



The Law Society

Queen's Speech – 6 November 2007

Law Society priorities

Parliamentary Unit

6 November 2007

Contents

Ministry of Justice	3
Draft Constitutional Renewal Bill	3
The Law Society's Position	4
Criminal Justice and Immigration Bill.....	5
The Law Society's position	6
Home Office.....	9
Counter Terrorism Bill.....	9
The Law Society's position	9
Department for Children, Schools & Families.....	11
Children and Young Persons Bill.....	11
Law Society's position.....	11
Appendix 1.....	12
Law Society lobbying in the 2006/2007 Parliamentary session.....	12
Legal Services Bill.....	12
Fraud (Trials without a Jury) Bill	13
Mental Health Bill	13
Sustainable Communities Bill	13
3rd Money Laundering Directive	14
Small claims.....	14
Legal aid	14
Appendix 2.....	16
Full list of bills & draft bills announced in the Queen's speech.....	16

Ministry of Justice

Draft Constitutional Renewal Bill

The purpose of the bill is to

- take forward the initial legislative elements of the Constitutional Renewal package set out in the Government's Green Paper 'The Governance of Britain' published on 3 July;
- rebalance power between Parliament and Government, and give Parliament more ability to hold Government to account;
- clarify the role of Government, both central and local.

Some elements of the Draft Bill would be dependent on subsequent consultation exercises, but provisions may include:

- Royal Prerogative – War Powers and Ratification of Treaties.

At present Parliament has no formal role in the ratification of treaties, and there is no formal mechanism by which either House can force a debate on a treaty laid under the Ponsonby Rule. The Government intends to make it a statutory requirement that treaties are laid in both Houses before ratification and is seeking views on how MPs and peers should be able to trigger a debate and the effect of any vote.

The Government believes that, regarding the deployment of troops abroad, the executive should seek the approval of the elected representatives in the House of Commons.

- The Role of the Attorney General

The Government's commitment to rebalancing power between the executive, legislature and the people inevitably involves reform of this historic office. A public consultation on this issue runs until November.

- Civil Service

The role, governance and values of the Civil Service are not set in Parliamentary legislation. The Government believes it is right to correct this.

- Pre-appointment scrutiny

The Government is consulting on proposals to involve Parliamentary Select Committees in the appointment of certain key public officials.

- Royal Prerogative of Mercy

The Government makes recommendations to the Monarch to exercise powers to grant mercy, exercisable as a free or conditional pardon to address a miscarriage of justice or as a remission of all or part of a sentence. This power is rarely used as it has been effectively replaced by statute and, therefore, the Government will consult on formally surrendering this power.

- Judicial Appointments

The Government is consulting on what its future role in judicial appointments should be, including considering a role for Parliament.

- Intelligence and Security Committee

The Government will focus on changes to bring appointments, operation and reporting of the Committee more in line with other select committees, while maintaining arrangements for dealing with highly classified information.

- Protest in Parliament Square

The Government has made it clear that there should be no unnecessary restrictions on people's rights to protest, particularly around the seat of the elected representatives, and a consultation has been launched.

The Law Society's Position

The Law Society welcomes the Government's consultation on its future role in judicial appointments. The Society believes that an effective appointments system, based on merit through a process that is objective and rigorous, and as remote as possible from political influence, will encourage high quality applicants from the widest possible pool, and ensure that the best become judges. This will enable the continuation of a strong and independent judiciary, in which all parts of the community have confidence. This is an essential component of our democratic system, providing for the fair resolution of disputes, safeguarding and promoting human rights and protecting the citizen against arbitrary government.

The Law Society also welcomes the Government's reform of the role of the Attorney General in light of its commitment to rebalancing power between the executive, legislature and the people. We look forward to seeing the details of this reform.

Criminal Justice and Immigration Bill

The purpose of the bill is to:

- take forward the Government's criminal justice reform agenda by reducing re-offending, protecting the public, promoting justice, improving access to justice and increasing confidence in the justice system.

