rights and Support) Bill amends these provisions to require that a human rights impact assessment be carried out before these powers can be used. **Liberty recommends that the provisions of the CV Act which afford the Government the power to postpone elections are amended to require the Government to mitigate the human rights implications of any proposed use of this power.**

ENSURING UNIVERSAL ACCESS TO HEALTHCARE

30. In a public health crisis, unless all of us are protected, none of us are protected. However, the continued operation of several immigration laws, policies and practices means that migrants are deterred from accessing healthcare when they need it. Recently, more than 341 organisations have called on the Department of Health and Social Care to ensure that the vaccination programme works for everyone, including through guaranteeing a data-sharing firewall and ending hostile environment measures in the NHS.⁴⁷ The Coronavirus (Rights and Support) Bill suspends measures which are the lynchpin of the hostile environment and may inhibit vaccine take up, undermine public health and ultimately risk contributing to preventable suffering and death.

⁴³ Coronavirus Act 2020, Sections 61 and 63

⁴⁴ BBC News, *Blair confirms election delay*, April 2001, available at: http://news.bbc.co.uk/1/hi/uk_politics/1255703.stm.

⁴⁵ Larkin, K., *Holding European Parliament Elections concurrently with local elections increase turnout and benefits certain parties*, Democratic Audit UK, April 2014, available at: <http://eprints.lse.ac.uk/81568/1/democraticaudit.com-Holding%20European%20Parliament%20elections%20concurrently%20with%20local%20elections%20increase%20turnout%20and%20benefit.pdf>.

⁴⁶ Serhan, Y., *The Coronavirus's Real and Immediate Threat to Democracy*, *The Atlantic*, March 2020, available at: <https://www.theatlantic.com/international/archive/2020/03/london-mayoral-election-coronavirus-covid19/607924>.

⁴⁷ Vaccines for All Campaign, *Vaccines for All*, 3 March 2021, available at: <http://www.vaccineforall.co.uk>.

DATA-SHARING FIREWALL

31. The sharing of personal data between essential public services, central Government departments and the Home Office is a cornerstone of the hostile environment. Data-sharing currently occurs in respect of health, education, banking, driving, welfare benefits, employment, homelessness, local authority support, and policing. It often occurs without the knowledge or consent of the data subject, and in some cases the trusted public servant who initially collected the data. Secrecy and non-consensual sharing are enabled in part by an exemption to data protection rights set out at Schedule 2, paragraph 4 of the Data Protection Act 2018.
32. These data-sharing agreements and practices have significant implications. Data collected by frontline services that people should be able to trust is being passed to the Home Office, and then used to take immigration enforcement action against people.⁴⁸ The data-sharing schemes also mean that people are being flagged to the Home Office for immigration enforcement when they attempt to access essential public services. Furthermore, the Home Office is telling public services when they should and should not allow a person to access services – sometimes on the basis of inaccurate data, leading to wrongful denial of services, as was the case for some Windrush citizens.
33. The Government was warned of the potential detrimental effects of the hostile environment on migrants' health during the pandemic as early as 16 March 2020.⁴⁹ In April, 60 MPs signed an open letter to the Health Secretary calling on the Government to respect the founding idea behind the NHS – that healthcare should be available to all who need it – and act decisively to ensure migrants are able to access healthcare without fear.⁵⁰
34. Almost half of all migrants surveyed by the Joint Council for the Welfare of Immigrants (JCWI) said that they would be scared to access healthcare if they got sick during the

⁴⁸ Liberty, *Care Don't Share*, 2018, available at:

<https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20%27Care%20Don%27t%20Share%27%20Report%20280119%20RGB.pdf>.

⁴⁹ Gardner, Z., *Migrants deterred from healthcare during the COVID-19 pandemic*, JCWI, February 2021, available at: <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=a135b52c-e9d0-469c-aad8-3dde31aec7a1>.

⁵⁰ Bulman, M., *Undocumented migrants dying of coronavirus because they're too afraid to seek help, MPs and charities warn*, The Independent, 18 April 2020, available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-undocumented-migrants-deaths-cases-nhs-matt-hancock-a9470581.html>.

pandemic.⁵¹ Other groups have highlighted the ways that ongoing data-sharing may affect migrants' take-up of Government programmes such as the NHS Test and Trace app.⁵²

CASE STUDY: DETERRING ACCESS TO HEALTHCARE

Elvis, a Filipino man, died from coronavirus in April 2020 without seeking assistance from the NHS.⁵³ Elvis did not have up-to-date papers that said he was allowed to live and work in the UK. He feared that he would be charged thousands of pounds for treatment⁵⁴ and that by seeking help, he would be reported to the Home Office.⁵⁵ He had been in the UK for about 10 years and was working as a cleaner. Elvis' wife, who also developed symptoms, did not seek help for the same reasons. Elvis' death prompted 60 MPs to write a cross-party letter to the health secretary calling for the immediate suspension of charging for migrants and all associated data-sharing and immigration checks.⁵⁶

35. The Coronavirus (Rights and Support) Bill suspends the immigration exception in the Data Protection Act 2018. It also establishes a duty on the part of the Secretary of State to make regulations providing for a firewall – an end to data-sharing practices between public services, and Government departments holding public service data, and Home Office immigration enforcement – to ensure that migrants can access healthcare without fear of arrest, deportation, and detention. **Liberty recommends that a data-sharing firewall between essential public services and Home Office immigration enforcement is established to protect public health.**

SUSPENDING NHS CHARGING

36. The Government has added coronavirus testing and treatment to the list of treatments exempt from NHS charging. While this is a welcome step, the wider charging regime

⁵¹ Gardner, Z., *Migrants deterred from healthcare during the COVID-19 pandemic*, JCWI, February 2021, available at: <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=a135b52c-e9d0-469c-aad8-3dde31aec7a1>.

⁵² Darr, S., *Data & Trust: Will migrants use the NHS app?*, Open Rights Group, 7 October 2020: <https://www.openrightsgroup.org/blog/data-trust-will-migrants-use-the-nhs-app>.

⁵³ Bulman, B., *'I'm hiding all the time': The undocumented migrants left terrified during lockdown*, The Independent, 5 July 2021, available at: <https://www.independent.co.uk/news/uk/home-news/undocumented-migrants-coronavirus-uk-lockdown-a9601616.html>.

⁵⁴ Apsana Begum MP, *Letter to Matt Hancock on Hostile Environment*, 17 April 2020, available at: <https://apsanabegum.com/letter-to-matt-hancock-on-hostile-environment>.

⁵⁵ Bulman, M., *Undocumented migrants dying of coronavirus because they're too afraid to seek help, MPs and charities warn*, The Independent, 18 April 2020, available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-undocumented-migrants-deaths-cases-nhs-matt-hancock-a9470581.html>.

