

Changing Human Rights Act will not prevent terror and ‘could bring harm’, lawyers warn

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Lawyers are concerned that changes to human rights legislation—as an attempt to prevent future terror attacks—could deprive innocent citizens of rights and freedoms afforded them since the Second World War. This comes after Theresa May said she is willing to change human rights laws if they prevent security services from restricting the movements of terror suspects. This follows three terror attacks in the UK over a three-month period. However, lawyers argue that the Human Rights Act 1998 (HRA 1998) does not stand in the way of preventing terrorism, so derogating from it or changing it will not help to stop terrorism.

Theresa May stopped short of making any firm policy proposals but told Conservative activists she was considering:

- longer prison sentences for people convicted of terrorist offences
- making it easier for the authorities to deport foreign terror suspects to their own countries

She added: ‘I mean doing more to restrict the freedom and the movements of terrorist suspects when we have enough evidence to know they present a threat, but not enough evidence to prosecute them in full in court...And if human rights laws stop us from doing it, we will change those laws so we can do it.’

Currently, security services are able to impose ‘terrorism prevention and investigation measures’ (TPIMs) which are imposed on terror suspects who cannot be charged or deported. The measures include:

- electronic tagging
- regular reporting to the police
- exclusion from certain places
- prevention from overseas travel

TPIMs expire after two years unless there is new evidence of involvement in terrorism.

Changing Human Rights Act ‘will not prevent terror’

Susie Labinjoh, Hodge Jones & Allen partner, argued: ‘HRA 1998 does not stand in the way of preventing terrorism so derogating from it or changing it is not going to assist in its prevention.’

Labinjoh suspects May’s comments allude to HRA1998 Article 5—the right to liberty and security which protects individuals against arbitrary detention by the State.

She further warned: ‘If we derogated from Article 5, we could have indefinite detention of those suspected of terrorism sometimes known as internment, which we had in Northern Ireland.’

Derogation is the mechanism by which the European Court of Human Rights recognises that in certain circumstances states may need to take measures which encroach on human rights law.

Labinjoh believes: 'It is highly questionable as to whether measures like this can actually prevent terrorism and in any event the TPIM regime basically restricts the freedom and movement of terror suspects.'

Head of the civil department at Hickman and Rose, Daniel Machover, said if May does seek to use derogation to enable temporary powers to detain suspects without charge or judicial scrutiny she would be required to publicly declare that a relatively small number of radicals had brought about a 'state of emergency' that threatens the life of the nation.

Machover added: 'Many of the convention rights which routinely prevent deportation, for example, cannot be derogated from. Others are already qualified, meaning that they can be infringed when it is in the interests of national security and public safety.'

'Any reduction in protections will harm innocent citizens'

Shamik Dutta, solicitor at Bhatt Murphy, said: 'Any reduction in the protections contained in the Human Rights Act would deprive innocent citizens of rights and freedoms that have been respected since the end of the Second World War.'

Among those most likely to suffer, Dutta added, are vulnerable citizens and the victims of crime who have been failed by the investigatory and prosecutorial authorities.

Birdmans partner Saimo Chahal said May's comments give the impression that human rights allow for terrorists to operate, and overlook the good HRA1998 has done to promote the rights of ordinary people.

Chahal considers that the comments could signal the end of HRA1998 as it has been a long-standing Conservative policy to replace this key human right legislation with a 'Bill of Rights', 'which looks and sounds not so different because it would still enshrine fundamental rights into legislation'.



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