

# UK Counter-Terrorism and Sentencing Bill deepens attack on fundamental civil liberties

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The Counter-Terrorism and Sentencing Bill being introduced by Boris Johnson's Conservative government is a draconian assault on civil liberties. The Bill passed its first reading in parliament on May 20.

Home Secretary Priti Patel introduced what ministers are describing as the biggest overhaul of terrorist sentencing and monitoring for decades. Given how far and how punitively this area has been legislated in the last 15 years, this is a serious warning.

The Bill seeks to indefinitely restrict the movements of terrorism suspects not convicted of any offense and lower the standard of proof required for monitoring suspects. It seeks to reintroduce controversial "control orders," which were repealed in favour of allegedly less intrusive measures.

Human rights organisations Liberty and Amnesty International have expressed concerns at the level of oversight available under present parliamentary pandemic restrictions. Amnesty warned that rushing the Bill through under these conditions "suggests the government could be trying to minimise scrutiny for significant legal changes."

The Bill would see a drastic extension of sentencing for convicted offenders. Offenders sentenced to life—where a minimum "tariff" must be served before consideration for release by a Parole Board—might never be released if they are subject to an Extended Determinate Sentence (EDS).

Prisoners with an EDS face extended licence periods of up to 10 years after release. Paroled offenders would spend the rest of their life on licence, subject to recall to custody.

A new category, the serious terrorist sentence, would carry a minimum 14-year jail term followed by an extended period of 7-25 years on licence.

The Bill would increase from 10 to 14 years the maximum penalty for some offences, including membership of a proscribed organisation, supporting a proscribed organisation and attending a place used for terrorist training.

At present, judges are able to consider the possibility of a "terrorist connection" for specific offences, allowing them to increase custodial sentencing. The Bill would allow them to consider whether there is a "proven terrorist connection" for *any* crime carrying a sentence greater than two years, giving them the option to extend sentencing everywhere.

The Bill would introduce a Sentence for Offenders of Particular Concern (SOPC), aimed in part at youth offenders. Under the SOPC, offenders would spend two-thirds of their sentence in custody before being eligible to apply for parole. Release would be followed by a mandatory 12-month licence period.

The Bill seeks to extend licence supervision, with 12 months being the minimum period for all offenders. Paroled adult offenders would also have to take lie detector tests.

The extension of surveillance marks the Bill's most draconian measures. At present, terrorism suspects not convicted of an offence can be monitored for up to two years by Terrorism Prevention and Investigation Measures (TPIMs).

TPIMs, often based on secret intelligence, are considered the strictest control measures available to the security services against suspects who are not being prosecuted or deported.

At present, TPIMs offer 14 restrictions, including residence requirements, exclusion zones, police reporting, limits on the use of financial services and electronic equipment, and a ban on holding travel documents. The Bill would allow more, including mandatory drug-testing and having to account for all electronic devices in a household rather than just the subject's own.

TPIMs will no longer be restricted to two years but could be renewed indefinitely on review. Potentially, this could see suspects not prosecuted but subject to restrictions on travel and accommodation for the rest of their lives.

TPIMs are used against those who cannot be prosecuted, but breach of a TPIM is a criminal offence allowing for imprisonment.

The standard of proof required for imposing a TPIM will also be lowered. At present, the home secretary must base the decision on a "balance of probabilities." The new legislation changes this to the less stringent "reasonable grounds" for suspecting someone is or has been involved in terrorist activity.

The Home Office has refused to comment on whether it believes the Bill will see an increased use of TPIMs.

The TPIM proposals have exposed the repressive content of the Bill. Critics warn that the proposals would mark a return to draconian control orders—a form of house arrest—in place previously. Introduced by Tony Blair's Labour government in

the Prevention of Terrorism Act (2005), control orders allowed suspects to be placed under close supervision with restrictions imposed on movement, association and use of specific facilities.

Control orders were to be signed off by the home secretary. In 2006, a High Court judge, Justice Jeremy Sullivan, declared that section 3 of the 2005 Act was incompatible with the right to fair proceedings under the European Convention on Human Rights (which outlaws indefinite detention without trial). He noted that it had been drafted in such a way as to prevent courts from overturning control orders.

