

## SIDE TRACK 2 ON CONTROL ORDERS

What is going on with the Lib Dems?

Though not a member, I attended the adoption meeting of one of their candidates for the last general election. What was impressive was how strongly those present (and the person they were choosing to fight the seat) felt about the importance of individual conscience in parliament, and how vital they all agreed the protection of freedom to be: the guest speaker they had along that evening had just written a passionate book on the topic.

As a non Lib Dem supporter I felt quite out of it. Here was a party that really seemed to care about civil liberties and was prepared to do something about their protection if chance should give them the opportunity.

**BUT ...**

Six months into government, it is not obvious that much of the Lib Dem agenda remains other than this deep commitment to freedom.

The deficit is being attacked exactly as the Tories wanted. The city bonus culture is back in full swing, with Vince Cable seeming less of a threat now than in his oppositional heyday. Universities are going to charge large fees.

But at least, say the Lib Dems, we have our commitment to freedom to celebrate, and to remind us why we yoked ourselves to the Tories back in May.

*This is what makes the control order debate that is now raging so important to the Party.*

At one level, we are just talking about nine people whose lives are being badly damaged by the judgment of our security services that they are in that odd position of being a threat to the state without being open to being proceeded against in the ordinary way, under the criminal law. Even the damage that is being done to those subject to these orders has been modified by a series of cases in which the judges have insisted on a set of minimum fair procedures that were not initially in the legislation. But at a deeper level, the soul of the Lib Dems is at stake. And the squabble has raised one of the most important questions that can be asked in any democracy: who really runs the country?

## WHERE HAVE CONTROL ORDERS COME FROM?

They are a creature, twice over, of reaction. *First* there was the infamous detention of ‘suspected international terrorists’ introduced by the then Home Secretary David Blunkett after the attacks on 11 September 2001, when it had become clear to him that his preferred option, the expulsion of foreigners he did not want to have around the place, was not open to him on account of the insistence of human rights law that no one could be expelled to a country where they were likely to be mistreated (sadly invariably the case with the people Mr Blunkett had in mind).

Then, *second*, when this regime was rendered politically unfeasible by the powerful *Belmarsh* ruling by the law lords (now the Supreme Court) in 2004, control orders were introduced as a kind of internment-lite, a system of inhibitions on movement and interaction that comes pretty close to what in countries we disapprove of might be called house arrest. Crucially no crime needs to be proved for such orders to kick in; they are administrative, relying in the main on security intelligence which would not pass muster in a real court.

## WHERE ARE CONTROL ORDERS GOING?

The Lib Dems pledged in their [manifesto](#) ‘to scrap controls’ and also to reduce the maximum period of pre-charge detention in terrorism cases to 14 days (it is currently 28). They also promised by ‘allowing intercept evidence in court’ to make it easier to convict terrorist suspects than is the case currently. The party was planning all this because it believed that ‘the best way to combat terrorism’ was ‘to prosecute terrorists, not give away hard-won British freedoms.’

The [Coalition programme for government](#) promised to ‘introduce safeguards against the misuse of anti-terrorism legislation’ and to that end a review was established, overseen by the Liberal Democrat peer and former DPP Lord Macdonald to ‘look at issues of security and civil liberties in relation to the most sensitive and controversial counter-terrorism and security powers and, consistent with protecting the public and where possible, to provide a correction in favour of liberty.’

This is where we are now.

The Review's publication has been delayed. The media has been full of stories of clashes at the highest level of government. Lord Macdonald has been reportedly rebuked by the Home Secretary for believing that his role was anything more than a merely procedural one. Former Lib Dem shadow Home Secretary (and leadership contender) Chris Huhne has publicly declared his desire that the orders should go, even though he is in the coalition cabinet.

## LESSONS FOR THE LIBERAL DEMOCRATS

*First* Labour ministers did not retain these powers out of authoritarian whimsy – the pressure from the security services to keep what are essentially intelligence-led Cold War practices is intense. Already the relevant bureau chiefs have been warning ministers about the indispensability of *both* control orders *and* 28 day detention.

*Second* in this field the spectre of atrocity (past and future) hangs over all discussion. Reason will not stand in the way of public opinion if we have a terrorist attack after the Lib Dems have repealed control orders: even if there is no link between the two, the Party risks taking the blame for rendering the country less safe.

*Third* the Home Office has changed since its one-time boss John Reid broke it up, declaring parts of it 'not fit for purpose' when he took over in 2006. The liberal bits have all drifted off to Justice, where Ken Clarke is reportedly opposed to control orders but has little say in the eventual outcome. The authoritarians and the spooks alone remain.

## THE FUTURE

So what will happen? The Lib Dems have been tamed by the Tories; are they now about to be tamed by the security services as well? Expect loud noises from the Home Secretary (the Conservative Teresa May) on small changes in liberal directions together with some generalised language about awful threats around the corner, leading to a 'reluctant' decision to retain control orders (promises of further review, etc) and some kind of package deal on 28 day detention, with control orders kicking in upon release after 14 days, or something along those lines. We may end up with more rather than fewer such orders as the authorities seek to demonstrate their indispensability.

But this debate is not about those nine people. It is about who has the final say on freedom and liberty. Though I hope I am wrong, it looks very much as though in this, as in so much else, it is not the Lib Dems. Nor even the Tories.