



## Analysis

### UK: The new government's assault on civil liberties

Chris Jones, June 2015

On Thursday 8 May the UK election saw the Conservative Party return to power. With no formal coalition (they previously governed with the Liberal Democrats), they now have more leeway to try to advance an agenda that, if successful, will be deeply damaging to civil liberties and human rights. This article provides an overview of the government's intentions.

The major civil liberties issues included in the Conservative programme include new digital surveillance powers for the security agencies, known more commonly in the UK as the 'Snooper's Charter' proposals; yet more anti-terrorism and counter-radicalisation laws; the abolition of the Human Rights Act and its replacement with a 'British Bill of Rights'; further restrictions on immigration and migrants; and new restrictions on the right to strike.

Also on the agenda are a referendum on the UK leaving the EU; possible restrictions on freedom of information laws; and increased supervision and disciplining of the unemployed – potentially including mandatory medical treatment.

#### **“Underpinning all of this is security”**

The Conservative government's agenda was laid out in more detail in the Queen's Speech at the end of May, which made numerous claims as to how new laws and policies on health, welfare, education and more would improve the lives of people across the country. However, according to the Prime Minister: “Underpinning all of this is security. With an Extremism Bill, an Investigatory Powers Bill and a Policing and Justice Bill, we will keep our people safe.”

#### **More state snooping**

In June 2012 the Conservatives introduced the Draft Communications Data Bill, which in April 2013 was blocked by then-Deputy Prime Minister Nick Clegg (not to mention significant public opposition). The Bill would have further expanded the powers of security agencies to monitor individuals' internet activity and digital communications and has been extensively criticised by civil society organisations, campaign groups, politicians and technical experts. [1]

Now, the proposals are coming back. Theresa May, who after the election was reappointed as Home Secretary by David Cameron, said on Friday 8 May that “increased surveillance powers were ‘one very key example’ of Tory policy that was blocked by the coalition arrangement with the Liberal Democrats.” [2]

In the Queen's Speech the government promised an Investigatory Powers Bill to "address ongoing capability gaps" and "provide the police and intelligence agencies with the tools to keep you and your family safe." [3] It will cover "all investigatory powers including communications". [4] *The Telegraph* reports that it "will revive the so-called 'Snooper's Charter' but is much wider than previously planned." [5] Even before the Bill has been published, critics have been vocal. [6] One article in *Digital Spy* suggests that, with its mass metadata collection programme estimated to cost £1.8 billion, the new measures will be "an expensive white elephant." [7]

### **More laws against "extremism"**

Other Conservative proposals blocked by the Liberal Democrats during the last parliament included a whole host of new measures concerned with "radicalisation" and "extremism". The last two governments in the UK have significantly extended the powers of the state through the counter-extremism strategy Prevent, which has been heavily criticised for its intrusive and discriminatory nature.<sup>8</sup>

The Queen's Speech includes the promise of a new Extremism Bill, the purpose of which is extraordinarily vague:

- "Unite our country and keep you and your family safe by tackling all forms of extremism";
- "Combat groups and individuals who reject our values and promote messages of hate."

In a recent radio interview, Theresa May did not offer much beyond vague claims that new powers are necessary in order to deal with "those who are seeking to divide us". [9]

In a speech given in March, however, she said that the "values that unite us" are: "regard for the rule of law, participation in and acceptance of democracy, equality, free speech and respect for minorities." Those who do not accept the responsibility to respect "the institutions and the laws" that make these values possible will apparently face "a new and real partnership" made up of "individual people, families, local communities, internet companies, government and civil society as a whole". The new proposals will take aim at "the whole spectrum of extremism, violent and non-violent, ideological and non-ideological, Islamist and neo-Nazi: hate and fear in all their forms." [10]

New measures will include:

- "Banning Orders: a new power for the Home Secretary to ban extremist groups";
- "Extremism Disruption Orders: a new power for law enforcement to stop individuals engaging in extremist behaviour";
- "Closure Orders: a new power for law enforcement and local authorities to close down premises used to support extremism";
- "Broadcasting: strengthening Ofcom's role [Ofcom is the broadcasting regulator] so that tough measures can be taken against channels that broadcast extremist content";
- "Employment checks: enabling employers to check whether an individual is an extremist and bar them from working with children."

