

Queen's Speech to Parliament

3 December 2008

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. In the forthcoming 2008-09 Parliamentary Session, the Law Society will be lobbying MPs and Peers regarding the following Bills expected to be announced in today's speech:

Ministry of Justice

- Constitutional Renewal Bill
- Coroners and Death Certification Bill
- Law Reform, Victims and Witnesses Bill

Home Office

- Citizenship, Immigration and Borders Bill
- Communications Data Bill
- Policing and Crime Reduction Bill

Government Equalities Office

- Equality Bill

For further information please contact:

Richard Messingham, Public Affairs Adviser.

Tel: 020 7320 5858

Mob: 07870 889 330

Email: richard.messingham@lawsociety.org.uk

Ministry of Justice

Constitutional Renewal Bill

- The Law Society's interest in the Bill relates to the process for judicial appointments instituted under the Constitutional Reform Act 2005. The Law Society believes that appointments should be made independent of the Government; and action needs to be taken to encourage a more diverse judiciary.
- The Society believes that the Constitutional Reform Act 2005 did not secure sufficient independence from the executive and although the Act requires the Judicial Appointments Commission to "have regard to the need to encourage diversity in the range of persons available for selection for appointments", progress has been disappointing.
- The Law Society believes that the Bill should go further than the Government proposes, in achieving independence for the Commission in selecting candidates for judicial appointment and reinforcing the duty of the Commission to strive for a more representative judiciary.
- The Law Society will also be seeking opportunities to press for the introduction of;
 - a statutory obligation upon the Government to provide sufficient resources to ensure that the Judicial Appointments Commission is able to carry out its functions effectively;
 - revocation of the Lord Chancellor's powers to issue guidance to the Commission on the way it should conduct its functions; and
 - removal from the Lord Chancellor of the right to determine the eligibility criteria for particular appointments.

Coroners and Death Certification Bill

- The Law Society welcomed many of the proposals in the draft Bill, but it has concerns that its proposals could result in a large volume of appeals which could adversely affect the operation of the coroner in the new system.
- The Law Society is particularly concerned that the entirety of the new system, including appeals and the role of Chief Coroner, should be properly resourced if the reforms are to work in practice. There also needs to be adequate funding to ensure that families have access to appropriate legal advice. To fail to properly resource the new system risks undermining all of the Government's reforms in this area.

Law Reform, Victims and Witnesses Bill

- The Law Society welcomes proportionate measures to increase public confidence in the criminal justice system and help protect the vulnerable, but any measures must respect due process and the rights of the defendant to a fair trial.
- The Society has serious concerns about the use of witness anonymity other than in exceptional cases, and stated this concern during the passage of the Criminal Evidence (Witness Anonymity) Act 2008. It is an essential element of a fair trial that the accused knows the case against him or her, and is able to effectively challenge a witnesses' evidence. Anonymity should be permitted only following a ruling by the trial judge, who is able to consider each case on its merits taking into account the interests of all parties. An additional safeguard should be considered involving the use of independent counsel to assess a witness's credibility, and restricting anonymity orders to serious cases.
- Reform of the law of homicide, and in particular reform of the defences of provocation and diminished responsibility, is overdue and to be welcomed, and the Law Commission produced a detailed and coherent set of proposals which the Law Society supports. However, the Government's most recent consultation proposed accepting only some of those proposals, and sought to restrict provocation unnecessarily. In our view, this may not result in a more coherent or fair set of laws.
- The Law Society is opposed to the creation of a Sentencing Commission and the creation of a rigid and structured sentencing framework. Judicial discretion is essential to allow the court to tailor the most appropriate sentence for each offence and offender. Numerical grid-based systems, such as are used in some US states, would remove judicial discretion. The current system of producing narrative sentencing guidelines which has been in place for only five years should continue.

