

Britain: Labour government pushes through bill on 42-day detention without trial

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The Brown government managed to pass its new anti-terror bill through parliament on Wednesday by a majority of just nine.

By 315 to 306, it was agreed to extend the period in which a person can be detained without charge from 28 days to 42. Little now remains of habeas corpus, on which Britain's international reputation as the home of personal liberty rested. The UK now has one of the most undemocratic terms on detention without charge in the world—worse even than Robert Mugabe's Zimbabwe, which the British government routinely condemns as dictatorial and authoritarian.

There had been speculation that Prime Minister Gordon Brown would lose the vote. Some 47 sitting MPs had voted against then Prime Minister Tony Blair's plan to extend the period of detention without charge to 90 days and both the former Lord Chancellor Lord Falconer and former Attorney General Lord Goldsmith had spoken out against the 42-day measure. Virtually the entire media, with the exception of Rupert Murdoch's *Sun* newspaper, had also denounced it, as had the Conservatives, the Liberal Democrats and human rights organisation Liberty.

In the event, just 36 Labour MPs voted against the 42-day extension. That still would have been enough to defeat the measure, but it was salvaged by the nine votes of Northern Ireland's Democratic Unionist Party.

The DUP claimed that it had voted out of principle, in order to safeguard national security. But principle was the last thing that was involved in the debate. Afterwards, it emerged that democratic safeguards had been horse-traded for the sum of £1.2 billion—the financial aid package Brown reportedly offered Northern Ireland in return for DUP support.

Labour discussions with the DUP continued up to the last hours before the vote. Reports indicate that the government has agreed that Northern Ireland will be able to keep the proceeds from the sale of army bases, worth £1 billion, and will gain a further £200 million through the relaxation of Treasury rules on the proceeds of new water charges. The government has also apparently pledged that Britain's liberal abortion laws will not be extended to Northern Ireland.

It took even less to buy off some potential Labour "rebels," some of whom were apparently persuaded to support the government by vague promises on compensation to miners with lung disease and that the UK would back a relaxation of sanctions on Cuba.

The more fundamental concern for many of the putative rebel Labour MPs in switching to backing the government was the political implications of a defeat of the 42-day extension. Labour MP Austin Mitchell said that he had changed to supporting the extension in order to "save Gordon Brown for the nation. I support him and I think he would be on his way out if he had been defeated on this."

After a series of electoral losses for Labour, and with opinion polls showing that the party's supporters are leaving it in droves, the government feared that the bill's loss would leave Brown fatally wounded.

That only intensified accusations that Brown was proceeding recklessly in forcing the matter to a vote—utilizing the "war on terror" for political posturing in the manner of his predecessor, and further discrediting Parliament in the process. Likewise, Liberty charged that Brown had "sexed up" the case for extending the period of detention—the charge made against Blair over Iraq's supposed weapons of mass destruction.

Brown countered that his refusal to back down on the extension was motivated solely by "national security" concerns, and made necessary by the fact that it took far longer for police to trawl through computers and decrypt potential terror plots. According to the latest figures available, however, 1,113 people had been arrested under the Terrorism Act 2000 between September 11, 2001 and September 30, 2006, of which just 104 were charged with specific terror-related offences. Moreover, since the limit was raised to 28 days in 2006, only 11 suspects have been held without charge for longer than 14 days.

Writing in the *Times*, Philippe Sands QC said that the prime minister had "plucked a detention number from the air with no evidence to back it up."

"What seems to have happened is that early on in his premiership Mr. Brown took a punt on a number—an arbitrary 42 days—and is now stuck with it. The policy was fixed on the basis of an ill-conceived political objective—tough on terror—and not on the basis of the evidence or any proper consultation."

Powers already exist to extend the period of detention beyond 28 days. The Civil Contingencies Act allows for an additional 30 days, but the government argued that it wanted the police to be given the extra time without having to declare a state of national emergency.

In the end, Brown agreed a number of supposed safeguards on the 42-day extension. These are that a chief constable and the Director of Public Prosecutions must request the extension from the Home Secretary only in the context of a "grave exceptional terrorist threat." Parliament must then debate and vote in favour of this extension within one week of the request being made. If it is passed, police will have 30 days to exercise their powers. But the government claims that the principle of habeas corpus will be upheld by judges having to regularly scrutinize such detentions. It has also said that those held beyond 28 days and then released without charge will be liable for compensation of up to £3,000 for each day they are held.

None of these "protections" are viable. As the *Times* newspaper

editorialized, the security services would likely refuse to release details of the evidence on which they were applying for the extension to parliament, on the grounds that it would compromise national security. “But if they did, and Parliament upheld a request, it would have voted on the evidence and thereby jeopardised the suspect’s chances of a fair trial. And if they did not, this vaunted parliamentary scrutiny would be little more than a charade.”

