

Coroners and Justice Bill

Commons Second Reading - 26 January 2009

The Law Society is the professional body for solicitors in England and Wales. The Society regulates and represents the solicitors' profession, and has a public interest role in working for reform of the law. The Society is interested in the following provisions in the Bill:

- **Part 1 – Coroners**

- Clauses 1-10, Investigations into deaths
- Clauses 11-13, Certification by Secretary of State in interests of national security, etc
- Clauses 17-19, Notification, certification and registration of deaths
- Clause 23, Provision of staff and accommodation
- Clause 30, Appeals to the Chief Coroner

- **Part 2 – Criminal Offences**

- Clauses 39-43, Partial defence to murder: diminished responsibility and loss of control

- **Part 3 – Criminal Evidence, Investigations and Procedure**

- Clauses 59-68, Anonymity in investigations & witness investigation orders
- Clauses 69-73, Witness Anonymity Orders
- Clauses 81-86, Vulnerable and Intimidated witnesses
- Clause 87, Examination of accused through intermediary
- Clauses 89-93, Live Links
- Clause 97, Bail: risk of committing an offence causing injury

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Coroners and Justice Bill

Part 1, Coroners

- The Law Society supports the reform of the law relating to coroners and inquests. The Society welcomes the creation of a national structure for the coronial service with the introduction of the post of Chief Coroner, senior coroners for each area, area coroners and assistant coroners. It is hoped that a structured service and prescribed qualifications and training will help to begin to improve the quality of the coronial service.
- The Society welcomes the proposed charter for bereaved people who have come into contact with the coroner system which the Government published at the same time as the Bill.

Clauses 1-10, Investigations into deaths

- The Law Society would like to see the powers of coroners to investigate deaths widened. For example, juries should be required for inquests dealing with the deaths of voluntary patients in mental health institutions and not just those held in state detention; and also for deaths raising health and safety issues in industry, workplaces and on the railways.
- There is a role for the coronial service in preventing future deaths. For that to be effective the coroner needs to be able to make recommendations and those recommendations need to be addressed. The Law Society would also have liked to have seen the Bill revisit the issue of the availability of public funding for the representation of parties at an inquest, and on appeal, which at present is very limited.

Clauses 11-13, Certification by Secretary of State in interests of national security etc

- The Law Society is disappointed to find that the Government has tried to resurrect earlier proposals in the Counter Terrorism Bill in 2008, for inquests involving national security to be held in private, and without a jury, particularly when the reasons to justify holding an inquest in secret have been extended.
- We believe that not only would deaths involving national security, for example that of Jean Charles de Menezes cease to be heard before a jury. Investigations into deaths could also potentially held in secret in order to protect the interests of the relationship between the United Kingdom and another country. This power might be used, for example, to prevent a public inquest on the death of a British serviceman killed by so-called 'friendly fire' from US forces in Iraq or Afghanistan. Public trust in coroners'

investigations will be undermined if the process ceases to be open and transparent.

Clauses 17-19, Notification, certification and registration of deaths

- The Law Society welcomes the addition to the Bill of provisions dealing with the notification, certification and registration of deaths, and in particular the introduction of medical examiners. The details of the new system will need to be clarified, including the mechanism whereby appropriate death certificates are exchanged with the Chief Coroner.

Clause 23, Provision of staff and accommodation

- This clause provides a new duty for each local authority within a coronial area to provide staff and accommodation. The Law Society is concerned that the Government will not provide the additional funding necessary to local authorities to ensure the effective delivery of the service. Potentially this could result in a demand on the time of the Chief Coroner to ensure that funding and accommodation is provided at a local level for the service.

Clause 30, Appeals to the Chief Coroner

- The Law Society supports the institution of an appeal system to review a coroner's decisions, for example the decision of a coroner not to hold an inquest into a person's death. This provision should hopefully reduce the incidence of judicial review challenges. However, the right to appeal will need to be managed carefully. The range of people classified as interested persons is very broad and could lead to the system being overloaded in dealing with a substantial number of appeals.
- Appeal from the Chief Coroner is to the Court of Appeal. For bereaved relatives this may be too intimidating a prospect; appeals the High Court would be more appropriate.

Part 2, Criminal Offences

Clauses 39-43 – Partial defence to murder: diminished responsibility and loss of control

- The Law Society is concerned that the proposals for reform of the law of murder are piecemeal in nature, being confined to reform of the partial defences of provocation and diminished responsibility and infanticide.

- The proposals are based on extensive work by the Law Commission¹, which reviewed the entire structure of murder in a logical and coherent way and made recommendations predicated on a new offence structure. In contrast, the proposals in the Bill select only two defences along with infanticide.
- Although the Government has stated that the wider recommendations of the Law Commission's report will be looked at 'in due course', the Law Society questions whether it is sensible to proceed in this staggered manner. The Law Commission's proposals promised a clear and logical basis for liability for homicide. In an area of the criminal law which requires clarity in order to fulfil the public interest, the Law Society believes that the most serious offences should be clearly defined.
- In particular, the proposed 'loss of control' partial defence in Clause 41 may result in a continuing distortion of the basis of liability for murder, so as to avoid the harsh consequence of the mandatory life sentence, which was the principle cause of the difficulties with the provocation defence. In agreement with Professor Spencer QC², the Law Society is concerned that if these changes are implemented without the structural changes as suggested by the Law Commission, the law may become further imprecise.
- The Law Society is also concerned by clause 42 (6) (c), which requires that in considering whether the loss of self-control had a 'qualifying trigger', sexual infidelity is to be disregarded. We fully accept that sexual infidelity should not amount to sufficient reason to reduce liability for what would otherwise be murder to manslaughter. However, life is rarely as straightforward as that suggests, and often there will be other factors, in combination with infidelity, that may mean it is appropriate to treat the killing as manslaughter and not murder. It is submitted that singling out this factor in the legislation as something to be disregarded is not appropriate. It may result arguments about the admissibility of evidence in cases in which infidelity is a relevant factor, amongst others, thus giving a distorted picture of the circumstances.

