

# Parliamentary Brief



The Law Society

## **Serious Crime Bill**

### **Second Reading – House of Commons**

**12 June 2007**

The Law Society recognises and fully supports the need to tackle serious crime. However, it is essential that any procedures put in place to achieve this end meet the fundamental requirements of proper evidence gathering and prosecution. We strongly back the provisions introduced in the House of Lords which provide for the prosecution to apply to introduce intercept and metering evidence in criminal proceedings for serious crime and terrorism related offences, to allow for prosecution in the normal way of those accused of such crimes. However, we remain gravely concerned that key proposals in the Bill undermine the presumption of innocence and will effectively amount to the abandonment of the principles concerning fair trials.

#### **Part 1 – Serious crime prevention orders**

The Law Society does not agree with the concept of serious crime prevention orders, applying to persons who have not been convicted of a criminal offence. Nor do we believe there is a need for such orders. Where there is evidence that a person is engaged in criminal activity, that evidence should be gathered with a view to prosecuting them. We fear the proposed orders are a measure of expediency to deal with cases where a prosecution is not possible because there is insufficient evidence. Given the ambit of the orders, the proposed powers and the potential criminal consequences of breaching an order, we are very concerned that they will lead to an increasing criminalisation of otherwise lawful behaviour.

Given that the standard of proof for an order will correspond to that required for an anti-social behaviour order, and will thus be to the criminal standard,<sup>1</sup> anyone who might fall within the scope of these types of orders should be prosecuted for criminal offences in the usual manner. We do not believe there is any need for such an order to be made between charge and trial, because a court already has the power under the Bail Act 1976 to impose any conditions which it believes necessary to ensure that a person does not commit an offence while on bail. Conditions of the type suggested in the Bill can be imposed as part of the defendant's bail.

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<sup>1</sup> as determined in the case of McCann [2002] UKHL 39

We are concerned that creation of this new order will add to the already considerable amount of new criminal justice legislation, all of which increase the training burden on prosecutors, courts and the legal profession. It is particularly important that the legal aid impact of the new order be properly and realistically assessed, given the very tight budgetary constraints that are being applied. The legal aid assessment will need to consider the cost of representation of third parties adversely affected by an order, as well as representation of those subject to an order.

### **Part 3 – Data sharing and data matching**

The Law Society fully supports proportionate measures to tackle fraud. However, we are concerned that the powers introduced by the Bill to allow public to private sector data sharing and ‘data mining’ may create further confusion, and we are not convinced that the exercise of such powers would be a proportionate response to crime prevention.

We have a number of particular concerns about the data sharing and data mining proposals. The first is data quality. Much existing data is of poor quality. If poor quality data is more widely shared across the public and private sectors then inefficiencies will be created. More worryingly, records may unjustifiably be flagged with a suspicion of fraud, and inappropriate and intrusive fraud investigations may be initiated.

We are concerned about the sharing of information by the private sector with public sector bodies which may expose individuals to the risk of unacceptable consequences in their private lives, not on the basis of proven criminality, but instead based on mere suspicion.

The fundamental principle of the criminal process is the presumption of innocence. If put in place without proper safeguards, data sharing may create the risk of draconian consequences for an individual without any of the protections provided by the criminal process. Robust guidance will be required. We would suggest that, at minimum, there should be a system in place to ensure that there is a valid basis for any suspicions which are subject to the sharing powers.

### **Part 3 - Regulation of Investigatory powers**

The issue of extending the powers in the Regulation of Investigatory Powers Act 2000 (RIPA) to all criminal investigations undertaken by HM Revenue and Customs (HMRC) has been raised in the context of the ongoing review of HMRC’s powers. In our responses to the consultation we have made clear our view that HMRC should not have wider powers than those available to the police.

It is equally vital to ensure that the use of any new powers is authorised at an appropriately senior level within HMRC. At present, the senior authorising officers for the police are Chief Constables (Commissioners for the Metropolitan and City police forces), whereas for HMRC those authorised will be officers of HMRC. We believe the Act must make clear the level of seniority required to authorise such intrusive powers and should identify an equivalent level of seniority to that of Chief Constable. In addition, the officers in question should be limited to those in HMRCs new Criminal Investigations Directorate - as is the case with the proposed powers of arrest<sup>2</sup> - who have received thorough training in the exercise of these powers.

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<sup>2</sup> See Modernising Powers, Deterrents and Safeguards - Criminal Investigation Powers: Publication of draft clauses and explanatory notes and Responses to the August 2006 consultation document, paragraph 3.13