

# Britain: government extends attack on defendants' rights

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The Blair government has outlined a fresh attack on civil liberties under the guise of “putting victims first.”

Under the Criminal Justice Act 2003, from mid-December judges will have discretion to allow evidence of a defendant's previous convictions to be put before juries.

The Act makes a fundamental change in law. Previous convictions were usually only revealed at the time of sentencing, as their introduction during trial was regarded as prejudicial to the outcome. Disclosure of such convictions during trial proceedings could lead to the case being stopped and a retrial ordered by the judge.

Under the new legislation, the prosecution will be able argue for the introduction of previous convictions and other evidence of “bad character,” if these are “strikingly similar” to the crime with which a person is charged. This can include other charges faced by a defendant, as well as acquittals and cautions, and any evidence that the person may be “disposed” to act in a way relevant to the charge against him or her. In some instances, social welfare reports on a defendant could also be disclosed to jurors.

Not satisfied with this, however, the government set an order before parliament on Monday, October 25, that enables the level of similarity between past offences and current charges to be lower in cases of child sex-abuse and theft.

This will mean that in the trial of a person accused of theft, not only evidence of previous convictions including for drunkenness, for example, could be set before the court but also social services reports indicating that the person has a propensity to steal.

Justifying the move, Home Secretary David Blunkett said the reforms were aimed at putting victims “at the heart of the justice system.”

“Trials should be a search for the truth and juries should be trusted with all the relevant evidence available to help them to reach proper and fair decisions,” he said. Current rules concerning evidence of “bad character” are “confusing and difficult to apply,” he continued, and can “mean that evidence of previous misconduct that seems clearly relevant is still excluded from court.”

Similarly, Prime Minister Tony Blair said that the measures were “part of a major rebalancing of the criminal justice system in favour of the victim” and “designed to make it clear we are not going to have people playing the system and get away with criminal offences that cause real misery to ordinary citizens.”

In reality, the move continues a “major rebalancing” of the criminal system against democratic rights, which has seen the detention without charge of foreign nationals and the Court of Appeal ruling that evidence obtained through torture is admissible in UK law.

The latest measure means that a trial's outcome is not to be determined on its individual evidential merits, but by measures aimed solely at ensuring a greater conviction rate.

With a general election expected within the next six months, the government is seeking to firm up its law-and-order credentials, and it has made clear that the “success” of the new measures will be judged by an increase in the numbers convicted. Child sex offences and theft had been singled out for particular treatment because of “particular public concern about them,” ministers have said. But a Home Office spokesman said that the government intends to extend the new measures to other categories of offences.

The move was opposed by civil liberty groups and representatives of the legal profession.

Liberty spokesman Barry Hugill, said, “With the best

will in the world, most jurors would find it very difficult not to be influenced by admission of previous convictions.

“That means you would be trying someone not for their alleged crime but for the those previous crimes.

“It’s guaranteed that it will lead to miscarriages of justice.”

David Walker, policy adviser for the crime reduction charity Nacro, warned, “The law has always recognised that juries who are aware of previous convictions are more likely to convict.

“Unless these powers are very carefully applied, there is a real possibility of more miscarriages of justice. This includes the risk that ex-offenders could be prosecuted unfairly on the basis of their previous convictions and to the detriment of their rehabilitation.”

A spokesman for the Bar Council said, “We need to avoid a ‘round up the usual suspects’ culture, where those who have previous convictions could be increasingly presented to the courts as the sort of person likely to have committed a crime.”



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