⁵⁶ Apsana Begum MP, *Letter to Matt Hancock on Hostile Environment*, 17 April 2020, available at: <https://apsanabegum.com/letter-to-matt-hancock-on-hostile-environment>.

remains in force.⁵⁷ There is clear evidence that this regime – coupled with data-sharing practices – stop people accessing healthcare, even where exemptions exist.⁵⁸ Nobody should be deterred from seeking care because of the threat of being charged or falling into debt. The Coronavirus (Rights and Support) Bill suspends immigration health surcharges – which make some migrants liable to be charged up to 150% of costs for secondary healthcare – ensuring that all migrants can access healthcare, regardless of their financial means. **Liberty recommends all NHS charging is suspended to enable everyone to access healthcare during the pandemic.**

LEAVING NO CHILD BEHIND

37. The coronavirus pandemic has led to significant disruption to children and young people's education and access to support that schools provide, particularly in marginalised communities. The Coronavirus (Rights and Support) Bill provides safeguards children who need it most.

RESTORING SEND DUTIES

38. On 30 April 2020, the Secretary of State for Education issued a notice using powers under the Coronavirus Act 2020 to modify the Children and Families Act 2014 so that local authorities would only be required to “use reasonable endeavours”, rather than having an absolute duty, to secure special educational needs and disabilities (SEND) provisions for disabled students. In practice, the Alliance for Inclusive Education (ALLFIE) has found that this modification left many disabled students without any support. Fifty-four per cent of the parents of disabled children surveyed by ALLFIE said that they did not receive any support from either the local authority or their children's school to help with home schooling.⁵⁹ As one parent explained. “there's a shocking lack of offer of support... There was no offer from [the child's] school or local authority. Speech and Language Therapy as part of his mainstream SEND unit provision, nothing.”⁶⁰

⁵⁷ Department of Health and Social Care, *Overseas NHS visitors: implementing the charging regulations*, 24 February 2021, available at: <https://www.gov.uk/government/publications/overseas-nhs-visitors-implementing-the-charging-regulations>.

⁵⁸ Gardner, Z., *Migrants deterred from healthcare during the COVID-19 pandemic*, JCWI, February 2021, available at: <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=a135b52c-e9d0-469c-aad8-3dde31aec7a1>.

⁵⁹ ALLFIE, *Alliance for Inclusive Education's submission to the Education Select Committee inquiry: The impact of COVID-19 on education and children's services*, 14 August 2020, available at: <https://www.allfie.org.uk/news/briefings/submission-to-the-education-committee-impact-of-covid-19-on-education-and-childrens-services-inquiry>.

⁶⁰ ALLFIE, *Alliance for Inclusive Education's submission to the Education Select Committee inquiry: The impact of COVID-19 on education and children's services*, 14 August 2020, available at: <https://www.allfie.org.uk/news/briefings/submission-to-the-education-committee-impact-of-covid-19-on-education-and-childrens-services-inquiry>.

39. The Government reinstated disabled children and young people's entitlements under the Children and Families Act 2014 in September 2020, however, it remains possible for the Government to invoke these easements to make changes again that will weaken local authorities' duties with dire consequences for millions of disabled people.⁶¹ The Coronavirus (Rights and Support) Bill repeals the easements to the Children and Families Act 2020. Liberty recommends the provisions of the CV Act which diluted local authorities' duties to provide SEND support are repealed.

MITIGATING THE IMPACTS OF SCHOOL CLOSURES

40. The Education Secretary has on multiple occasions ordered temporary school closures, resulting in a shift to remote education provision. While this may be necessary and proportionate to protect the rights of children and young people, education workers, and their wider communities, school closures have had significant impact on children's rights and a disproportionate impact on some groups. The Government has failed to mitigate these impacts, with potential long-lasting consequences.

41. Disabled children and young people, including those with special educational needs, and their families and communities, have been disproportionately impacted by temporary school closures. Many pupils have been unable to access educational support, which will entrench existing inequalities. For example, remote education curricula produced by the Department for Education has not factored in the needs of disabled children, failing to provide BSL interpretation or audio description. Eighty-nine per cent of respondents in a survey conducted by ALLFIE said that no alternative provision had been arranged if online learning was not accessible for disabled students.⁶² Similar findings were made by OFSTED in their February 2021 report on remote education, in which 59% of parents said their SEND child has been disengaged from remote education, compared with 39% of parents of non-SEND children.⁶³ In addition, disabled children have not been provided with

⁶¹ Richardson, H. and Sellgren, K., 'Utter abandonment' of special needs families during lockdown, BBC News, 1 July 2020, available at: <https://www.bbc.co.uk/news/education-53248609>.

⁶² ALLFIE, *Submission to Children's Commissioner for England: Covid-19 and Disabled Children's Education*, 4 June 2020, available at: <https://www.allfie.org.uk/news/briefings/submission-to-childrens-commissioner-for-england-covid-19-and-disabled-childrens-education>.

⁶³ OFSTED, *Remote education research*, 18 February 2021, available at: <https://www.gov.uk/government/publications/remote-education-research/remote-education-research>.

the necessary computer equipment and assistive technology to allow them to access remote education.⁶⁴

42. Gypsy, Roma, and Traveller (GRT) pupils have also been disproportionately affected by the shift to remote education. Before the pandemic, GRT communities faced some of the greatest issues in accessing the education system of any ethnic group.⁶⁵ Various GRT organisations have highlighted the ways that the shift to remote educational provision will contribute to greater inequalities.⁶⁶ This is, in part, due to ongoing issues of digital exclusion and lack of home learning support for GRT pupils. A 2018 study by the Traveller Movement found that only 38% of members of Gypsy and Traveller communities surveyed had a household internet connection, compared to 86% of the general population.⁶⁷
43. The Coronavirus (Rights and Support) Bill requires the Secretary of State to undertake a human rights impact assessment prior to taking a decision to close schools. In doing so, they must have particular regard for the effect that such a decision would have on the best interests of pupils, the effects on disabled pupils and pupils with special educational needs, the impact on the wellbeing and mental health of pupils, and digitally excluded pupils. If a decision to close schools is taken, the Bill also requires the Secretary of State to publish statutory guidance on the provision of remote education, with particular regard for the need to secure every child's right to an inclusive education. **Liberty recommends steps are taken to mitigate negative impacts of school closures on young people's human rights.**

PROVIDING FREE SCHOOL MEALS

44. During periods when schools have closed the Government has failed to ensure that children who would ordinarily receive free school meals still have access to adequate food. Two weeks after schools closed, the Department for Education set up an electronic voucher system so that families could buy food at selected supermarket chains.

⁶⁴ ALLFIE, *Submission to Children's Commissioner for England: Covid-19 and Disabled Children's Education*, 4 June 2020, available at: <https://www.allfie.org.uk/news/briefings/submission-to-childrens-commissioner-for-england-covid-19-and-disabled-childrens-education>.

⁶⁵ Friends, Families, and Travellers, *Written evidence submitted by Friends, Families and Travellers*, Women and Equalities Committee, July 2020, available at: <https://committees.parliament.uk/writtenevidence/8641/pdf>.

⁶⁶ The Traveller Movement, *Open letter to the Department for Education: Don't further marginalise Gypsy and Irish Traveller school pupils*, 9 November 2020, available at: <https://travellermovement.org.uk/news-news/125-open-letter-to-the-department-for-education-don-t-further-marginalise-gypsy-and-irish-traveller-school-pupils>.