Home Office

Citizenship, Immigration and Borders Bill

- The Law Society agrees in principle that immigration legislation should be simplified. However, the proposals seen so far in the Home Office consultations "Simplifying Immigration Law" and "The Path to Citizenship" are vague and suggest a somewhat piecemeal approach to reforms of certain aspects of immigration law, rather than a coherent consolidation of the plethora of legislation enacted since the Immigration Act 1971.
- The Law Society also notes that, whilst simplification of the legislation may be desirable, the circumstances of migrants and would-be migrants to the UK often do not fall within neat categories and we believe that

discretionary concessions should continue to be appropriate in some situations.

- The Law Society has concerns about the proposals for 'probationary citizenship' which add complexity to the process of becoming a British citizen and would appear to run contrary to the aim of facilitating integration of migrants who are eligible to choose the UK as their permanent home.

Communications Data Bill

- The Bill will transpose EU Directive 2006/24/EC on the retention of communications data into UK law. The Article 29 Data Protection Working Party set up under Directive 95/46/EC has issued Opinion 3/2006 on Directive 2006/24/EC setting out its reservation that 'the provisions of the Directive will have far reaching consequences for all European citizens and their privacy'.
- The Article 29 Working Party recommends that in transposing 2006/24/EC Member States should implement adequate and specific safeguards. These include purpose specification, access limitation, data minimisation, no data mining and security measures. This will assist compliance with Article 8 of the European Convention on Human Rights (qualified right to respect for private and family life etc).
- The Law Society will consider the Bill in the light of the Article 29 Working Party's Opinion and its recommended safeguards. We are also concerned at reports that the Government may set up a central database for communications data. We agree with the view of the Office of the Information Commissioner in May 2008 that '[i]f the intention is to bring all mobile and internet records together under one system this would give [the Office of the Information Commissioner] serious concerns and may well be a step too far'.

Policing and Crime Reduction Bill

- The Law Society has been involved in the review of the Police and Criminal Evidence Act 1984, and is a member of the PACE Review Board. The Law Society believes that the overall framework of the Act, and in particular the safeguards on police powers, have withstood the test of time and command the support and respect of the police, defence lawyers, the Crown Prosecution Service (CPS) and the judiciary. Therefore, the Law Society is concerned that any proposals aimed at reducing police bureaucracy should not adversely impact on a system that in general works well to regulate police powers.
- The decision to charge a suspect should remain with the CPS, and should not revert to the police as Sir Ronnie Flanagan has recently suggested.

Charging is a legal decision that should be made by the CPS when the police have completed the investigation. Getting the charge right at the outset of a criminal prosecution is essential to a fair and efficient criminal process.

- The Law Society will be concerned to ensure that any proposals to improve arrangements for the recovery of criminal assets and streamline judicial co-operation in relation to extradition are fair to the defendant, provide a means to access effective legal advice and representation, and respect due process. The Law Society supports reducing bureaucracy by repealing legislation in this area that is unused, unlikely to be commenced or no longer required.
- The Law Society is opposed to the suggestion that a defendant's consent to appear by video-link to a 'virtual first hearing court' be removed. The right to be physically present in court if the defendant wishes, particularly at the important first hearing when issues of bail and plea are considered, should be retained.

Government Equalities Office

Equality Bill

- The Law Society supported the government's proposed statement of purpose for the Bill, and agreed it captured the need for work to build good relations and promote positive attitudes within and between groups and underpin efforts to build integration and cohesion.
- The Society agrees that a single public sector equality duty should require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement. It supports evidence-based prioritisation of equality objectives.
- All public authorities should be subject to the same duty, but the duty should be applied in a proportionate manner. However the rights of groups identified by religion or belief should not enable them to pursue practices which are unacceptable in terms of public policy. For example, religion or belief should not over-ride public policy in relation to sex education, the teaching of creationism, gender segregation, homosexuality, or female genital mutilation.
- The Society has some reservations about a single equality standard; a 'one size fits all' approach is probably not appropriate. The professions, for instance, may wish to develop their own equality standards, with or without accreditation.