

Emergency legislation for terror law offenders in UK sets anti-democratic precedent

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6 February 2020

Boris Johnson's Conservative government is intensifying its repressive law-and-order agenda, utilising revulsion at recent terror offenses.

Immediately following the February 2 stabbing of two shoppers in Streatham, South London, by the recently released Sudesh Amman, and the November 29 murder of Jack Merritt and Saskia Jones by Usman Khan on London Bridge, also recently released, the government announced plans to increase the proportion of the sentence those convicted of terror offences will serve in prison.

These changes will be retroactively imposed on prisoners sentenced under the old system. Under the proposed law, offenders will serve a minimum of two-thirds of their sentence before undergoing a Parole Board assessment.

Justice Secretary Robert Buckland told the House of Commons Monday, in the aftermath of the Streatham terror attack, that emergency legislation would “ensure an end to terrorist offenders getting released automatically having served half of their sentence with no check or review... We face an unprecedented situation of severe gravity, and as such it demands the government responds immediately and that this legislation will apply to serving prisoners.”

The proposed legislation—to be introduced Tuesday next week and set to be on the statute books by February 27—clears the way for the imposition of indefinite sentences, where prisoners are only released on the say-so of the prison authorities. Buckland said, “We will review whether the current maximum penalties and sentencing framework for terrorist offences is indeed sufficient or comprehensive on the underlying principle that terrorist offenders should no longer be released until the Parole Board is satisfied they are no longer a risk to the public.”

The next morning Cabinet Minister Michael Gove told *Sky News*, “We need to be able to prove that people are no longer a danger to the public. There is a big difference between those people who are Islamist extremist terrorists and those convicted of other offences.

“If you have people in the grip of an ideology that means they want to kill innocent people in order to advance a

particular religious or political view, they are a danger to society. Until they are comprehensively deradicalized and it is safe to have those people on our streets then public protection must come first.”

The full weight of the right-wing media was mobilised behind the government, with screaming banner headlines, editorials and op-eds. The *Daily Telegraph* complained in its editorial, “He [Amman] had been jailed for terrorist related crimes for three years but released halfway through and was being closely watched because he was deemed dangerous. In the past he might have received an IPP but there is no longer any mechanism for incarcerating people known to be dangerous indefinitely. They must be released, thereby using up massive police and MI5 resources to keep them under surveillance.”

IPP refers to an Imprisonment for Public Protection, an indeterminate sentence included in the Criminal Justice Act of 2003 by Labour Home Secretary, David Blunkett, since abolished. Nominally intended for a small number of cases involving a hard core of extremists, IPPs ended up being served on more than 8,000 people. They were scrapped in 2012, but nearly 2,500 people are still indefinitely detained in prison on an IPP sentence.

The *Telegraph* concluded that Buckland “has announced emergency legislation to stop this but the real issue is not automatic early release but whether people like Amman should be allowed out at all.”

A range of legal experts and campaigning groups criticised the legality and practical impact of the plans. Claire Collier, advocacy director of Liberty, said, “The government's response to recent terror attacks is a cause of increasing concern for our civil liberties.

“From last month's kneejerk lie detector proposal [for those on or seeking probation], to today's threat to break the law by changing people's sentences retrospectively, continuing to introduce measures without review or evidence is dangerous and will create more problems than it solves.”

Amanda Pinto QC, chair of the Bar Council (the professional association for barristers in England and

Wales), said the plan “should be the subject of careful consideration to ensure that it complies with the rule of law.”

Simon Davis, president of the Law Society of England and Wales, warned, “If the license period [the part of the sentence spent outside of prison] is instead spent in custody, we risk releasing inmates without any supervision, without any transition and without any opportunity for the probation service to recall them to prison if there are concerns about their post-release behaviour.”

Geoffrey Robertson, renowned human rights barrister at Doughty Street chambers, described the government’s announcement as “panic legislation.”

Even Lord Carile—removed from a review of UK terror legislation in December after his impartiality was challenged—has questioned the legality of the government’s intentions and suggested the legislation will be challenged all the way up to the Supreme Court. Speaking on *Newsnight* on Monday, Carile said, “The decision to lengthen the sentence of people who’ve already been sentenced and therefore expected to be serving half the sentence may be in breach of law.”

The government’s attempt to impose new sentencing laws retroactively—on prisoners who are currently serving sentences passed with the expectation of an earlier release, is an example of *Ex post facto* (“out of the aftermath”) law. This is prohibited by most constitutions, criminal codes and rights charters across the world. Retrospective criminal laws are prohibited by Article Seven of the European Convention of Human Rights (ECHR) and can also be said to breach Article Six, which guarantees the right to a fair trial.

In the UK, the principle of “parliamentary sovereignty” can be invoked to deny this protection, though even in the UK the use of retroactive legislation has been rare. The government’s lawyers intend to lean on this principle to allow a deeply unpopular Conservative administration to trample on widely recognised legal rights in pursuit of a reactionary political agenda.

The *Times* reported Tuesday that Johnson is considering suspending the European Convention on Human Rights. The government could do so by applying for a “derogation” from the convention. This could be enacted “by simply informing the Council of Europe and explaining its [the government’s] reasons. The derogation could be open to legal challenge but several countries, including the UK, have derogated without crossing legal boundaries.”

Further draconian measures are under consideration with “Ministers... also examining plans to reintroduce ‘control orders’, which impose virtual house arrest on released terrorists, with restrictions on where they live, their movements and with whom they can associate.”

Control orders were implemented from 2005 by Blair’s Labour government—part of a raft of anti-democratic measures justified on the basis of strengthening counter-terror legislation.

The policy does nothing to address the real roots of terrorist violence in militarist destruction abroad by the UK, as the junior partner in US-led wars going back several decades.

David Merritt, the father of prison rehabilitation worker and Cambridge University graduate Jack Merritt, killed in the London bridge terror attack, tweeted, “Longer sentences by themselves = just kicking the can down the road, allowing prisoners to radicalise each other & build greater resentment. Key has to be deradicalization, rehabilitation, supervision & diverting people from this path in the first place.”

Like all “national security” measures, as has already been shown with the governments listing of left-wing and climate action groups alongside right-wing terror organisations, the aim of the Tory emergency legislation is the suppression of all popular political and social opposition.

English and Welsh law is strongly bound by precedent. Once judges are given the power to impose indefinite sentences for “public protection,” a chain of rulings can quickly widen the scope of their application. Whatever measures are used initially against terrorists will be deployed more widely and severely against thousands of workers and youth who defy the class war offensive of the ruling elite.

The climate of fear accompanying the rush to “emergency legislation” is already being used to push through new draconian laws—in cases unrelated to terror offences.

On Wednesday, Home Secretary Priti Patel proposed doubling or trebling the amount of time a person can spend on pre-charge bail—a period in which a suspect is subject to police restrictions prior to any charges being made. This would delay the point at which a magistrate’s approval for the extension of bail is required from three months to six, nine or even 12 months. Her proposals also include removing the presumption against pre-charge bail and allowing officers of lower ranks to authorise and extend the term.



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