⁶⁷ Friends, Families, and Travellers, *Digital exclusion in Gypsy and Traveller communities in the United Kingdom*, September 2018, available at: <https://www.gypsy-traveller.org/wp-content/uploads/2018/09/Digital-Inclusion-in-Gypsy-and-Traveller-communities-FINAL-1.pdf>.

However, research by Human Rights Watch found this system “deeply flawed” and failed to meet the needs of low-income families, resulting in people relying on foodbanks to feed their children or schools distributing food directly to families to plug the gap.⁶⁸ The Coronavirus (Rights and Support) Bill empowers the Secretary of State for Education to make regulations to provide for direct cash transfers, or other non-voucher systems, for free meal replacement during school closures. This draws on effective alternatives developed by education authorities in Scotland, Wales, and Northern Ireland, which child right experts describe as less complicated and more respectful families’ dignity than the approach in England.⁶⁹

45. The Bill also requires free school meals to be provided during the school holidays for the duration of the pandemic. Given free school meals are provided for children who, by definition, experience pre-existing disadvantage and may rely on these meals as their primary source of nutrition, the failure to continue to provide food during the holidays raises significant human rights concerns. **Liberty recommends a free school meal replacement scheme which relies on direct cash transfers or other non-voucher systems and that free school meals are provided throughout the school holidays.**

PROTECTING HEALTH DATA

46. Throughout the pandemic, the Government has introduced various measures that rely on collection of personal data. However, these measures have been challenged for the lack of robust privacy safeguards by information rights and privacy campaigners. In July 2020, the Government was forced to admit that the Test and Trace programme had been operating unlawfully due to its failure to complete a data safety assessment, following a successful legal challenge by Open Rights Group.⁷⁰ The Government’s responses to the pandemic must not ride roughshod over privacy rights. The failure to protect privacy also contributes to marginalised communities’ distrust of such programmes.⁷¹
47. The Coronavirus (Rights and Support) Bill creates a general duty on the part of public authorities to have due regard to the need to protect people’s privacy in its response to the coronavirus. It also creates additional duties on the part of the Information

⁶⁸ Human Rights Watch, *UK: Children in England Going Hungry with Schools Shut*, 27 May 2020, available at: <https://www.hrw.org/news/2020/05/27/uk-children-england-going-hungry-schools-shut>.

⁶⁹ Human Rights Watch, *Submission to the UK Parliament Education Committee*, 23 July 2020, available at: <https://www.hrw.org/news/2020/07/23/submission-uk-parliament-education-committee>.

⁷⁰ Open Rights Group, *Government admits Test and Trace unlawful*, 20 July 2020, available at: <https://www.openrightsgroup.org/press-releases/government-admits-test-and-trace-unlawful>.

⁷¹ Darr, S., *Data & Trust: Will migrants use the NHS app?*, Open Rights Group, 7 October 2020, available at: <https://www.openrightsgroup.org/blog/data-trust-will-migrants-use-the-nhs-app>.

Commissioner's Office (ICO) to advise Parliament, the Government, and other institutions and bodies on the human rights and data protection implications of any measures and policies that collect data in connection with the Government's response to coronavirus, as has been done by data regulators in other countries.⁷² The ICO must also monitor the processing of personal data for contact-tracing and publish assessments relating to the Government's processing of contact-tracing data, including information about any breaches of data law committed by a public authority or relevant person.

48. The Coronavirus (Rights and Support) Bill provides that the appropriate national authority should make provision for the decentralisation of contact-tracing and associated data. Last year, NHSX was forced to make a U-turn on its centralised data collection model⁷³ after concerns were raised that it would open the door for the Government to not only access enormous quantities of sensitive information but also enable cross-referencing of previously unlinked data.⁷⁴ Indeed, the existence of data-sharing schemes under the hostile environment⁷⁵ and the sharing of health data with the Department for Work and Pensions in relation to people claiming benefits⁷⁶ gives good reason to be wary of such schemes. A centralised contact-tracing system would not only be an unnecessary infringement of our data privacy rights, but would further diminish trust and deter uptake of the contact-tracing app among marginalised communities.
49. The Coronavirus (Rights and Support) Bill also requires the Secretary of State to publish guidelines for the processing of personal data, including the purposes for which data may be processed, the maximum period for which data can be retained, and the measures needed to ensure the security of the personal data collected. Finally, the Bill requires the Secretary of State to regularly review the NHS Covid-19 app, NHS Test and Trace, and the NHS Covid-19 Data Store for their efficacy, impact on people's privacy, and information rights. Any data collected for the purposes of contact tracing and connected purposes must also be deleted within three months of being collected. **Liberty**

⁷² Killock, J., *Fighting and winning for privacy, where was the ICO*, Open Rights Group, 5 August 2020, available at: <https://www.openrightsgroup.org/blog/fighting-and-winning-for-privacy-where-was-the-ico>.

⁷³ Sabbah, D. and Hern, A., *UK abandons contact-tracing app for Apple and Google model*, The Guardian, 18 June 2020, available at: <https://www.theguardian.com/world/2020/jun/18/uk-poised-to-abandon-coronavirus-app-in-favour-of-apple-and-google-models>.

⁷⁴ Liberty, *Written evidence from Liberty: NHSX Contact Tracing App*, Joint Committee on Human Rights, 6 May 2020, available at: <https://committees.parliament.uk/writtenevidence/4081/pdf>; Big Brother Watch, *Everything you need to know about the NHSX contact tracing app*, 2020, available at: <https://bigbrotherwatch.org.uk/campaigns/emergency-powers/faq>.

⁷⁵ Liberty, *Care Don't Share*, 3 December 2018, available at: <https://www.libertyhumanrights.org.uk/issue/care-dont-share>.

⁷⁶ Bulman, *DWP plans to obtain people's medical data will deter benefit claimants accessing healthcare, doctors warn*, 26 February 2019, available at: <https://www.independent.co.uk/news/uk/home-news/dwp-benefit-claims-medical-data-sharing-nhs-healthcare-doctors-charities-a8797991.html>.

recommends stringent safeguards on data collected for the purposes of protecting public health are implemented and overseen and implemented by an empowered ICO.

SUPPORTING EVERYONE TO STAY HOME

50. A central element of the Government's coronavirus response has been to call on people to "stay home". However, many people simply cannot afford to "stay home". The Coronavirus (Rights and Support) Bill ensures everyone can follow this public health advice.

ENSURING NOBODY LOSES THEIR HOME

51. In March 2020, the Government announced that no renter would be "forced out of their home in this difficult time",⁷⁷ putting in place an eviction ban via successive stays on possession proceedings.⁷⁸ In September, the stay was lifted, and possession proceedings began again, with the courts prioritising the most egregious cases.⁷⁹ In the same month, the Housing Secretary announced that bailiffs could not enforce evictions where local lockdown measures were in force, effectively extending the eviction ban.⁸⁰ The ban on enforcement of evictions by bailiffs in all but the most serious cases was extended in January,⁸¹ February,⁸² and again in March, and is set to continue until May.⁸³

52. In respect of rent payments, from March 2020 to January 2021, landlords could not evict tenants because of rent arrears amassed since the initial national lockdown; they could only act if nine months of arrears had built up prior to the pandemic.⁸⁴ However, recent

⁷⁷ MHCLG and Robert Jenrick MP, *Complete ban on evictions and additional protection for renters*, 18 March 2020, available at: <https://www.gov.uk/government/news/complete-ban-on-evictions-and-additional-protection-for-renters>.