More importantly, 42-day detention without charge (and 28, 14 and 7 days for that matter) is a flagrant abuse of democratic safeguards. Once again, the state has been given extraordinary powers to lock people up and interrogate them without those held having any legal recourse, or even knowing the grounds on which they are being imprisoned. And, as Liberty has pointed out, the Home Secretary’s decision to invoke “grave and exceptional” circumstances is not subject to any legal requirement that he cite his evidence and can be taken in response to a supposed threat emanating from anywhere in the world.

Political commentary following the vote was generally in agreement that the result would do nothing to win Brown popular support. The *Guardian* said it was a “hollow victory” in which “the prime minister has squandered parliamentary time, goodwill and his reputation as a man of principle on a symbolic sacrifice of liberty.” The *Times* wrote that Brown was “still fighting for his political life.” Only the *Sun* lauded the result as “a major victory for the PM after a torrid six months. He passed it with credit.”

Such supposed “credit” was immediately spent when it was revealed, within moments of the vote, that top-secret documents containing the government’s latest intelligence on Al Qaeda had been left on a London subway train.

One document, commissioned by the Ministry of Defence, reportedly contains “damning” information on Iraq’s security forces. The other document, reportedly entitled “Al-Qaeda Vulnerabilities,” was commissioned jointly by the Foreign Office and the Home Office and marked “UK Top Secret” and “for UK/US/Canadian and Australian eyes only.”

The revelation that an intelligence official had apparently forgotten the documents made a farce of Brown’s earlier insistence that his government would “take no risks with security.”

Brown no doubt was determined to see through the 42-day extension and prove himself “tough” on national security to the likes of the *Sun*. He has been ridiculed as a “coward” and a “ditherer” after backing down on a range of issues, including calling an early general election immediately after he assumed leadership of the Labour Party.

But focusing exclusively on the political crisis surrounding Brown serves to dull the political faculties of working people as to the consequences of Parliament’s decision. Numerous commentators claim that the government is in such a mess, and so weakened, that the bill will not make it onto the statute books.

Former Attorney General Lord Goldsmith, for example, said the “thinness of the Commons majority” justified the House of Lords blocking the bill. And the Equality and Human Rights Commission established by the government under its chairman Trevor Phillips had already announced before the vote that it would launch a legal challenge to the extension if it were passed, on the grounds that it violates the European Convention on Human Rights. The *Guardian* editorialized that the law “quite possibly, will never come into force.”

Willem Buiter in the *Financial Times* gave voice as to what really had been agreed. The “UK’s gutless House of Commons” had taken a “major step on the road to a police state in the UK—a horrifying

encroachment on human rights,” he wrote. “This introduction of state-of-emergency-instruments and powers during ‘normal’ times is a constitutional outrage.”

The correctness of the police-state analogy is further underscored by the fact that it was the police and security services which have been the prime advocates and movers of the extended powers—and no doubt insisted that Brown bite the bullet. Metropolitan Police Commissioner Sir Ian Blair, the Chief Constable of Northern Ireland Sir Hugh Orde, and former Metropolitan police head of anti-terrorist operations Peter Clarke were amongst those members of the security apparatus who made their insistence on the extension known.

The implications of such draconian and arbitrary powers have already been seen in the arrests of Nottingham University student Rizwaan Sabir and university staff member Hicham Yezza. Both are high-profile political campaigners at the university and have been particularly active in anti-war protests. Sabir’s “crime” was to download, from a US government web site, a copy of an Al Qaeda training manual, which he was using to research his dissertation on “the American approach to Al Qaeda in Iraq.” After he emailed the document to Yezza to print it for him, the pair were arrested and held without charge for six days. Released on May 20 without charge, Yezza was rearrested on immigration matters and is currently facing deportation from the country.

In an unprecedented move, Jonathan Evans, director general of MI5, released a public statement on the 42-day extension. While maintaining the secret service’s guise of political neutrality, the purpose of the statement was to refute claims that MI5 was opposed to the extension. MI5 “are not, and never have been, the appropriate body to advise the government on pre-charge detention time limits,” Evans wrote, continuing “except to say that we recognise the challenge posed for the police service by the increasingly complex and international character of some recent terrorist cases.”

Two leading former spies with MI6, responsible for international espionage, also made rare public statements in favour of 42 days. Baroness Park stated that “MPs will be very irresponsible if they take out the 42 days,” and would put spies’ “lives at risk,” while Lady Ramsay, a former member of the Intelligence and Security Committee, said, “Voting against 42 days increases the odds in favour of the terrorists.”



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