The main elements of the bill are:

- removing the power to impose Suspended Sentence Orders for summary only offences and providing for non-dangerous offenders who breach the terms of their licence to be recalled to prison for a fixed 28 day period;
- Violent Offender Orders, which will allow courts to impose post-sentence restrictions on those convicted of violent offences e.g. residence or movement restrictions;
- ending automatic sentence discounts for offenders re-sentenced to an indeterminate sentence after initial sentencing decision ruled unduly lenient, and powers for courts to make dangerous offenders given a discretionary life sentence serve a higher proportion of their tariff before eligible for parole consideration;
- changing the law on the use of self-defence to ensure that people who act with reasonable force to protect themselves and others, and their property, are fully protected under the law;
- introducing a new offence of inciting hatred against gay, lesbian, transgender and disabled persons;
- extension of existing crack house closure powers to tackle premises at the centre of serious and persistent disorder or nuisance, regardless of tenure, and new powers to deal with nuisance or disturbance on NHS premises;
- a new special immigration status for terrorists and serious criminals who cannot currently be removed from the UK for legal reasons.
- measures to devolve police accountability and information sharing to a lower level
- the extension of the powers of Crown Prosecution Service Designated Caseworkers to allow them to conduct more complex and serious matters in the Magistrates' Court.
- changes to the scheme for compensation for miscarriages of justice to limit the amount payable to £500, 000.
- changes to the power of the Court of Appeal (Criminal Division) to overturn convictions.

The Law Society's position

Violent Offender Orders (VOOs)

The Law Society strongly believes that the criminal justice system is suffering from 'change fatigue', and that new legislation, particularly that creating additional criminal offences or alternative ways of dealing with people who have offended, can be counterproductive if it unnecessarily results in the wastage of scarce resources. The Law Society is also concerned with the trend towards mixing the civil and criminal jurisdictions, resulting in an area of quasi-criminal orders that may impose significant restrictions on an individual's liberty. The Law Society views the proposals for VOOs with both these concerns in mind.

Given the circumstances in which it is proposed that VOOs will be applicable, it is unlikely that they will often be necessary. We therefore question whether the creation of a further civil order is the most effective use of resources. We query also whether the Magistrates' Court is the most appropriate venue for considering what may be complex evidence relating to risk. As the Crown Court will have imposed the sentence for the specified offence and has experience in dealing with the dangerous offender public protection sentencing provisions, it is more appropriate that the Crown Court has jurisdiction in VOO applications. Although the number of such applications is likely to be relatively small, we urge MPs to press Ministers for information relating to the likely legal aid impact of the proposals.

Extending the powers of Designated Caseworkers (DCWs)

The Law Society is strongly opposed to proposals to extend the role of DCWs resulting from the proposed amendments to the Prosecution of Offences Act 1985. The Law Society is not opposed to the deployment of paralegals in appropriate circumstances, as we recognise this will result in the time of legally qualified prosecutors being more productively used. However, allowing DCWs to undertake summary trials or contested bail applications in relation to serious offences is, in the Law Society's view, inappropriate.

The amendments will permit non-legally qualified CPS staff to: conduct trials in magistrates' courts; conduct proceedings in magistrates' courts in relation to certain offences previously excluded from their remit, including offences triable only on indictment, where the accused has elected to be tried by jury or where the court has found that it should be tried by jury; conduct applications for 'preventative civil orders' (e.g. parenting orders, restraining orders, anti-social behaviour orders, drinking and football banning orders); and conduct certain proceedings assigned to the DPP by the Attorney General under the Prosecution of Offences Act 1985.

The proposal is not aimed at improving the quality of the service provided to victims of crime and witnesses, but rather the Law Society is concerned that the proposal is an expedient means to save money which may have a very detrimental effect on due process. In particular, we are concerned that no qualified lawyer may be involved with a case in the magistrates' court in which the defendant is facing an imprisonable offence.

Compensation for miscarriages of justice

The Law Society is opposed to this provision, which would arbitrarily cap the maximum amount of compensation payable for the worst case of suffering arising from a miscarriage of justice at £500,000, to bring it into line with claims made by victims of crime. While the Law Society would support an increase in resources available to support victims of crime, this must not be at the expense of those who have suffered a miscarriage of justice at the hands of the state and who are in fact victims themselves.

Appeals against conviction

The Law Society is strongly opposed to the proposed amendment to the Court of Appeal Act 1968. The change would remove the ability of the Court of Appeal to refuse to uphold a conviction based on an abuse of the investigation or prosecution processes.

Far from protecting the integrity of the justice system, the proposals seriously endanger the very principle of rule of law by permitting convictions which are based on gross abuse to stand, thereby undermining the integrity of the system. By undermining public confidence in the fairness of the system, the changes would lead to a perception that convictions were unsafe, unreliable and unfair. The removal of this basic safeguard, which is, in any event, exercised in a handful of cases only, would create an environment in which abuse of power and corrupt practices could be effective in obtaining convictions, and would encourage 'noble cause corruption'.