⁷⁸ Shekarian, S., *Government extends eviction ban once again*, Hodge Jones & Allen, 17 February 2021, available at: <https://www.hja.net/government-extends-eviction-ban-once-again>.

⁷⁹ MHCLG, *Understanding the possession action process: A guide for private landlords in England and Wales*, 27 November 2020, available at: <https://web.archive.org/web/20201202125950/https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-private-landlords-in-england-and-wales>.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Brady, D., *Bailiff eviction ban extended to end of March*, Inside Housing, 15 February 2021, available at: <https://www.insidehousing.co.uk/news/news/bailiff-eviction-ban-extended-to-end-of-march-69526>.

⁸³ BBC News, *Covid-19: Evictions ban in England extended until May*, 10 March 2021, available at: <https://www.bbc.co.uk/news/uk-politics-56350475>.

⁸⁴ MHCLG, *Understanding the possession action process: A guide for private landlords in England and Wales*, 27 November 2020, available at: <https://web.archive.org/web/20201202125950/https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-private-landlords-in-england-and-wales>.

amendments to the rules dropped the exemption in relation to arrears accrued during the pandemic and reduced the length of arrears that would qualify for eviction to six months.⁸⁵

CASE STUDY: HOUSING

William has chronic obstructive pulmonary disease and is in his sixties, putting him at a very high risk from COVID-19. During the first lockdown, William was told by his doctor that he had to stay shielding at home, meaning that he was unable to continue his freelance work spraying cars. This placed William in significant financial difficulty, forcing him to rely on foodbanks for support.

In June 2020, William was served an eviction notice under section 21 of the Housing Act because of rent arrears he had accrued whilst he was shielding and unable to work.⁸⁶

53. As highlighted by multiple housing unions and legal practitioners, the Government's stop-start approach to the eviction ban has caused significant anxiety and insecurity for renters, who have suffered financially as a result of the pandemic.⁸⁷ In January 2021, Citizens Advice found that half a million renters in the UK are in arrears, and that one in three private renters have lost income during the pandemic.⁸⁸ The Coronavirus (Rights and Support) Bill provides for a ban on all eviction notices for the duration of the pandemic response, by way of a stay on eviction proceedings and the giving of eviction notices. It also establishes a rent waiver for the duration of the crisis, meaning that any arrears accrued as a result of the crisis cannot be expected or included in any future grounds for eviction. **Liberty recommends that a robust eviction ban and rent waiver be established.**

SAFE ACCOMMODATION

54. Apart from uncertainty regarding the eviction ban, renters continue to face problems with the quality of their housing and accommodation. Many people live in overcrowded

⁸⁵ MHCLG, *Guidance for landlords and tenants*, 26 February 2021, available at: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities/coronavirus-covid-19-guidance-for-landlords-and-tenants>.

Booth, R., *Eviction orders being issued despite government Covid pledge*, The Guardian, 28 February 2021, available at: <https://www.theguardian.com/society/2021/feb/28/eviction-orders-being-issued-despite-uk-government-covid-pledge>.

⁸⁶ With thanks to William and ACORN Bristol for this case study.

⁸⁷ Shekarian, S., *Government extends eviction ban once again*, Hodge Jones & Allen, 17 February 2021, available at: <https://www.hja.net/government-extends-eviction-ban-once-again>.

⁸⁸ Citizens Advice, *Half a million renters in arrears as evictions set to resume*, 5 January 2021, available at: <https://www.citizensadvice.org.uk/about-us/about-us1/media/press-releases/half-a-million-renters-in-arrears-as-evictions-set-to-resume>.

housing and accommodation, which has had an impact on their ability to shield from the virus. A report by the Health Foundation concluded that overcrowding may have contributed to increased death rates in poorer areas of the country during the pandemic.⁸⁹

55. For some, “home” is simply not a safe place to be. In July 2020, it was reported that more than 40,000 calls and contacts had been made to the National Domestic Abuse Helpline during the first three months of the first lockdown—an 80% increase from the normal number of calls made.⁹⁰ One report by Women’s Aid in August 2020 found that over 90% of respondents currently experiencing domestic abuse said that the COVID-19 pandemic had negatively impacted them in at least one way. Of those women living with their abuser during lockdown surveyed by Women’s Aid, 61% said the abuse had worsened.⁹¹ Migrant survivors have also been disproportionately affected during the pandemic, with the ‘No Recourse to Public Funds’ condition forcing survivors “to choose between becoming destitute or returning/staying with the perpetrator.”⁹²

56. The Government has failed to adequately protect homeless people and rough sleepers during the pandemic. During the first lockdown, the Government’s ‘Everyone In’ emergency housing and accommodation scheme is estimated to have saved hundreds of lives.⁹³ Liberty welcomed the scheme while highlighting the continued difficulties that rough sleepers, particularly migrant rough sleepers, experienced while trying to access emergency accommodation.⁹⁴ Instead of using the scheme as an opportunity to end rough

⁸⁹ Heath, L., *Overcrowding has affected households’ ability to protect themselves during pandemic, study finds*, Inside Housing, 5 January 2021, available at:

<https://www.insidehousing.co.uk/news/news/overcrowding-has-affected-households-ability-to-protect-themselves-during-pandemic-study-finds-69086>.

⁹⁰ Kelly, J. and Graham, S., *Coronavirus: Domestic abuse helpline sees lockdown surge*, BBC News, 23 July 2020, available at: <https://www.bbc.co.uk/news/uk-53498675>.

⁹¹ Women’s Aid, *A Perfect Storm: The impact of the COVID-19 pandemic on domestic abuse survivors and the services supporting them*, 18 August 2020, <https://www.womensaid.org.uk/a-perfect-storm-the-impact-of-the-covid-19-pandemic-on-domestic-abuse-survivors-and-the-services-supporting-them>.

⁹² Latin American Women’s Rights Service, *Women and Equalities Committee - Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics: Evidence submission*, 29 April 2020, available at: <https://lawrs.org.uk/wp-content/uploads/2020/12/2020-LAWRS-Women-and-Equalities-Committee-call-for-evidence-COVID-19.pdf>.

⁹³ Westwater, H., *Hundreds of homeless lives saved in lockdown thanks to Everyone In scheme*, 28 September 2020, available at: <https://www.bigissue.com/latest/hundreds-of-homeless-lives-in-saved-lockdown-thanks-to-everyone-in-scheme>.

