UK: New legislation proposes to jail whistleblowers for up to 14 years

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The UK government legal adviser, the Law Commission, has issued a "Consultation Paper" revealing plans to replace the Official Secrets Act with much more draconian powers.

The new law will also target those who even *receive* sensitive material from unofficial sources. Anyone who passes on or publishes such material will face a similarly lengthy prison sentence.

The ability of whistleblowers to defend their actions on the basis of "public interest" will be explicitly removed. It will no longer be possible for whistleblowers to justify going to the media or publishing information online because it exposes serious wrongdoing by the government or its agencies. The state is intending to arrogate to itself the sole right to determine what is in the public interest and what is not.

The proposed replacement law will punish whistleblowers like US National Security Agency contractor Edward Snowden with a prison sentences of up to 14 years. Following Snowden's revelations that the US state had established a massive surveillance apparatus—in alliance with Britain's intelligence agencies—that was able to monitor the activities of every man, woman and child on the planet, the Tory government asked the Law Commission to come up with measures to counter such devastating exposures.

The mantra of the British state has become, "We must know everything about you; you must know nothing about us."

Since the passage into law last November of the Investigatory Powers Act, or Snoopers' Charter, the state now has access to every citizen's personal data, but anyone—whether a British citizen or not—who gets access to information on the functioning and nefarious activities of the British state will be dealt with as ruthlessly as if they were a hardened criminal.

The proposals represent a reversion back to the draconian Section 2 of the 1911 Official Secrets Act. This notorious legislation criminalised the disclosure, or receipt, of any piece of official information. The original Act, rushed through Parliament in 40 minutes at the height of the Agadir crisis in 1911, when war with Germany loomed, gave blanket protection for every single piece of information inside Whitehall. Then, however, those convicted under it faced imprisonment for up to only two years, compared with 14 under the new legislation.

It was only after a string of high-profile cases in the 1970s and 1980s, and the prospect of a likely successful challenge before the European Commission of Human Rights by civil rights campaigners, that Section 2 was replaced. In 1989, under the Conservative government of Margaret Thatcher, it was replaced with a slightly less restrictive version.

Were other organisations, including the *World Socialist Web Site*, to receive sensitive material covered by the new law, they could be subject to legal action, with its editors facing prison sentences.

It also raises the very real possibility of the state using leaks of material as a form of entrapment. Unless a recipient destroys the material received, or takes it to the "Investigatory Powers Commissioner," they will face prosecution. With court hearings being held in secret "when necessary" and no need for the leaked information to be confirmed—even if a hearing were held in public—such operations would be performed at minimal risk to the perpetrators.

Even the Tory-supporting *Daily Telegraph* felt forced to note, "The new law, should it get approval, would see documents containing 'sensitive information' about the economy fall foul of national security laws

for the first time."

The Law Commission arrogantly asserts that the "person making the unauthorised disclosure is not best placed to make decisions about national security and the public interest"—thus dispensing with hundreds of years in which the law allowed that they could, on the basis that this was a check on the state's misuse of power.

The Law Commission states, "Our provisional conclusion is that the public interest is better served by providing a scheme permitting someone who has concerns about their work to bring it to the attention of the independent Investigatory Powers Commissioner." That is, whistleblowers must report only to representatives of the state machine, who will then warn their masters in the ruling elite on the possible threat to their interests!

A further proposed change to existing law, prompted by the revelations of both WikiLeaks and Snowden, is the removal of any need for the prosecution to prove that any harm was suffered as a result of information being disclosed.

In the words of the Law Commission, "[C]urrently the prosecution must prove that the information disclosed damaged or was likely to damage specified interests. A prosecution would, therefore, involve public confirmation that the unauthorised disclosure did cause or risk harm. ... We suggest remodeling the offences so that they focus ... upon whether the defendant knew or had reasonable cause to believe the disclosure was capable of causing damage. It is ... not whether damage did or did not occur."

This proposal arises out of the difficulties state prosecutors had in finding a means to charge WikiLeaks founder Julian Assange and other whistleblowers under existing laws. In addition to the overwhelming strength of the public interest defence, and the risk that the illegality of many of the activities uncovered would be given more publicity, prosecution would involve showing the damage caused by WikiLeaks to the operations of the state. While many spurious assertions have been made by representatives of the political and military establishment alleging "harm" caused by WikiLeaks, including loss of life, none have ever been backed by evidence.

The Law Commission's proposals handing even more power to a repressive state apparatus was revealed in the same week that the Independent Police Complaints Commission (IPCC) admitted that "there is evidence which suggests documents were shredded [by the police] after the Undercover Policing Inquiry [commenced]."

The *Independent* reported that the IPCC is investigating claims that documents kept by the National Domestic Extremism and Disorder Intelligence Unit (NDEDIU) of the Metropolitan Police were shredded in May 2014. This was shortly after Theresa May, then the Home Secretary, initiated measures to allow a highly restrictive public inquiry into undercover policing practices.

This latest example of criminality on the part of the police comes after months of revelations of undercover cops being given the names of dead children and having long-term relationships with young women in organizations targeted for police spying. This was in order to best facilitate them carrying out spying activities on legally constituted groups who were involved in peaceful protests.

In response to the Law Commission proposals, the Law Society minimised their significance. It claimed that "criminalisation is limited to the unauthorized disclosure of those categories of information that have implications for the national interest."

The history of state activity has proven that "the national interest" is a euphemism for the interests of the elite.