

THE QUEEN'S SPEECH 2003

A commentary on the proposals
for legislation

November 2003



The Law Society



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The Law Society

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INTRODUCTION

In the Queen's Speech of 26 November, the Government announced its programme of Bills for the coming Session. These are listed in Appendix 1. This cannot be a definitive list as in practice the Government introduces extra Bills as the Session progresses, sometimes in response to unforeseen circumstances or because more Parliamentary time becomes available. For example, although a Mental Incapacity Bill was not announced in the Speech it may appear later in the Session.

The Society does not take an active interest in all Government Bills. Rather we lobby on those measures where the profession's experience can make the greatest contribution to improving our law.

This booklet sets out the Society's initial response to the Bills on which we expect to be most actively engaged, together with background notes on the measures themselves.

The Society's response to the various Government Bills, highlighted here, often draws on the expertise of the Law Society's committees, which advise the Boards and the Council on policy. The Parliamentary Unit will work with policy specialists and committees in order to steer representations to Government and to brief MPs and peers as each measure progresses through Parliament. Our work on all Bills is overseen by the subsidiary Boards – usually the Law Reform Board - on behalf of the Main Board and Council.

I believe that the Society's lobbying activity on Bills – often in partnership with like-minded organisations – produces real results. We need to build on that. For further details of the Society's Parliamentary activity in the last Session, see Appendix 2.

If you would like any further information about the Law Society's Parliamentary activity for this Session please contact John Ludlow, Head of our Parliamentary Unit, on 020 7320 5858 or e-mail john.ludlow@lawsociety.org.uk



Janet Paraskeva

26 November 2003

CHILDREN'S BILL

Background to the Bill

The Government published a Green Paper, "Every Child Matters" on 8 September 2003; the deadline for responses is the 1 December 2003. The Government has said it will legislate at the earliest opportunity.

The announcement followed the report into the death of eight-year-old Victoria Climbié.

What the Bill does

The Bill will:

- Provide for a Children's Commissioner to be appointed as an independent children's champion.
- Create the post of Director of Children's Services, to be accountable to local authority education and children's social services, and a lead council member for children.
- Require local authorities to set up Local Safeguarding Children Boards which would give those who work with children, for example police and health services, a duty to work together and safeguard and promote children's welfare.
- Require local authorities to promote the educational achievement of children in care.
- Make provision to enable information sharing between those who work with children.
- Allow for the introduction of a new integrated inspection framework for children's service and appropriate intervention where services are failing.

The Law Society's position:

The Law Society broadly welcomes the contents of this Bill.

The issue of most interest to the Society is the establishment of a Children's Commissioner. We believe that the Bill should provide that the Commissioner should have specific regard to the United Nations Convention on the Rights of the Child in undertaking all duties and promote respect for that Convention in legislation, policies and procedures.

We are interested in the enabling of information sharing between those who work with children. Whilst we consider that the current law does require simplification in order to improve protection of children, we are concerned about the wider implications of an expansion of non-consent based information sharing.

CIVIL CONTINGENCIES BILL

Background to the Bill

A draft Bill was published on 19 June 2003. The Bill is intended to modernise Britain's emergency planning system, giving Ministers all the powers they need to tackle a wide range of incidents from foot and mouth to an attack on the internet.

The existing provisions, the 1948 Civil Defence Act and the Emergency Powers Act 1920, were designed to deal with a possible Soviet attack and industrial and civil unrest respectively. Neither of these appropriately provides for the possible risks and threats that the United Kingdom may encounter in the twenty-first century.

What the Bill does

The Bill will:

- Provide a single framework for civil protection in the UK, introduce a new regional civil protection tier and a two-tier duty for local responders to codify existing best practice.
- Modernise existing legislative tools to provide more flexibility, proportionality and robustness in dealing with emergencies.
- Extend the current definition of emergency and the scope of potential situations under which the legislation may be used.
- Clarify police powers by clearly setting out the emergency powers that can be used in response to terrorist incidents. In the event of an incident, the police could be given powers to evacuate danger areas, request specialist equipment, and restrict public access to sensitive sites.
- Extend the powers of the Government to allow a Minister of the Crown to declare a state of emergency by regulation or order if there is insufficient time.