⁹⁴ Taylor, D., *Homeless Migrants Still Sleeping Rough Despite PM’s Pledge, Say Charities*, April 2020, available at: <https://www.theguardian.com/society/2020/apr/16/homeless-migrants-still-sleeping-rough-despite-pms-pledge-say-charities>

sleeping altogether, the Government stopped funding the programme in May 2020, forcing many rough sleepers and homeless people back onto the streets.⁹⁵

57. The Coronavirus (Rights and Support) Bill requires the Government to ensure that everyone in need has access to housing and accommodation support, including migrants with ‘No Recourse to Public Funds’, homeless people and rough sleepers, and survivors of domestic abuse. It specifies that any provided accommodation must be safe and coronavirus secure. **Liberty recommends that measures are implemented to ensure everyone has access to safe and secure accommodation during this public health crisis.**
58. Throughout the pandemic, various asylum accommodation facilities have come under criticism for being unsafe. In September 2020, the Home Office opened Penally Camp and Napier Barracks as contingency accommodation for asylum seekers, against the advice of Public Health England.⁹⁶ The facilities have been widely criticised for their deleterious and unsafe conditions: indeed, 178 people tested positive for Covid-19 at Napier barracks in January alone. In March 2021, a report by the Independent Chief Inspector of Borders and Immigration (ICIBI) and Her Majesty’s Inspectorate of Prisons (HMIP) criticised the barracks accommodation, noting that “[t]he environment at both sites, especially Napier, was impoverished, run-down and unsuitable for long-term accommodation.” In respect of Napier, the report stated that “[p]eople at high risk of self-harm were located in a decrepit ‘isolation block’ which we considered unfit for habitation.”⁹⁷ Elsewhere, asylum seekers in state-provided hotel accommodation have raised concerns over the poor level of health and sanitation measures, quality and choice of food, availability of water and toiletries in these facilities, as well as restrictions on liberty and freedom of movement.⁹⁸ **Liberty recommends that asylum seekers are given access to safe and secure accommodation during this public health crisis.**

⁹⁵ Williams, J., *‘The numbers on the streets are going to rocket’: Homeless people put up in hotels amid pandemic to be kicked out as government quietly scraps scheme*, Manchester Evening News, 14 May 2020, available at: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/the-numbers-streets-going-rocket-18254318>.

⁹⁶ BBC News, *Asylum seekers: Napier Barracks and Penally camp ‘filthy and run-down’*, 8 March 2021, available at: <https://www.bbc.co.uk/news/uk-england-kent-56325360>.

⁹⁷ Independent Chief Inspector of Borders and Immigration, *An inspection of the use of contingency asylum accommodation – key findings from site visits to Penally Camp and Napier Barracks*, 8 March 2021, available at: <https://www.gov.uk/government/news/an-inspection-of-the-use-of-contingency-asylum-accommodation-key-findings-from-site-visits-to-penally-camp-and-napier-barracks>.

⁹⁸ Taylor, D., *Asylum seeker brings case against ‘curfew’ at London hotel*, The Guardian, 19 February 2021, <https://www.theguardian.com/uk-news/2021/feb/19/asylum-seeker-brings-case-against-covid-curfew-at-london-hotel>.

PROVIDING FOR GYPSY, ROMA AND TRAVELLER COMMUNITIES

59. The needs of Gypsy, Roma and Traveller (GRT) communities in respect of housing and accommodation have been continually neglected throughout the pandemic. As early as March 2020, GRT rights organisations wrote to the Government asking it to lay out clear plans to support GRT communities. In particular, organisations asked the Government to extend the eviction ban in the rented sector to GRT communities, given that the continued potential use of enforcement powers seek to address a purported problem – “unauthorised encampments” – that are often the direct result of a lack of adequate site provision.⁹⁹ Indeed, the Government recognised in the 2018 consultation on ‘Powers for dealing with unauthorised developments and encampments’ that, “accommodation insecurity is an issue with far-reaching impacts, including on educational attainments, social inclusion and on both physical and mental health.
60. Additional insecurity arises when accommodation is unauthorised and travelling communities are liable to be moved on at short notice”.¹⁰⁰ Throughout the pandemic, Gypsy, Roma, and Traveller communities have also had limited or even no access to water and sanitation facilities.¹⁰¹ The Coronavirus (Rights and Support) Bill makes clear the eviction ban extends to GRT communities, suspends commonly used enforcement powers and requires the Government to ensure that GRT communities are able to access water and sanitation facilities. **Liberty recommends that GRT communities are given equal access to housing and accommodation in a manner that respects and protects their nomadic way of life.**

ENSURING EVERYONE CAN MEET THEIR BASIC NEEDS

61. In April 2020, the Government increased the Universal Credit (UC) Standard Allowance and Working Tax Credit by £20 per week. As research by the Trussell Trust concluded, this was worth over £1,000 a year to a household and has protected people who have

⁹⁹ Friends, Families, and Travellers, *COVID-19: UK Government must lay out clear plan to support Gypsies, Travellers, and Boaters*, 24 March 2020, available at: <https://www.gypsy-traveller.org/health/covid-19-uk-government-must-lay-out-clear-plan-to-support-gypsies-travellers-and-boaters>.

¹⁰⁰ HM Government, *Government response to the consultation on powers for dealing with unauthorised development and encampments*, February 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917668/Unauthorised_development_and_encampments_response.pdf.

¹⁰¹ Friends, Families, and Travellers, *COVID-19: UK Government must lay out clear plan to support Gypsies, Travellers, and Boaters*, 24 March 2020, available at: <https://www.gypsy-traveller.org/health/covid-19-uk-government-must-lay-out-clear-plan-to-support-gypsies-travellers-and-boaters>.

lost income or their jobs from experiencing poverty during the crisis.¹⁰² Amid speculation that the Government would end the £20 uplift in its 2021 budget, the Joseph Rowntree Foundation released findings in January 2021 showing that removing the uplift would plunge around half a million more people, including 200,000 children, into poverty. This would have disproportionate effects on already-marginalised communities, including people of colour and disabled people.¹⁰³ In March 2021, it was announced that the Universal Credit uplift would remain in place until September 2021.¹⁰⁴

62. Notwithstanding the uplift, the Government has not provided sufficient support for everyone in need. The Government has failed to extend the £20 uplift to over 2 million claimants in receipt of ‘legacy’ benefits, such as income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, and Housing Benefit. This policy has disproportionately affected disabled people, with over 1.9 million disabled people on ‘legacy benefits’ being denied the same financial lifeline as those on Universal Credit, in spite of facing similar pressures as well as additional vulnerabilities throughout the pandemic.¹⁰⁵ A report by the Disability Benefits Consortium, a network of 100 organisations, found that 82% of disabled claimants have had to spend more money than normal during the pandemic, often due to greater food shopping and utility bills. As a result, two-thirds of claimants have had to go without essential items at some point in this period, and almost half have reported being unable to meet financial commitments such as rent and household bills.¹⁰⁶

¹⁰² The Trussell Trust, *Dignity or destitution? The case for keeping the Universal Credit lifeline*, February 2021, available at: <https://www.trusselltrust.org/wp-content/uploads/sites/2/2021/02/dignity-or-destitution-UC-standard-allowance-report-final.pdf>.

¹⁰³ Maddison, F. and Porter, I., *Keep the lifeline: why the Government should keep the £20 uplift to Universal Credit*, Joseph Rowntree Foundation, 18 January 2021, available at: <https://www.jrf.org.uk/report/keep-lifeline-why-government-should-keep-20-uplift-universal-credit>.

¹⁰⁴ Scullion, L. Robertshaw, D., Summers, K., and de Vries, R., *Universal credit: extending the £20-a-week uplift isn’t enough – our research shows the whole system needs an overhaul*, 3 March 2021, available at: <https://theconversation.com/universal-credit-extending-the-20-a-week-uplift-isnt-enough-our-research-shows-the-whole-system-needs-an-overhaul-156154>.