Given that the police already take the term "domestic extremist" to include politicians, journalists and peaceful protesters, [11] the potential for unwarranted restrictions on individual liberties are enormous. One author has noted that certain strands of critical

feminist thought would quite easily fit within the catch-all definitions so far proposed by the government. [12]

Despite the clear danger to free speech and freedom of association, the government is strident about its agenda. In May, David Cameron told the UK's National Security Council:

*"For too long, we have been a passively tolerant society, saying to our citizens 'as long as you obey the law, we will leave you alone'... It's often meant we have stood neutral between different values. And that's helped foster a narrative of extremism and grievance."* (emphasis added) [13]

## Reforming the police?

The Queen's Speech also contained proposals to introduce new legislation on policing and justice issues, following on from a whole host of measures introduced under the previous government. [14] They are likely to apply only to England and Wales. On the face of it, many of them appear positive:

- Creating "a presumption that suspects will be released without bail unless it is necessary," limiting pre-charge bail to 28 days (with possible extensions, potentially subject to judicial oversight);
- Ensuring that all 17-year olds are treated as children when they are detained in custody in accordance with the Police and Criminal Evidence Act (PACE) 1984;
- Changes to the law around the detention by police of people deemed to have mental health issues, including reducing the use of police cells for those under 18 and limiting the current 72-hour detention period for adults; [15]
- Enhanced powers for the police inspectorate body, Her Majesty's Inspectorate of Constabulary, including the power to investigate the work of contractors to acquire information from third parties;
- Changes to the police disciplinary system to "ensure police corruption and misconduct is brought to light," including the power to undertake disciplinary proceedings against officers who have left their jobs;
- Making the Police Federation (essentially police officers' trade union) subject to the Freedom of Information Act.

The devil, of course, is in the detail. Frances Crook of the Howard League for Penal Reform responded to the Queen's Speech with an article that said the proposals are, overall, "rational and proportionate", although she argued for extending the Freedom of Information Act to cover the numerous contractors undertaking work in the policing and criminal justice sector.

Crook also referred to proposals to introduce a maximum sentence of seven years for possession of new psychoactive substances as "disappointing". [16] In order to "protect hard-working citizens", the government intends to introduce "a blanket ban which would prohibit and disrupt the production, distribution, sale and supply of new psychoactive substances (NPS) in the UK." [17] Deej Sullivan, a more forthright author than Crook, argues that the proposals represent "yet another clear example of the hypocrisy and stupidity of our national drug policy." [18]

How the criminal justice system will cope with the presumably numerous new prosecutions that will be the result of this is unknown. Court translation and legal aid services have suffered massively under reforms introduced in recent years in the name of austerity. The Queen's Speech states that the new Policing and Criminal Justice Bill "will allow us to deliver

a range of criminal justice reforms that will aim to better protect the public build confidence [sic] and improve efficiency.” [19] The Ministry of Justice has apparently “identified efficiency savings of £249 million” for the financial year 2015-16. [20]

### **Goodbye human rights, hello ‘British rights’**

Another long-held aim for many in the Conservative Party is the abolition of the 1998 Human Rights Act, which incorporates the European Convention of Human Rights into UK domestic law, and its replacement with a ‘British Bill of Rights’.

Included in the Conservative election manifesto was a promise to “scrap the Human Rights Act and curtail the role of the European Court of Human Rights, so that foreign criminals can be more easily deported from Britain.” It seems almost certain that a change in the UK’s human rights laws would result in lower levels of protection for everyone, and in particular some of the most vulnerable people in the country.

Along with making it easier to deport “foreign criminals”, the press release that accompanied an October 2014 document outlining the Conservatives’ plans also made references to “travellers” and “illegal immigrants” misusing the right to family life. [21]

The October document also stated that “there will be a threshold below which Convention rights which not be engaged”. [22]

The Queen’s Speech did not include plans for legislation on replacing the Human Rights Act. Instead, it simply said there would be “proposals for a Bill of Rights to replace the Human Rights Act,” which is expected to mean a consultation on the government’s intentions. [23]

While the practicalities of attempting to repeal the Human Rights Act and withdraw from the ECHR may eventually prove too difficult to overcome, the intentions of the government are clear – individual rights should be further restricted.

### **Putting “hard working British families first”**

The government also plans to introduce new measures to “control immigration”. A new Immigration Bill will contain measures aimed at:

- “Dealing with those who should not be here, by rooting out illegal immigrants and boosting removals and deportations”;
- “Reforming our immigration and labour market rules, so we reduce the demand for skilled migrant labour and crack down on the exploitation of low-skilled workers.” [24]

The proposals have been examined in more depth by Frances Webber of the *Institute of Race Relations*, in an article observing how they “contain more of the same old deterrence policies, creating more desperation, in the face of the biggest refugee crisis since World War II.” [25]

### **Restricting the right to strike**

Over the last 35 years an impressive array of anti-trade union legislation has been brought into existence, [26] and the new government hopes to add to it by further restricting the right to strike.

New proposals will change the law so that “public sector strikes will not be able to go ahead unless they are supported by 40 per cent of workers who are eligible to vote.” Furthermore:

“The government will also require turnout to reach at least 50 per cent of those entitled to vote for a strike to go ahead, and prioritise proposals to allow employers to hire agency staff.” [27] This was confirmed in the Queen’s Speech, which announced a new Trade Union Bill.