The Society therefore welcomes the Secretary of State's commitment, given on second reading, to review the drafting of clause 261, and we await the amended clause with interest. Should the amendment be brought forward during committee stage, we would ask the Committee to ensure close scrutiny of the revised drafting, to ensure it provides suitable protection of the principle of the rule of law.

Reforming the law on self-defence

The Law Society does not believe that reform of the law on self-defence is necessary or desirable at this time.

Special Immigration Status

The Law Society has no objection in principle to the concept that foreign criminals who have committed serious offences, but who cannot be removed from the UK, should not be granted permanent immigration status. However the Society believes that the Part 11 proposals do not make good law. They are unnecessary as the Secretary of State can achieve the same ends by granting discretionary leave reviewable every 6 months, and may impose conditions under existing powers.

¹ Commons Hansard, Monday 8th October, Column 66

Part 11 creates further complexity in the realm of immigration law at a time when the Border and Immigration Agency has been consulting on ways to achieve simplification of this complex area. Additionally, Part 11 gives the Secretary of State wide discretionary powers to 'designate' a person as subject to 'Special Immigration Status', even where relatively minor offences have been committed, thus creating the danger of inconsistent decision making. Finally, the intention to prevent designated persons, including family members of a foreign criminal from employment, and to subject them to financial dependency on vouchers for an indefinite period, contradicts all notions of rehabilitation and may exacerbate rather than lessen the risk of re-offending.

Home Office

Counter Terrorism Bill

The purpose of the bill is to introduce new measures to strengthen terrorist prosecutions and deal with terrorists after they have been charged.

The main elements of the bill are:

- measures to ensure that full use can be made of DNA in terrorism investigations;
- following consultation, changes to enable post charge questioning of terrorist suspects and the drawing of adverse inferences from a refusal to say something that is later relied on in court;
- a requirement for convicted terrorists to provide the police with personal information on their release from prison and to notify any changes to this information;
- introduction of a foreign travel order that will enable convicted terrorists to be banned from travelling overseas;
- funding arrangements for protecting key sites.

The Government is also considering options in relation to pre-charge detention in terrorist cases.

The Law Society's position

Post charge questioning

We note that the power to question after charge already exists in certain circumstances, particularly in relation to complex terrorism-related investigations, questioning to minimise the risk of harm, or where it is in the interests of justice to allow the detainee to comment on information which has come to light since charge. To prevent any suggestion that post-charge questioning is oppressive it should only be undertaken in relation to new information that has arisen since charge, and not simply be repetition of previous questioning. It should be authorised by a police officer of Inspector rank, and the defendant must be entitled to challenge any requests for questioning before the court, which should have the power to prevent it if it is not satisfied it would be in the interests of justice. The defendant must have access to legal advice by a solicitor in person during any such questioning.

Extension of the period of pre-charge detention

As the Government has rightly acknowledged, there is a fine balance to be struck between individual liberty and national security. To increase the time for pre-charge

detention without good cause risks alienating and deterring the cooperation of the very people who may otherwise supply information to prevent terrorist crimes.

The Law Society, like the Joint Committee for Human Rights, is not convinced by the arguments for increasing the period of time for which a person can be held before they are charged. On the contrary, the evidence contained in the Options paper (Options for pre-charge Detention in Terrorist Cases', Home Office, 25 July 2007) indicates that the current period, one of the longest periods of pre-charge detention in any comparable system, is sufficient even in cases of great complexity (such as the airline plot).

We share the concern of the Joint Committee on Human Rights that the proposed extension to the pre-charge detention period is being sought on the precautionary basis that 28 days will possibly be inadequate in the future. Any increase in the pre-charge detention period must be justified by evidence, rather than being based on the Government's belief 'that there will be cases in the future, possibly quite soon, in which more than 28 days will be needed for charges to be brought' (ibid: 8).

In our view, initiatives that have already been taken, as set out in the Home Office 'Options' paper (new offences, use of the charging threshold test), should be allowed time to bed down, and be combined with other initiatives not yet in place, such as the use of intercept evidence and post-charge questioning with appropriate safeguards. The cumulative effect of these measures should be evaluated before embarking on the draconian course of a further increase in the length of pre-charge detention.