¹⁰⁵ Disability Rights UK, *Budget 2021: “Outrageous” that over 1.9 million disabled people on legacy benefits refused £20 week financial lifeline*, 9 March 2021, available at: <https://www.disabilityrightsuk.org/news/2021/march/budget-2021-%E2%80%9COutrageous%E2%80%9D-over-19-million-disabled-people-legacy-benefits-refused-%C2%A320> and Anwar, A., *Why the £20 uplift in Universal Credit must be extended to those on legacy benefits*, Trust for London, 18 February 2021, available at: <https://www.trustforlondon.org.uk/news/why-the-uplift-in-universal-credit-must-be-extended-to-those-on-legacy-benefits/>; and, Pring, J., *Legal action launched over ‘blatant discrimination’ of DWP’s £20-a-week uplift*, Disability News Service, 11 March 2021, available at: <https://www.disabilitynewsservice.com/legal-action-launched-over-blatant-discrimination-of-dwps-20-a-week-uplift>.

¹⁰⁶ Murray, N., *Pandemic poverty: Stark choices facing disabled people on legacy benefits*, Disability Rights Consortium, February 2021, available at: <https://www.disabilityrightsuk.org/sites/default/files/pdf/Pandemic%20Poverty%20-%20Stark%20choices%20facing%20disabled%20people%20on%20legacy%20benefits%20FINAL.pdf>.

63. Further, an estimated 1.4 million migrants in the UK have ‘No Recourse to Public Funds’ (NRPF), meaning that they have had no access to state benefits throughout the pandemic. Research by JCWI has found that a fifth of migrants surveyed who were working before the pandemic have lost their jobs since the pandemic started. Of these migrants, 75% had no recourse to public funds. Migrants with NRPF were 52% more likely to say that it was not possible to safely self-isolate in their home.¹⁰⁷ The coronavirus pandemic is likely to exacerbate existing inequalities and to render migrants with NRPF, who are also disproportionately represented in precarious work, vulnerable.¹⁰⁸
64. The Coronavirus (Rights and Support) Bill ensures that everyone—regardless of their financial circumstances or immigration status—is able to access the support they need to stay home, self-isolate and live a dignified life. The Bill suspends No Recourse to Public Funds, giving all migrants access to mainstream benefits. It removes the five-week Universal Credit waiting period, and also extends the uplift to Universal Credit to ‘legacy’ benefits, to ensure that everyone is able to access sufficient resources to meet their needs. **Liberty recommends that benefits sufficient to ensure people enjoy an adequate standard of living and can safely self-isolate are extended to everyone.**

KEEPING ALL WORKERS SAFE

65. Early on in the pandemic, the Government introduced the furlough scheme that was designed to protect workers. Notwithstanding the scheme, many workers have been unable to access sufficient support throughout the pandemic or have been forced into dangerous conditions. Additionally, the coronavirus pandemic is having a particularly significant effect on migrant workers and workers in low-paid and insecure work who were already at higher risk of experiencing labour abuses and exploitation.¹⁰⁹ In April 2020, many workers in frontline roles—such as cleaners, delivery drivers, couriers, security guards, and supermarket workers—reported to the anti-labour-trafficking

¹⁰⁷ JCWI, *No Recourse to Public Funds is a public health risk and causes destitution*, February 2021, available at: <https://www.jcwi.org.uk/no-recourse-to-public-funds-public-health-risk-destitution>.

¹⁰⁸ Rob McNeil, *Between a rock and a hard place: the COVID-19 crisis and migrants with No Recourse to Public Funds (NRPF)*, 26 June 2020, available at:

<https://migrationobservatory.ox.ac.uk/resources/commentaries/between-a-rock-and-a-hard-place-the-covid-19-crisis-and-migrants-with-no-recourse-to-public-funds-nrpf/>; and, Dickson, E., Jolly, A., Morgan, B., and Qureshi, F., *Research report: Local Authority Responses to people with NRPF during the pandemic*, 27 August 2020, available at:

https://www.researchgate.net/publication/343774922_Research_report_Local_Authority_Responses_to_people_with_NRPF_during_the_pandemic.

¹⁰⁹ Focus on Labour Exploitation, *No worker left behind: Protecting vulnerable workers from exploitation during and after the coronavirus (COVID-19) pandemic*, April 2020, available at:

<https://www.labourexploitation.org/publications/no-worker-left-behind-protecting-vulnerable-workers-exploitation-during-and-after-covid>

organisation Focus on Labour Exploitation (FLEX) that they had not been given sufficient information or protective equipment, in spite of being in close proximity with high numbers of people every day.¹¹⁰

CASE STUDY: WORKERS' RIGHTS

Emanuel Gomes passed away from suspected coronavirus in April 2020.¹¹¹ Emanuel spent the last days of his life cleaning an office in the Ministry of Justice.¹¹² He had worked at the MoJ since February 2018, where he was outsourced to the cleaning company OCS. As an agency worker, Emanuel was not entitled to holiday or sick pay. At the time, most civil servants were working from home.

Emanuel fell ill and suffered from a lost appetite, phlegm, and a fever. Emanuel's union, United Voices of the World, suggest that he only continued to attend work because the MoJ and OCS refused to offer him any occupational sick pay. Emanuel died after being taken home by a colleague who was concerned about his symptoms including that Emanuel didn't know where he was or how to get home.¹¹³ In the months after, Emanuel's death was officially recorded as hypertension of the heart¹¹⁴ and the MoJ stated that there was no Covid-19 outbreak at its offices.¹¹⁵

"Emanuel should not have been at work. He should have been able to take the time off to rest, recover and seek whatever medical treatment he needed.... Like millions of workers across the country, Emanuel simply couldn't afford to get sick. Doing so would have left him unable to buy food or pay his rent. Forcing him to make that choice ended up costing his life." - Justice for Emanuel, United Voices of the World

¹¹⁰ Focus on Labour Exploitation, *No worker left behind: Protecting vulnerable workers from exploitation during and after the coronavirus (COVID-19) pandemic*, April 2020, available at: <https://www.labourexploitation.org/publications/no-worker-left-behind-protecting-vulnerable-workers-exploitation-during-and-after-covid>

¹¹¹ United Voices of the World, *Justice for Emanuel*, April 2020, available at:

<https://www.uvwunion.org.uk/en/campaigns/ministry-of-justice/justice-for-emanuel/>

¹¹² Grant, H. and Da Silva, B.R., *Emanuel Gomes died just hours after his cleaning shift. Why was he working?*, The Guardian, 26 June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/26/emanuel-gomes-died-just-hours-after-his-cleaning-shift-why-was-he-working>

¹¹³ United Voices of the World, *Worker Stories*, 2020, available at: <https://www.uvwunion.org.uk/en/your-uvw/worker-stories>.

¹¹⁴ Grant, H. and Da Silva, B.R., *Emanuel Gomes died just hours after his cleaning shift. Why was he working?*, The Guardian, 26 June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/26/emanuel-gomes-died-just-hours-after-his-cleaning-shift-why-was-he-working>.