Part 3, Criminal Evidence, Investigations and Procedure

Clauses 59-68, Anonymity in investigations & witness investigation orders

- The Law Society takes no issue with this concept in these provisions, and notes that they are likely to be used in a very small number of cases, given the restrictions on the type of offence to which they may relate.

¹ Law Commission (2006) *Murder, Manslaughter and Infanticide: Project 6 of the Ninth Programme of Law Reform: Homicide*, Law Com No. 304, HC 30

² Archbold News (2008), 8th Issue, 8 September 2008.

Clauses 69-80, Anonymity of witnesses

- It is a fundamental aspect of the right to a fair trial that the defendant in a criminal trial is able to challenge the evidence adduced against them. Knowledge of the witnesses' identity is usually essential to enable an effective challenge. If the defendant does not know the identity of a witness, they will be unable to provide their legal team with instructions to enable effective cross-examination, or to challenge the witnesses' credibility. The witness may well have a reason to lie, be it involvement in the offence themselves, or a grudge against the accused. For the accused to be unaware of their identity may have the effect of weakening the defence case to such an extent that the defendant's right to a fair trial is severely compromised.
- The Law Society urges MPs to ensure that this Bill is robust enough to prevent witness anonymity becoming a routine request that is made and granted in run-of-the-mill cases, and without very good reason. These orders should only be used where necessary in the most exceptional cases.

Clauses 81-86, Vulnerable and Intimidated witnesses

- The Law Society welcomes the provision in Clause 81 to increase the age at which a witness becomes automatically eligible for special measures to 18 years, as part of ensuring consistency in the age limit in various criminal justice measures applicable to young people. We also welcome the ability for a child witness to opt-out of giving evidence by video recording and live links, if they so wish (clause 83 (4) and (5)).

Clause 87, Examination of accused through intermediary

- The Law Society strongly supports accused persons being given the statutory right to an intermediary. We note and query the need for a more restrictive test of eligibility that is contemplated for defendants - in that their ability to participate effectively is compromised by their level of intelligence or social functioning, in the case of an under 18 year old, or because the accused has a mental disorder or significant impairment of intelligence or social functioning - than for prosecution witnesses, where the test relates to the quality of their evidence. However, it is the experience of solicitors that a great many accused persons are subject to the type of vulnerabilities which would mean that an intermediary would be appropriate, and they are therefore likely to meet the test.
- While the clause contemplates the use of an intermediary during the giving of evidence by the accused, provision should be made for their presence throughout the trial to assist this the accused to understand the

proceedings, as well as during legal consultation to facilitate communication between the accused and his or her legal team. Such assistance could be essential to ensuring a vulnerable defendant's right to effectively participate in their criminal trial is respected.

Clauses 89-93, Live Links

- Clause 89 (3) would remove the requirement that a defendant consent to the use of a live link for a preliminary hearing in the Magistrates' Court where the defendant is at the police station, a so-called 'virtual court hearing'. The Law Society is strongly opposed to removing this requirement.
- When Section 57C was inserted into the Crime and Disorder Act 1998 as amended by the Police and Criminal Justice Act 2006, Parliament saw fit to require that the defendant at a police station should have the right to consent to appearing in court by live link, or to choose to appear in the usual way.
- Since then the Act, there has been a limited experiment known as the 'Camberwell prototype', which was designed to assess whether the technology was capable of facilitating the appearance of the accused from a police station. Having established that it is so capable, a larger pilot of the system is currently being planned, which we understand will commence in April 2009. No change to the consent requirement should occur until this pilot takes place, and is fully and independently evaluated.
- Unlike the situation with other live link hearings (where the accused is held at police station and it is likely to be their first hearing), in the case of a prison-to-court live link, some time will have elapsed since the prisoner's arrest and it is likely that they will have received detailed legal advice in person in relation to the case, and have appeared in person in court to apply for bail. In contrast, the police station live links are expected to happen within hours of arrest, as a substitute for the usual first appearance in court. Important decisions in relation to bail and plea will need to be made immediately, and only a short time after their arrest.
- In these circumstances, people may not have time to access proper disclosure of the prosecution case, or to take legal advice. Their ability to participate effectively in the hearing might thereby be compromised. If the solicitor and client are unable to gather the necessary information to support a bail application, or locate people who may be prepared to be surety, people who would currently be held overnight and released on bail the following day will instead be remanded in custody for many days or even weeks, thus increasing the prison population, because of purely procedural factors, and not because of any public policy decision that bail should be denied.

Clause 97, Bail: risk of committing an offence causing injury

- This provision would amend Schedule 1 of the Bail Act 1976, to prevent a court granting bail to a person charged with murder unless the court is of the opinion that there is no significant risk that they would commit an offence likely to cause physical or mental injury to another person. This is a wholly unnecessary change to the law on bail, which will simply increase its complexity for no good purpose. It has been prompted by a very tragic, but very unusual, set of circumstances that arose in the Gary Weddell case.
- At present, when deciding any bail application, a court will take into account the risk of re-offending, particularly that which could pose a risk of injury. This is especially the case where the charge is serious, and murder is of course among the most serious of offences. Parliament should not create unnecessary legislation on the basis of one exceptional case. Members of Parliament might wish to press for statistics on the number of cases where an accused, charged with murder, has committed an offence of violence, or has not complied with their bail conditions. The Society is confident such figures would be low, and that courts are fulfilling their role in protecting the public in this regard very effectively.