It is frequently the case that very few trade union members vote in strike ballots. However, the same charge can also be levelled at national and local elections, and there have been no proposals suggesting that they be subject to similar requirements. The Conservative Party, for example won a small majority in parliament (331 seats in total) with 36.9% of votes cast in the UK’s ‘first past the post’ system, with a turnout of 66.1%. The Scottish National Party were able to take 56 seats in Scotland with just 4.7% of the overall vote. [28]

When it comes to elections, however, the new government is apparently keen to change the UK’s electoral boundaries (although this was not mentioned in the Queen’s Speech): “Redrawing constituency boundaries to lock Labour out of power for a decades is at the top of the agenda for the new Conservative government, senior Tories have said.” [29]

### **EU: in or out?**

After the Conservative Party’s victory, David Cameron promised to “deliver” the referendum on the UK’s membership of the EU that was included in the Party’s election manifesto. The question that will be asked is contained in the Bill, which is being “fast-tracked” through Parliament: “Should the United Kingdom remain a member of the European Union?” [30]

Originally proposed for 2017, it has been reported that the government is “drawing up plans to bring forward an in/out referendum on Britain’s membership of the European Union by a year to 2016 in order to avoid a politically dangerous clash with the French and German elections in 2017.” [31]

Leaving the EU would mean vast changes in a whole host of areas of UK law, which would in turn effect, in one way or another, everyone living in the UK (as well as UK citizens living in the EU). Steve Peers has examined some of the issues at stake on his blog. [32]

### **Less freedom of information**

Following a debacle in which the courts recently forced the government to publish letters that had been sent by Prince Charles to ministers, consideration will also be given to amending the Freedom of Information Act “to make it easier for officials to withhold information from the public.” However, no proposals on the issue were contained in the Queen’s Speech.

The UK’s Freedom of Information Act, passed in 2000, originally contained a provision that gave ministers a veto on whether to release information or not. This provision was overturned by the courts, who “did not like the notion that the executive could simply overrule a court without any constraint.”

There may now be an attempt to reintroduce the veto. Any such changes would further weaken the law. As the *BBC* put it:

*“Even before one considers what officials might now try to do to our most important transparency law, it is important to note how weak the act is already. There is a serious compliance problem in Whitehall, and the [Information Commissioner’s Office] has decided not to do anything about it.” [33]*

## **Welfare: mandatory medical treatment?**

Policies introduced by the last government (and those before it) have seen thousands of people obliged to participate in “workfare” programmes, in which they must either work or lose their benefits. A key component of these schemes is routine surveillance and monitoring of individual’s activities in relation to finding work. [34]

There was no specific mention of these schemes in the Conservative Manifesto, although it does state that: “Real fairness means that where people really cannot work, they must be supported – but where they are able to work, they should.”

The manifesto’s section on “welfare” also says: “People who might benefit from treatment should get the medical help they need so they can return to work. If they refuse a recommended treatment, we will review whether their benefits should be reduced.” (emphasis added) [35]

The Queen’s Speech introduced a Full Employment and Welfare Benefits Bill. Mandatory medical treatment was not mentioned in the speech, but there will be an extension of mandatory work schemes for young people. The Speech says that the government’s “future youth offer” will introduce:

*“[A] new Youth Allowance for 18-21 year olds with stronger work related conditionality from Day 1. After 6 months they will be required to go on an apprenticeship, training or community work placement.”* [36]

Reforms to the welfare system during the last government affected the disabled particularly badly, and thousands of people have either died or committed suicide after fearing removal of their social security payments, or actually having them withdrawn. [37] Attempts to implement further similar policies does not seem likely to improve the situation, to say the least. Following the Queen’s Speech, disabled campaigners warned that: “Disabled people should prepare themselves for more cuts and further attacks on their rights over the next five years.” [38]

## **An easy ride?**

The Conservative government has a majority of just 12 MPs in the House of Commons, and may find it difficult to pass much of the legislation it desires.

For example, the Scottish National Party, which now has 56 MPs (an increase of 50) and is the third-largest party in parliament, is apparently hoping to use its newfound representation to block both the Snooper’s Charter and attempts to repeal the Human Rights Act. [39]

There are also signs of a “growing rebellion on the Tory backbenches as the complexity and political difficulties involved in seceding from the judicial authority of the Strasbourg court become increasingly apparent to the government.” [40]

The balance of power in the House of Lords, the UK’s upper legislative chamber, has also changed:

*“Cameron has 224 Conservative peers to call upon for votes; Labour has 315, while the Liberal Democrats’ 110 members – who sat on the government benches up for the last five years – will now transfer to the other side.”*

There are also 178 “cross-bench” peers, who have no particular party loyalty. [41]

It is not just in the UK’s political institutions where the government may run into trouble – the day after the election, there were strident protests outside Downing Street. A number of protests are planned for the coming months, and numerous campaign groups and activist organisations across the country have vowed to oppose the government’s plans on welfare, civil liberties, and austerity. [42]

The government’s agenda is clear – limiting individual rights by building up the powers of the state, at the same time as continuing with an unpopular austerity agenda. There is however a lot of potential opposition and their plans may not go as smoothly as they hope.

## Notes

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