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UK government criticised over change in death penalty stance on Isis pair

Wednesday 25 July 2018, by [GRIERSON Jamie](#) (Date first published: 23 July 2018).

Ministers under fire after US told Britain would not oppose death penalty for terror suspects



El Shafee Elsheikh (left) and Alexanda Kotey after their capture in eastern Syria in January. Photograph: AFP/Getty Images

The government came under attack from MPs and experts on Monday after it made a “secret and unilateral” change to its stance on the use of execution for two terror suspects in the US.

Critics said the decision to suspend the normal approach of demanding a “death penalty assurance” could put the UK’s principled opposition to the the death penalty in jeopardy.

The security minister Ben Wallace was forced to answer an urgent question in the Commons after it emerged that the home secretary, Sajid Javid, had written to the US attorney general, Jeff Sessions, to confirm the UK’s position on the case of two former Britons accused of being members of the [Islamic State](#) cell known as “the Beatles”. The prime minister, Theresa May, was aware of the position adopted in the letter.

Hearing widespread condemnation from Tory, Labour, SNP and Liberal Democrat MPs, Wallace said the government would not seek assurances when that would “get in the way” of seeking criminal justice.

Asked in parliament how many times this had happened before, he said it had not occurred during his time as a security minister but he would supply a written answer to the question.

The former Tory attorney general, Dominic Grieve, told MPs the decision was a major departure from normal policy. “Those are the key questions and until they’re answered I have to say to him this issue is going to continue to haunt the government,” he said.

Alexanda Kotey and El Shafee Elsheikh are alleged to have been members of a four-man cell of Isis executioners in Syria and Iraq responsible for killing a number of high-profile western captives.

The position in Javid’s letter signals a shift in the UK government’s policy towards the death penalty,

which was considered to be one of “blanket opposition”.

The case of Kotey and Elsheikh is complicated by the fact they have been stripped of British citizenship – a move confirmed by Wallace in the Commons on Monday. They were [captured in January](#) and have been at the centre of a dispute over whether they should be [returned to the UK for trial](#) or face justice in another jurisdiction.

In a [leaked letter](#) obtained by the Telegraph, Javid said the UK “does not currently intend to request, nor actively encourage” the transfer of Kotey and Elsheikh to Britain.

He wrote: “I am of the view that there are strong reasons for not requiring a death penalty assurance in this specific case, so no such assurances will be sought.” He said he had instructed officials to “action the request” for UK cooperation.

He adds: “As you are aware, it is the long-held position of the UK to seek death penalty assurances, and our decision in this case does not reflect a change in our policy on assistance in US death penalty cases generally, nor the UK government’s stance on the global abolition of the death penalty.”

It is not the first time the government has not sought assurances over the use of death penalty overseas, sources have told the Guardian.

The development has been widely criticised, including by relatives of Kotey and Elsheikh’s alleged victims. The UK’s shadow attorney general, Shami Chakrabarti, said: “Sajid Javid appears to have secretly and unilaterally abandoned Britain’s opposition to the death penalty. By doing so he is not just playing with the lives of these particular terrorists but those of other Britons – including potentially innocent ones – all over the world.

“Just as we should be persuading countries like the US and Iran to drop the death penalty, [Sajid Javid](#) appears to be encouraging this grave human rights abuse.”

Lord Carlile, a former reviewer of terrorism legislation, described Javid’s letter as extraordinary.

“It is a dramatic change of policy by a minister, secretly, without any discussion in parliament. It flies in the face of what has been said repeatedly and recently by the Home Office – including when Theresa May was home secretary – and very recently by the highly respected security minister, Ben Wallace,” he told BBC Radio 4’s Today programme.

[Amnesty International](#) also criticised Javid’s letter. Allan Hogarth, the head of advocacy and programmes at the human rights group, said: “This is a deeply worrying development. The home secretary must unequivocally insist that Britain’s longstanding position on the death penalty has not changed and seek cast-iron assurances from the US that it will not be used.

“A failure to seek assurances on this case seriously jeopardises the UK’s position as a strong advocate for the abolition of the death penalty and its work encouraging others to abolish the cruel, inhuman and degrading practice.”

The mother of one of the cell’s victims told Today she was “very against” any use of the death penalty if Kotey and Elsheikh were convicted.

“I think that you just make them martyrs in their twisted ideology,” said Diane Foley, whose son, the US journalist James Foley was [killed in 2014](#). “I would like them held accountable by being sent to prison for the rest of their lives. That would be my preference.”

Execution would be too easy for them, she said. “In a way that allows them to take a much easier way out.”

Along with [Mohammed Emwazi](#) – the killer nicknamed Jihadi John – and Aine Davis, Kotey and Elsheikh are alleged to have been members of the notorious “Beatles” group that held foreign hostages, killed them by decapitation and distributed footage of the murders across the internet.

Emwazi, who was killed in a US airstrike in 2015, appeared in a number of videos in which captives including the British aid workers David Haines and Alan Henning and Foley and his fellow US journalist Steven Sotloff were killed.

Davis was convicted of being a member of a terrorist organisation and jailed for seven and a half years by a court in Silivri, Turkey, in May 2017.

The Telegraph reported that other documents say British officials have assessed that Kotey and Elsheikh may be sent to [Guantánamo bay](#) without trial and that such an outcome would not be formally opposed.

The Home Office refused to comment on the leaked documents. A spokesperson said: “We continue to engage with the US government on this issue, as we do on a range of national security issues and in the context of our joint determination to tackle international terrorism and combat violent extremism. The UK government’s position on Guantánamo Bay is that the detention facility should close.”

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