The Law Society's position:

The Law Society supports the general aim to provide "a wide range of coordinated, capable resources" to deal with various emergency situations, provided proper safeguards are in place.

We recognise the need for the Government to adopt wide reaching powers to prepare for and protect against potential emergency situations. However, we are concerned that, as drafted, such far-reaching measures may be incompatible with the Government's human rights obligations.

In particular, the proposed legislation shifts the focus of earlier legislation from the essential needs of the general public to include disturbance to the State and financial institutions. It sets out a definition of 'emergency' as an event or situation, which presents a serious threat to human welfare, the environment, political, administrative or economic stability or the security of the United Kingdom.

We believe that this non-exhaustive list, particularly “events or situations which cause or may cause disruption of the activities of the Government, the performance of public functions or the activities of banks or other financial institutions” provides an open ended, and potentially arbitrary, definition of ‘emergency’, leaving scope for possible misuse.

CIVIL PARTNERSHIP BILL

Background to the Bill:

In July 2002 the Law Society published a paper, "Cohabitation: the Clear Case for Law", calling for reform of the law on cohabitation. We called for same sex couples to be given the right to register their relationships, enjoying the same rights and responsibilities as marriage. We also called for reform of the law on cohabitation to ensure that people are not unfairly disadvantaged on the breakdown of their relationship.

In June 2003 the Government published a consultation document, "Civil Partnership: a framework for the legal recognition of same-sex couples".

What the Bill does

- The Bill will allow gay and lesbian partners to register their partnership. The scheme would apply to adults in a same sex couple, neither of whom is in an existing civil partnership or marriage. Couples who register would have a new legal status as "civil partners".
- The scheme will not apply to heterosexual cohabitants on the grounds that they have the option of civil or religious marriage denied to homosexuals.
- Under the Bill civil partners will gain joint treatment for income related benefits; joint state pension benefits; an ability to gain parental responsibility for each other's children; recognition for immigration purposes; and exemption from testifying against each other in court.

The Law Society's position:

The Law Society supports the proposals contained within the Bill.

However, we are concerned at the Government's failure to deal with the issue of cohabitants, both same sex and opposite sex, who do not marry and do not register their relationship. When such relationships end the outcome can be unjust for some individuals and we seek an assurance that the Government will consider the position of unregistered/unmarried cohabitants.

We are also concerned that many forms of registered partnerships which already exist in other jurisdictions are not recognised outside their country of origin. We also have concerns surrounding the methods of dissolving a UK registered partnership for parties habitually resident outside the UK.

CONSTITUTIONAL REFORM BILL

Background to the Bill

On the 14 July the Lord Chancellor published, "Reforming the constitution: A New Way of Appointing Judges".

The Lord Chancellor announced his intention to have the Judicial Appointments Commission in place within 18 months.

What the Bill does

The Bill will:

- Establish an independent Judicial Appointments Commission to recommend candidates to the Secretary of State for Constitutional Affairs to appoint as judges.
- Create a Supreme Court to replace the Appellate Court of the House of Lords. The Commission will promote opening up appointments to some of those groups who are under-represented in the judiciary, including women and ethnic minorities.
- Abolish the office of the Lord Chancellor, removing the current anomaly of a position which combines three distinct constitutional roles.
- Devolution issues will be transferred to the new Court, powers that are currently within the Judicial Committee of the Privy Council.

The Law Society's position

Judicial Appointments

The Law Society supports the Government's proposal to establish an independent Judicial Appointments Commission. The Commission's key objectives must be to underpin the independence of the judiciary; modernise the judicial appointments system, and encourage greater diversity of applicants for judicial appointment.

In order to underpin the independence of the judiciary, the members of the Commission must themselves be seen to be independent of the government of the day. Therefore they should be appointed by an open application process involving assessment by an independent panel.