¹¹⁵ Grant, H. and Da Silva, B.R., *MOJ failed to investigate Covid-19 cluster among cleaners*, The Guardian, 26 June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/26/moj-failed-to-investigate-potential-covid-19-cluster-among-cleaners>.

66. The Coronavirus (Rights and Support) Bill provides that workers must be provided with full pay when they are sick and/or self-isolating. It raises statutory sick pay (SSP) to the rate of a full week's pay, and also removes the lower limit for those who can claim SSP, which will ensure that the lowest-paid workers are able to access this support. Additionally, the Bill increases the minimum wage up to the Living Wage (and for workers in London, the London Living Wage). Employers must undertake risk assessments of workplaces and provide workers with personal protective equipment (PPE). Additionally, labour inspections must continue to take place, to guard against workplace exploitation. **Liberty recommends that statutory sick pay and minimum wage are increased, and measures are implemented to prevent the exploitation of essential workers during the pandemic.**

RELEASING PEOPLE FROM DETENTION SETTINGS

67. The pandemic poses significant risks to people deprived of their liberty in detention settings. People held in detention are at heightened risk of infectious diseases due to overcrowding, inability to social distance or self-isolate, high rates of underlying medical conditions and inadequate sanitation, all of which amplify the spread of coronavirus. As the World Health Organization acknowledged in its guidance on coronavirus and places of detention, “people in prisons and other places of detention are not only likely to be more vulnerable to infection with Covid-19, they are also especially vulnerable to human rights violations.”¹¹⁶ Staff risk exposing their families and communities to infection, with detention settings acting as a vector of disease in the surrounding community. The State has a duty under Article 2 ECHR to take steps to protect the right to life of people in its care, including people detained in prisons, youth offending institutions and immigration detention.

PRISONS

68. On 27 March 2020, as the country was gripped by the first wave of the pandemic, a coalition of nearly 600 organisations and individuals led by INQUEST and Women in Prison called on the Government to take urgent steps to reduce the number of people in prison, young offender institutions, training centres, and immigration detention settings. This reflected the overwhelming international consensus that the only way to prevent the

¹¹⁶ WHO, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance*, 15 March 2020, available at: <https://apps.who.int/iris/bitstream/handle/10665/336525/WHO-EURO-2020-1405-41155-55954-eng.pdf>.

spread of COVID-19 and minimise risks to people detained, frontline staff, and the wider community, is to lower the number of people in detention.

69. Throughout the pandemic, however, the Government has been slow to act. Some of the measures it has implemented to reduce the spread of COVID-19 have had detrimental impacts on those who remain inside such harmful settings.¹¹⁷ For example, some prisoners have been held in conditions amounting to solitary confinement for more than 23 hours a day.¹¹⁸ As of January 2021, 4800 prisoners had contracted COVID-19 and at least 71 had died since the start of the pandemic, with outbreaks being reported at multiple facilities across the country.¹¹⁹ The Coronavirus (Rights and Support) Bill creates a duty on the Secretary of State to take immediate steps to reduce the number of people in prisons and youth offender institutions, and to secure the release of clinically vulnerable prisoners who do not pose a risk to the public. **Liberty recommends steps are taken to reduce the number of people detained in prisons as a matter of urgency.**

IMMIGRATION DETENTION

70. Apart from prisons, hundreds of people continue to be held in immigration detention, reportedly without access to adequate sanitation or the ability to socially distance, despite the fact that removal to many countries remains unlikely given restrictions on international travel.¹²⁰ Hygiene and ventilation is substandard, people are often required to congregate in large groups and detainees report that staff do not wear protective equipment.¹²¹ Since the start of the pandemic, three immigration detention centres have seen outbreaks of COVID-19.¹²² People were sent to immigration detention centres despite confirmed coronavirus cases, and detainees with pre-existing health conditions

¹¹⁷ INQUEST and Women in Prison, *Reply to Lucy Frazer*, Women in Prison, 8 June 2020, available at: https://www.womeninprison.org.uk/media/downloads/INQUEST_and_WIP_reply_to_Lucy_Frazer_080620.pdf.

¹¹⁸ Newing, H., *Most prisoners spending 'at least' 23 hours a day in cells during pandemic*, The Justice Gap, 2 September 2020, available at: <https://www.thejusticegap.com/most-prisoners-spending-at-least-23-hours-a-day-in-cells-during-pandemic/>

¹¹⁹ Phillips, N., *COVID-19: 'Public health emergency unfolding' in prisons as coronavirus cases soar*, Sky News, 20 January 2021, available at: <https://news.sky.com/story/covid-19-public-health-emergency-unfolding-in-prisons-as-coronavirus-cases-soar-12192395>.

¹²⁰ 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 were released afterwards: <https://www.bbc.co.uk/news/uk-52560093>. However, hundreds of people remain in detention, and there have been multiple reported COVID-19 outbreaks in centres across the UK.

¹²¹ Schulkind, R., *Immigration detention must be urgently abandoned in wake of COVID-19*, Legal Action Group, April 2020, available at: <https://www.lag.org.uk/article/207943/immigration-detention-must-be-urgently-abandoned-in-wake-of-covid-19>.

¹²² Taylor, D. and Grierson, J., *New Covid outbreak at third UK immigration removal centre*, The Guardian, 15 January 2021, available at: <https://www.theguardian.com/uk-news/2021/jan/15/new-covid-outbreak-harmondsworth-uk-immigration-removal-centre>.

were reported as feeling “terrified” about becoming infected and had been given no information or effective means to protect themselves.¹²³ In August 2020, the Home Office resumed deportation flights in spite of warnings that such a policy would increase the risk of coronavirus transmission.¹²⁴ During the national lockdown in December, the Home Office chartered a deportation flight to Jamaica. One man on the flight, who had been held in immigration detention for a month prior, tested positive for Covid-19 upon arrival.¹²⁵

CASE STUDY: IMMIGRATION DETENTION

The charity Bail for Immigration Detainees (BID) has collected stories of their clients who are exposed to significant harm in immigration detention:

“One BID client told BID recently that he is allowed one shower per week and otherwise he is kept in his cell, as part of the new restrictions. He has now told us that he has contracted Covid-19, as have others on his wing. He has twice been granted bail but hasn’t been released due to the Home Office’s failure to source an address. Two other BID clients held in different prisons have also contracted Covid-19, one of whom has been hospitalised. We are deeply concerned about the mental health implications of treating people this way and the rapidity with which coronavirus is spreading within prisons.”¹²⁶

71. The Coronavirus (Rights and Support Bill) suspends provisions that permit detention of persons liable to removal, and requires that the Secretary of State for the Home Department must implement the immediate release of all persons detained under immigration powers in immigration removal centres (IRCs), short-term holding facilities, prisons, and any other place in which they are detained. The Bill also requires the Home

¹²³ Ailes, E., *Coronavirus: Yarl’s Wood detainees ‘terrified’ after positive test*, BBC News, 1 April 2020, available at: <https://www.bbc.co.uk/news/uk-52121224>.

¹²⁴ Bulman, M., *Home Office restarts deportation of asylum seekers despite coronavirus fears*, The Independent, 8 August 2020, available at: <https://www.independent.co.uk/news/uk/home-news/home-office-asylum-seekers-deportation-coronavirus-a9657761.html>.