Department for Children, Schools & Families

Children and Young Persons Bill

The purpose of the bill is to:

- reform the statutory framework for the care system, to ensure that children and young people receive high quality care and support and to drive improvements in the delivery of services focused on the needs of the child.

The main elements of the bill are:

- giving pilot local authorities the power to test a different model of organising social care by commissioning services from 'Social Work Practices' and enabling regulation of these practices;
- increasing the focus on the transparency and quality of care planning and ensuring that the child's voice is heard when important decisions that affect their future are taken;
- increasing schools' capacity to address the needs of children in care including placing the role of the designated teacher on a statutory footing and ensuring that children in care do not move schools in Year 10 and 11, except in exceptional circumstances;
- ensuring that young people are not forced out of care before they are ready by giving them a greater say over moves to independent living and ensuring they retain support and guidance as long as they need it;
- improving the quality and stability of placements for children in care, securing higher placement standards and better value for money and ensuring children in care and custody are visited regularly.

Law Society's position

It is very positive that steps are being taken to improve outcomes for children in care and the Law Society wholeheartedly supports this.

However the proposed reforms of the statutory framework will only be meaningful if mechanisms are in place to ensure that those for whom this Bill is intended to most benefit - the children - are able to challenge issues which may arise further to the implementation of such reforms.

The importance of the voice of the child is a theme referred to in the main elements of the Bill and the Law Society endorses this. However children in care can be physically, geographically and socially isolated, meaning that sufficient resources must be allocated to really promote the voice of the child in order to enable that child to access services and independent advice.

Appendix 1

Law Society lobbying in the 2006/2007 Parliamentary session

The Society lobbied on many issues of interest and concern to the profession in the last Parliamentary session.

The following is a brief snapshot of some of our successes.

Legal Services Bill

In response to pressure from the Law Society a significant number of concessions were made by ministers, particularly in the final stages of the Bill.

For example, it is now much clearer that the primary responsibility for the regulation of lawyers rests with the approved regulators and that the new Legal Services Board should only intervene when their actions are unreasonable and not where it simply disagrees with a decision made by an approved regulator.

The Government also accepted that the Lord Chancellor should consult with the Lord Chief Justice in making appointments to the Board. The independence of the legal profession – and its regulation – from Government is a key constitutional principle, underpinning the rule of law and these changes help to ensure this is a reality.

On complaints handling, ministers were persuaded that lawyers should not be required to pay charges where a complaint has not been upheld and has been dealt with properly in house. This is the so-called polluter pays principle, and we were pleased to see it finally enshrined in the Bill.

On Alternative Business Structures - which the Society had long been advocating - the Government accepted our argument that access to justice should be properly considered when granting new licenses. This will be vital in helping to ensure that new legal services providers do not simply concentrate on a few profitable areas of work rather than offering a full range.

One of the most important of the Government's concessions was to allow the Law Society to regulate Legal Disciplinary Practices (law firms including up to 25% of non-lawyers partners) in advance of the introduction of the ABS regime from 2011. This, we believe, will enable real benefits for both the profession and the public to be realised significantly earlier than would have otherwise have been the case.

Fraud (Trials without a Jury) Bill

The Law Society's lobbying against this Bill played a crucial role in its eventual defeat on second reading in the House of Lords. We have been consistently opposed to the Government's efforts to remove juries in serious and complex fraud trials.

The Society prepared an oral briefing session in the House of Lords ahead of the second reading debate, fielding a panel of expert speakers in conjunction with the Bar Council and JUSTICE. A third of those peers who spoke in the debate were briefed, and the Bill was comfortably rejected.

Mental Health Bill

As part of Mental Health Alliance, a number of Law Society sponsored amendments were passed in the House of Lords. These would have enshrined in statute the existing principle that people treated against their will in hospital must be given treatment that will improve their health or will prevent their condition worsening; closed loopholes that would have allowed people to be eligible for community treatment where it would be an unnecessarily restrictive way to help their mental health problems; and ensured that people whose ability to make decisions about their health is fully functioning cannot be forced to have treatment they do not believe is in their best interests.

Unfortunately, the Government overturned these important changes at the Commons Committee stage, though they did make some important concessions to protect patients and their families from abuse and neglect. We now have a Bill that for the first time gives people a right to an advocate when they are detained and that protects children from being put on adult wards inappropriately. We also have new safeguards over the use of electro-convulsive therapy, for people detained under the Mental Capacity Act, and for the renewal of detention.

That being said, the Law Society will continue to campaign for a new Mental Health Act that is both humane and effective.

