

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Liberty's Second Reading Briefing on the Public Bodies Bill in the House of Lords**

**November 2010**

## **About Liberty**

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

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

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

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1. Clauses 1-7 of the *Public Bodies Bill* confers wide-ranging powers on Ministers in relation to specified bodies and offices, which include powers to abolish and merge identified entities and to modify the constitutional, funding and operational arrangements of others. In exercising these functions, Ministers are required to have regard to objectives of efficiency, effectiveness and economy, in addition to the need to ensure accountability in the exercise of powers conferred in the Bill. Clause 8(2) of the Bill restricts Ministers in the exercise of those powers conferred by clauses 1-7 to circumstances where *“the order does not remove any necessary protection, and... does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise”*.<sup>1</sup> Clauses 1 -7 each have attached schedules which list those organisations that the Government has already decided it wants to be abolished, merged etc. So for example Schedule 1 includes those bodies and offices to be abolished; Schedule 2 includes those bodies to be merged and so on.

2. Clause 11 however grants Ministers the power to add any of the 150 bodies listed at Schedule 7 of the Bill to those schedules subject to the wide-ranging powers set out at clauses 1-7, including the power to abolish the body entirely. The mechanism for adding the bodies listed in Schedule 7 to those schedules that allow for abolition, merging and modification is contained in clause 27. This provides for an order to be made by way of statutory instrument and further specifies that a *“provision which may be made by an order under this Act may be made by repealing, revoking or amending an enactment (whenever passed or made)”*.<sup>2</sup>

3. Liberty recognises that, in this climate of austerity, a variety of options for reducing public sector spending fall to be considered. We further acknowledge that, in some circumstances this may involve abolishing or paring back established organisations. Liberty is concerned, however, that arrangements with far-reaching implications fall to be made by executive order. Many of the organisations listed in the various schedules to the Bill were created by primary legislation and came therefore to be created by the will of Parliament. It is entirely inappropriate for such bodies to be scrapped or fundamentally reformed at the imperative of a Minister without due regard to democratic process.

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<sup>1</sup> Public Bodies Bill: Clause 8(2).

<sup>2</sup> Public Bodies Bill: Clause 27(2).

4. Liberty is extremely concerned about the inclusion in the Bill of wide-ranging powers to allow, by means of secondary legislation, for statutory bodies, to be subject to abolition or far-reaching reform. As Liberty has consistently stated, secondary legislation should not be used to amend primary legislation. Amendments to legislation should be properly debated and considered by Parliament with the ability for amendments to be proposed and implemented. Secondary legislation, which is not subject to a full and proper parliamentary debate, should not amend primary legislation in relation to anything other than the most minor details. Allowing a Minister to make an order abolishing or fundamentally restructuring bodies created by established democratic process, gives an unacceptably broad power to the executive. Ministers exercising powers conferred under clauses 1-6 of the Bill are required to consider the impact of statutory instruments made pursuant to the Bill on the continued exercise of “*any right or freedom which that person might reasonably expect to continue to exercise*”,<sup>3</sup> however this requirement provides scant protection, particularly when read together with clause 8(1) which obliges Ministers to have regard to efficiency, economy and an executive understanding of the “*effectiveness*” of the organisation when exercising the powers proposed in the Bill.

5. Clause 3 read together with Schedule 3 of the Bill provides for a Minister to modify the constitutional arrangements of a body such as the Equality and Human Rights Commission (EHRC), including its powers to employ staff, its governing procedures and arrangements and the extent to which it is accountable to Ministers.<sup>4</sup> The EHRC has a statutory mandate, amongst other roles, to encourage good practice and public sector compliance with human rights norms, monitor the effectiveness of implementation of the law and bring or contribute to legal challenges raising equality and human rights issues; including challenging governmental decision making by means of judicial review.<sup>5</sup> It is extremely worrying that the Executive is reserving to itself the power to make fundamental changes to bodies such as the EHRC, which will potentially impact on their statutory powers to hold Government to account.

6. Liberty is further extremely concerned about the power, proposed at clause 11 of the Bill, to bring any of the 150 bodies listed at Schedule 7 within the broad powers provided for at clauses 1-7. The Bill effectively renders these bodies liable to

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<sup>3</sup> Public Bodies Bill: Clause 8.

<sup>4</sup> Public Bodies Bill: Clause 3(2)(a)-(i).

<sup>5</sup> Equality Act 2006: sections 9(1)(b)-(d) and 30(1).

abolition or fundamental restructuring at the behest of the executive. By contrast to the bodies already listed at Schedules 1-6, the Bill fails even to make provision for Parliament to consider the suitability of the groups listed at Schedule 7 for inclusion on a list of organisations subject to the wide powers including abolition. Liberty notes, with concern, that many of the bodies listed at Schedule 7 to the Bill are organisations which have a mandate to provide independent oversight of vital areas of public sector activity. We do not believe that all the organisations listed at Schedule 7 must necessarily be retained in their current form. It is however vital that organisations which provide valuable independent oversight of the discharge of public functions – particularly where vulnerable people are concerned - are kept and permitted to maintain operational independence. Liberty is concerned that the wide-ranging powers provided for in the Bill may lead to the abolition of organisations and offices which play a vital role in holding public bodies or indeed central government to account.

7. This Bill follows a trend popular with the last Government of avoiding the necessary rigours of parliamentary scrutiny. As we saw with the debates on 42 day pre-charge detention and incitement to religious hatred, Parliament plays a vital role in safeguarding our fundamental rights and freedoms. Not only does parliamentary scrutiny create a vital opportunity for unacceptable new laws to be amended as Bills pass through Parliament, it also gives interested parties, the general public and the press the time to consider the implications of proposed new laws.

**Rachel Robinson**