¹²⁵ Taylor, D., *Prisoner deported from UK to Jamaica tests positive for Covid-19*, The Guardian, 5 December 2020, available at: <https://www.theguardian.com/world/2020/dec/05/prisoner-deported-uk-jamaica-test-covid-19-windrush-coronavirus>; De Noronha, L., *Mass deportation flight from the UK presents grave COVID risk*, The Gleaner, 26 November 2020, available at: <http://jamaica-gleaner.com/article/commentary/20201126/luke-de-noronha-mass-deportation-flight-uk-presents-grave-covid-risk>.

¹²⁶ Bail for Immigration Detainees, *Detention and deportation during Covid-19: what the figures tell us*, 17 November 2020, available at: <https://www.biduk.org/articles/721-detention-and-deportation-during-covid-19-what-the-figures-tell-us>.

Office to suspend all deportations and forced removals for the duration of the coronavirus response, in order to protect public health. **Liberty recommends that all people detained in immigration detention are immediately released.**

REINSTATING SAFEGUARDS IN SOCIAL CARE

72. The CV Act exposed people to infringements of their civil liberties by the stripping away of vital safeguards they benefit from in ordinary times. These provisions targeted disabled people and older people: groups already experiencing the sharp end of the pandemic and lockdown. The Coronavirus (Rights and Support) Bill shores up support for at risk-groups during this pandemic, rather than weakening it.
73. Section 15, in combination with Schedule 12, of the CV Act allows local authorities to apply easements under the Care Act 2014, weakening protections for those in need of care at a time when informal social support is restricted by the need for social distancing, and increasing pressure on local authority and NHS services by only allowing people access to support once conditions have reached a minimum threshold of severity. Government guidance for local authorities on the use of the easements states they should only be adopted if it is “*essential in order to maintain the highest possible level of services*”.¹²⁷ Of the eight councils that have implemented the easements, many of them have done so without providing transparent evidence that this high threshold has been met, and the guidance is not rigorous enough to prevent abuse. While the CV Act 2020 expressly required local authorities to continue to meet the needs of people to avoid a breach of the ECHR rights, a survey carried out by the British Institute of Human Rights of those working in social care found that 76% of respondents were provided with no legal training or clear information about how to assess when that threshold was crossed.¹²⁸
74. The vast majority of local authorities did not trigger the easement provisions in the CV Act, which underscores that these provisions have not been necessary. However, even in circumstances where local authorities do explicitly rely on them, retaining them on the statute books still carries significant rights risks. Liberty is concerned that the very existence of the easements provisions provides cover for local authorities to reduce care and support to disabled people, even when they have not formally implemented

¹²⁷ DHSC, *Care Act easements: guidance for local authorities*, 1 September 2020, available at: <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>.

¹²⁸ British Institute of Human Rights, *Written evidence from the British Institute of Human Rights*, Joint Committee on Human Rights, 22 July 2020, available at: <https://committees.parliament.uk/writtenevidence/9271/html>.

them. They also disincentivise local authorities from taking proactive steps to ensure people get the critical care they need at a time of crisis.¹²⁹

75. Disabled and older people have faced a significant reduction in the care they receive, inhibiting their ability to live dignified lives. A survey conducted by Mencap found that seven out of ten learning disabled people had their support cut during the pandemic, in whole or in part, leaving many in lockdown long after the easing of official restrictions.¹³⁰

CASE STUDY: DIRE CONDITIONS FOR THOSE IN NEED OF CARE

Liberty also gathered evidence from our members who rely on social care. We documented the distressing experience of a terminally ill ex-serviceman could not register for food or receive support from social services, so was forced to survive on packets of crisps. Another 90-year-old disabled Liberty member whose wife passed away at the start of the pandemic was contacted by social services, but his needs were not addressed, leaving him feeling lonely and suicidal.

Liberty was contacted by a man who told us that he had Post Traumatic Stress Disorder and agoraphobia. He was referred to the Community Mental Health Team. He had an operation in February 2020, but was offered no care “because of the virus”. His cleaner stopped coming and he was forced to sleep on the settee and to urinate in a bottle.

76. Given the devastating impact of the coronavirus on disabled and older people, leaving them without basic support is a dereliction of duty to those bearing the brunt of the pandemic. Disabled people account for six in every ten coronavirus related deaths.¹³¹ The average age of people who have died with coronavirus is above 80, with more than nine in 10 of the deaths among the over 65s.¹³² In order to ensure respect for the right to life it is crucial to ask whether the steps taken have done enough to protect the lives of those most vulnerable to the disease. Reducing the care provided for those facing acutely

¹²⁹ Liberty, Inclusion London, and Disability Rights UK, *Restoring the Rights of Disabled People: Scrap the Coronavirus Act Easements*, Inclusion London, September 2020, available at: <https://www.inclusionlondon.org.uk/wp-content/uploads/2020/09/Care-Act-easements-briefing-final1.pdf>.

¹³⁰ Mencap, “I don’t know what day it is or what the weather is like outside”: Social care cuts for people with a learning disability leaves families stuck in lockdown, 10 August 2020, available at: <https://www.mencap.org.uk/sites/default/files/2020-08/Social%20care%20survey%20%281%29.pdf>.

¹³¹ Office for National Statistics, *Updated estimates of coronavirus (COVID-19) related deaths by disability status, England: 24 January to 20 November 2020*, 11 February 2021, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbydisabilitystatusenglandandwales/24januaryto20november2020>.

¹³² Trigg, N., *Covid: How the UK reached 50,000 virus deaths*, BBC News, 11 November 2020, available at: <https://www.bbc.co.uk/news/health-54908177>.

heightened risks raises serious concerns as regards the State's obligations under the rights to life (Article 2 ECHR), right to be free from torture and inhuman or degrading treatment (Article 3 ECHR) and right to private and family life (Article 8 ECHR). The Coronavirus (Rights and Support) Bill repeals the easements in the CV Act, to reinstate vital safeguards for disabled and older people's rights.

CONCLUSION

77. The past year has seen everyone's lives completely upended. Families have been separated, businesses have been shuttered, cities have been silenced, and everyone has been touched by tragedy. A year ago we did not, and could not, know exactly what we faced. It was in many ways a different world. The Coronavirus Act was written in this time, a time of fear and uncertainty, and hurried through at great speed. Its provisions reflect the circumstances of its birth. Twelve months on we have learned a great deal about supporting people through a pandemic – what works and what absolutely does not. Indeed, much of this was known long before the coming of coronavirus, by the people with intimate experience working in frontline groups, and even more keenly by the communities with whom they work. Liberty's Coronavirus (Rights and Support) Bill takes what was not available in March 2020 – the experience of a year of pandemic – along with what was available but not used – the experience of these expert groups – to create a response to this crisis that supports people to uphold public health rather than criminalising them into it, that defends our democracy when it is needed most rather than centralising and circumventing, and that supports workers, children, disabled people, migrants, people in detention and all of us rather than leaving people behind. In other words, it is a response that protects everyone. Another way is possible, and it begins with repealing the Coronavirus Act.