

Coronavirus Bill: Extra powers must be subject to strict oversight and must end with the pandemic

Over the years, CAGE has performed a watchdog role in the UK, keeping a check on the government's expansive set of national security policies and anti-terror legislation. We have conducted extensive research on their impact and use, and we have published numerous reports documenting how these powers are abused when basic safeguards of due process and rule of law are not applied.

In this exceptional moment, CAGE has been carefully observing the debate around the need to introduce extraordinary powers as part of the COVID-19 response. At a time of growing authoritarianism across the globe, we feel it is necessary to proceed with caution with any new law, even in the face of a global pandemic.

The COVID-19 pandemic has created uncharted waters for all of us. Like most countries across the world, the British government has been forced to introduce unprecedented measures to deal with the pandemic, and try to slow down the spread of the virus until a vaccine has been developed.

One criticism of the British government is that it has acted slowly in implementing these measures, while nations facing the same threat have acted much sooner. Be that as it may, reaching a balance between the right timing of the response, minimising disruption to people's lives and ensuring public safety is no easy task. This means that when extraordinary powers will naturally be sought by the government, it is crucial to subject them to appropriate scrutiny.

In light of the passage of the Coronavirus Bill being put through Parliament, and the announcement of an effective 'lockdown' in Britain, as a society, we have to look at these powers with calm and objective minds and ensure that they:

- a) are actually needed;
- b) are fit for purpose; and
- c) are limited, both in extent and reach, as well as in duration.

We also have to ensure there is stringent oversight of these powers, by individuals and groups that are at arm's length from the executive and those who will enforce it. We must also be vigilant: often exceptional powers are at first justified, only to be re-validated, through public shows of force - to give the impression of 'something being done'.

As the Bill currently stands, these essential safeguards appear to be missing. This holds up the possibility of these powers being open to abuse, liable to be used for political ends, and that they are in effect, a move towards strengthening the coercive capacity of the state in many ways.

Strengthening powers of coercion

Attention should be drawn particularly to Schedules 8, 21 and 22 of the Bill (as of 24/3/20).

Schedule 21 allows for an almost unprecedented encroachment on individual civil liberties, granting police, immigration and public health officers the ability to detain individuals for up to 48 hours, as well as to isolate, examine, take samples and force disclosures from them - while making non-compliance an offence.

The powers can be used against an individual when: "(a) the person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus, or (b) the person has been in an infected area within the 14 days preceding that time." (Sch 21, Pt 1(2))

This allows for these far-reaching powers to be broadly applied on the very tenuous grounds of suspecting that someone might be infected.

In practise this can allow for arbitrary use of vast policing powers and can become like a civilian form of the discriminatory Schedule 7 stop and searches at UK borders under the Terrorism Act - which are used to harass individuals, and gather personal information for the purposes of intelligence.

Though it can apply anywhere, there is nothing to suggest this power can not also be used to force self-incrimination, nor are there any safeguards against data sharing on individuals with Home Office agencies. This can have an especially acute impact on already targeted groups such as migrants.

Schedule 22 can allow for the banning of any type of event, gathering or meeting and the shutting down of premises for the purpose of:

“(a) preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus, or(b) facilitating the most appropriate deployment of medical or emergency personnel and resources” (Sch 22, Pt 2(5))

Needless to say, this can also be easily used to outlaw protests – including those called in opposition to draconian powers such as these – as well as meetings for political and religious purposes, and can severely undermine freedom of association. The vague wording around this aspect of the Bill leaves it ripe for abuse and misuse.

In addition, Schedule 8 includes amendments to the Mental Health Act 1983, which allows for easier detention and medication-without-consent of individuals. This is alarming given the long-standing concerns around deaths in mental health detention, the use of mental health detention in the course of policing, and the racialised manner in which this plays out - with black men more often the subjects of overmedication in mental health detention.

A 2015 report by INQUEST¹ notes: “The number of deaths in mental health detention is high in comparison with other forms of custody”. The report references figures that show deaths of mentally detained patients “[make] up 60% of the total numbers of all deaths in custody”. The move to streamline the process of mental health detention, along with the unprecedented pressure on healthcare services in the coming months, will leave vulnerable individuals “suspected of infection” being open to coercive and possibly violent interventions from the state.

Exceptional powers rarely remain temporary

While the Bill is being touted as a temporary and extraordinary power to detain with the current pandemic, provisions in the Bill are wide reaching, and provide the opportunity for Government to intervene in and make unusual demands of authorities and public sector bodies.

Sections 88-92 indicate the possibility for provisions in the Bill to be extended, modified and effectively made permanent in future.

‘Exceptional’ powers rarely remain temporary, but can quickly become the new normal; this Bill shouldn’t be seen as just an isolated law, but a framework that can be manipulated in many ways to accumulate centralised control.

In Britain, the Terrorism Act 2000, for example, consolidated powers provided by the purportedly temporary Prevention of Terrorism Acts issued from 1974. The ‘SUS laws’, used predominantly against inner city black men in the 1970s, drew from anachronistic legislation dating back over 150 years. Meanwhile, in France recently, and other countries historically, powers granted during States of Emergency were later made permanent through law.

In order to validate such exceptional powers, the government will have to prove their value to the public.

Our experience challenging counter-terror policies have shown that this value is often affirmed through spectacle: the circus of mass arrests, media frenzy and government pronouncements that they have averted a catastrophe – which amount to statements that can often be far from the reality.

It is a troubling prospect that in order to justify the existence and continuation of such powers, the government and its agencies may rely on scapegoating; they will marshal their influence through the media to draw attention to isolated cases, which will then be held up as a reason to retain these extraordinary powers.

The powers granted by the Bill must be robustly reviewed by a cross-party committee. The government must demonstrate its necessity, rather than being allowed to be perpetually rubber-stamped for renewal every six months, as per the current proposal.

1- <https://www.inquest.org.uk/deaths-in-mental-health-detention>

Furthermore, these laws should be suspended immediately with the end of the pandemic, and the two-year initial lifespan of the Bill is unjustifiable.

*A heavy handed approach to the public,
and a soft touch for business*

Recent weeks have seen the government forced to intervene to deliver funding and assert their control over public services and infrastructure, refuting decade-long pronouncements that such radical action from government was no longer possible.

But these practical measures, compelled by extreme circumstances, come up against the ideological commitment of the government to preserve the interests of business and finance.

In order to avoid criticism of this, we have seen the government gradually deflecting responsibility on to the public for not isolating, while they are not yet adequately meeting the conditions in which people can do so while feeling financially secure.

The increased coercive powers of the Bill should be seen in this light: what is needed right now is increased job security, wage security and housing security, rather than simply further securitisation.

It is a reflection on the now-standard approach to governance in Britain that the Bill leans heavily towards increasing the coercive ability of the state, and increasing the criminalisation of individuals.

What is required most of all is increasing the capacity of public health systems and protecting citizens from exploitation by employers and landlords - yet so far these concerns have been approached in a voluntarist manner by the government.

The disparity is clear: a heavy-handed approach to the public, and a soft touch for business.

Despite the bluster from sections of the government that we are 'all in this together', the false starts, u-turns and flat out mistakes shown by the Johnson government in dealing with this pandemic thus far make it clear that they should not be left to their own devices.

It is vital that we do not renege on our convictions to hold power to account, nor relent on our critical approach to state power: this is not the moment that politics dies, but rather it is the moment it is being remade.