Sustainable Communities Bill

The Law Society mounted a targeted lobbying campaign on the Sustainable Communities Bill to ensure that the importance of locally provided legal services was explicitly recognised. A single amendment was sought to include legal services within the Bill's definition of those local services which it actively seeks to protect. This was considered particularly crucial in light of the Government's legal aid reform plans, which threaten the future viability of high street firms and local legal aid providers.

Supporting information and evidence was gathered from the profession via the Society's e-communications, while focussed lobbying was undertaken in Westminster. The amendment was adopted without opposition by the Commons Committee examining the Bill.

3rd Money Laundering Directive

The Society had concerns that this Directive, which must be incorporated into UK law by 15 December, contained an unworkable definition of 'beneficial ownership'. It was felt that it would lead to inconsistent application and leave even the most conscientious of practitioners open to severe criminal sanction.

Following sustained lobbying the Government eventually agreed to significant changes to the definition of beneficial ownership in the draft regulations, in order to make them clear and workable.

We are now looking for further changes in the regulations incorporating the Directive, this time concerning the proposal for a revised 'tipping-off offence'. The particular difficulty with the new offence is that it appears to remove a legal professional privilege exemption which is currently part of the Proceeds of Crime Act and replace it with a much watered-down exemption. This will compromise a vital protection for clients. The Society is currently lobbying on this issue.

Small claims

For some time there had been pressure on the Government – most notably from the insurance industry – to increase the current small claims limit of £1,000 for personal injury claims. The Society opposed this, arguing that it was important to safeguard access to justice and enable people to get the help of a solicitor when bringing these potentially complex claims.

Following our 'Fast and Fair' campaign, which involved the lobbying of MPs and giving evidence to the then Constitutional Affairs Select Committee, the Government decided to retain the current small claims limit for personal injury and housing disrepair claims.

The Government consultation, issued at the time, also proposed increasing the fast track limit to £25,000 and introducing a streamlined claims process for personal injury claims under £25,000. The consultation drew heavily on the proposal in 'Fast and Fair' for the development of a streamlined process for lower value personal injury claims to ensure that injured people continue to have help from a solicitor and which also ensures the claim is dealt with proportionately.

Legal aid

The Law Society's What Price Justice? campaign was launched in November 2006 to raise awareness of the damaging effects that would be felt by the Government's plans to reform legal aid. Our lobbying in Parliament has formed a major strand of this work.

Since the launch, five separate debates attacking the Government's plans have been prompted in parliament. After layered communications with MPs, our Early Day Motion (EDM) (No. 537) expressing concern about the impact the measures will have upon vulnerable clients, was signed by 156 Members – exactly half of which were on the Government's own back benches. More EDMs were subsequently tabled by others, taking the total proportion of MPs (excluding Ministers and Parliamentary Private Secretaries) who have vented their anxiety about the reforms to approximately 65 per cent.

After hearing evidence from the Law Society and others in its inquiry into the Implementation of the Carter Review of Legal Aid earlier in the session, in April the Constitutional Affairs Committee added to the pressure by publishing a damning report on the Government's proposals and handling of the reforms. This formed the basis of a significant debate in Westminster Hall in July 2007 in which the Government was heavily and consistently criticised from all sides.

The Society continues its lobbying efforts on this issue.

Appendix 2

Full list of bills & draft bills announced in the Queen's speech

Bills:

- Channel Tunnel Rail Link (Supplementary Provisions Bill)
- Child Maintenance and Other Payments Bill
- Children and Young Persons Bill
- Climate Change Bill
- Counter Terrorism Bill
- Criminal Justice and Immigration Bill
- Crossrail Bill
- Dormant Bank and Building Society Accounts Bill
- Education and Skills Bill
- Employment Bill
- Energy Bill
- EU Reform Treaty Bill
- Health and Social Care Bill
- Housing and Regeneration Bill
- Human Fertilisation and Embryology Bill
- Local Transport Bill
- National Insurance Contributions Bill
- Pensions Bill
- Planning Reform Bill
- Regulatory Enforcement and Sanctions Bill
- Sale of Student Loans Bill

Draft Bills:

- Draft Cultural Property (Armed Conflict) Bill
- Draft Apprenticeships Bill
- Draft Citizenship and Immigration Bill
- Draft Constitutional Renewal Bill
- Draft Marine Bill
- Draft Heritage Protection Bill
- Draft Marine Navigation and Ports Safety Bill