In 2011, the Conservative/Liberal Democrat coalition replaced control orders with TPIMs, which it claimed were less intrusive and had greater concern for civil liberties. That the current Bill would effectively reverse even that gesture in favour of more repressive measures is a mark of the escalating threat to democratic rights posed by the Johnson government.

This Bill follows legislation enacted in February allowing for the indefinite detention of those charged with terrorist offences and prisoners suspected of radicalisation.

Patel has justified the Bill, like February's Act, on the basis of recent terrorist attacks in London. She said these attacks had revealed "serious flaws in the way terrorist offenders are dealt with."

Human rights bodies have noted that the Bill is solely concerned with incarceration. There is no consideration of the reasons people undertake terrorist activity. Liberty, which has described the Bill as "a threat to fundamental pillars of our justice system," said, "The government's counter-terror strategy is failing, yet instead of reviewing the errors it is rolling out a bill that threatens all of our civil liberties."

"Without an evidence-based approach the government is failing to address the root causes of these incidents and therefore failing to stop them."

Earlier this year, it was reported that Islamic extremists had been able to meet up and network in prisons. Professor Ian Acheson, a former prison governor who conducted a government review of Islamic extremism in prisons, called for "more focus on how extra time for violent extremists in custody will be used to challenge and change their hateful ideologies. If this isn't effectively addressed, the new measures will simply delay further attacks, and might even inspire them."

One man who works in de-radicalising jailed terrorists told *The Independent* simply that the plans were "crazy."

The police have broadly welcomed the Bill's extension of their monitoring powers. Deputy Assistant Commissioner Dean Haydon, the senior coordinator of UK counter-terrorism policing, said monitoring changes would "only work effectively if used alongside a whole society approach aiming to reduce that threat in the long term."

Haydon wants the controversial Prevent programme to be bolstered. Another creation of the Blair government, Prevent was ostensibly aimed at countering the supposed threat of

religious radicalisation, but centred on targeting the Muslim community and creating wider anti-Muslim sentiment.

Its remit was expanded in 2011 and it has become more nakedly a vehicle for political surveillance and suppression. In 2015, it became a statutory requirement for schools, local authorities, prisons and National Health Service staff to report any individual deemed vulnerable to radicalisation to the programme.

Prevent is widely opposed. Last year the government was forced to announce a review of Prevent, but appointed as its head Lord Carlile, a loyal supporter of both the programme and of the security services. He was removed after a legal challenge, but the post remains vacant.

The review was due to be completed by August, but the current Bill scraps that statutory deadline. Instead "the aim" is to review Prevent "by August 2021."

The Bill faces no obstacles in going through. After backing the rushing through of February's legislation under then party leader Jeremy Corbyn, Labour under his successor, Sir Keir Starmer, has welcomed the Bill.

Shadow Justice Secretary David Lammy said, "The horrific terrorist attacks on British soil in recent years demonstrate the need to update terrorism sentencing legislation." He pledged that Labour "will work constructively with the Government on measures that reduce the chances of those who commit terrorist offences from re-offending." Labour Shadow Home Secretary Nick Thomas-Symonds MP declared, "As a responsible opposition, we will work with the Government to scrutinise this proposed piece of legislation to make it effective."

Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, said he was "uncomfortable with getting rid of protections for individual rights that don't appear to have caused any real problems for the authorities to date." These criticisms will not lead to him opposing anything. The position of "independent" reviewer of terrorism legislation is just window-dressing to give the appearance of oversight.

Hall was appointed to the position in May 2019 and has supported further attacks on civil liberties. In a speech to the conservative Henry Jackson Society think-tank in January, Hall said section 49 of the Regulation of Investigatory Powers Act (RIPA) 2000 is too "difficult" for police and intelligence agencies to work with. Section 49 of RIPA allows police and others to legally order suspects to hand over their passwords for encrypted information. Hall spoke in favour of legislating a new offence of failing to hand over a password during a terrorism investigation.



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