The Law Society believes there should be minimal political involvement in the appointment of judges. Therefore we favour a hybrid commission which would directly appoint judges to all courts up to the High Court. For more senior appointments, it would make only one recommendation for each vacancy to the Secretary of State on which they would advise the Queen.

The Law Society believes the Commission should comprise half lay members and have a lay chair. We do not favour nominated members, as there can be a perception that those members exist to represent a particular interest.

Supreme Court

The Law Society supports the establishment of a Supreme Court. We accept that the Supreme Court should not have the power to strike down legislation as this would not fit with the unwritten constitution.

Serving judges should no longer sit and vote in the House of Lords.

The Society proposes that the new institutions should be democratically accountable by laying annual reports before Parliament and should be amenable to scrutiny by a Select Committee.

Resources and Independence

Substantial resources will be required for the Supreme Court and the Judicial Appointments Commission. The Law Society is concerned that the Government appears to underestimate significantly the resources required for them to operate effectively.

DOMESTIC VIOLENCE, CRIME AND VICTIMS BILL

Background to the Bill:

In June 2003 the Government published "Safety and Justice: the Government's Proposals on Domestic Violence".

Throughout its reform of the Criminal Justice System the Government has reiterated its aim of putting the needs of victims and witnesses at its heart. In July 2003 the Government announced "A new deal for victims and witnesses".

What the Bill does

The Bill will:

- Provide increased support to victims and witnesses of crime, including setting up an independent Commissioner for Victims and Witnesses and a code of practice binding on all criminal justice agencies.
- Establish mechanisms aimed at preventing domestic violence through education, awareness raising and getting information to victims and tackling risk factors such as alcohol and drugs misuse.
- Make common assault an arrestable offence and extend the use and enforcement of restraining orders.
- Set up a register of civil orders which will allow the police to check for outstanding orders against an alleged offender, so they can take immediate action to protect the victim.

The Law Society's position:

The Society welcomes the Government's intention to support the victims of domestic violence and to provide support and protections for witnesses and victims. The Society has been involved in many of the consultation exercises and initiatives on witness care the Government has been developing over the last few years.

However, we are concerned that placing provisions for victims and witnesses under the umbrella of anti-domestic violence measures will hamper full and serious consideration of the issues involved. Victims of domestic violence have very special and particular needs, distinct from victims of other crimes.

Considerable funding will be required to implement the proposals and the Society is concerned that sufficient funding should be made available so that the initiatives in the Bill can be put into practice.

We are disappointed that the consultation paper 'Safety & Justice' made little mention of children, while the current Green Paper on children does not deal directly with the effects on children of domestic violence. We hope that the needs of children will be fully taken into account.

EMPLOYMENT RELATIONS BILL

Background to the Bill

This Bill reforms the Employment Relations Act 1999 and industrial relations law. It also implements the EU Information and Consultation Directive.

On 11 July 2002 the Secretary of State for Trade and Industry announced the commencement of a review of the Employment Relations Act 1999. She also announced the terms of reference for the Review, as follows:

“In line with commitments made in the 1998 *Fairness at Work* White Paper, the Government will review the operation of the statutory union recognition and derecognition procedures in the Employment Relations Act 1999. The review will also look at the operation of the other provisions of the Act.”

What the Bill does

The Bill will:

- Enact the TUC / CBI framework agreement on the EU Information and Consultation Directive, and take powers to make detailed regulations.
- Make changes to:
 - Trade union recognition procedures;
 - Trade union election procedures;
 - The relationship between trade unions and their members
- Enhance individual employment rights by:
 - Strengthening protection against discrimination on grounds of trade union membership and activities and dismissal of striking workers;
 - Clarifying the right to be accompanied at disciplinary and grievance hearings
- Streamline enforcement of the National Minimum Wage
- Improve protection from unfair dismissal for people requesting flexible working by enabling them to make a claim after only six months of employment.

The Law Society's position

We welcome the implementation of the EU Information and Consultation Directive; and the expected clarification / strengthening of individual employees' rights in relation to both their employment and their trade union membership.

We also welcome the unexpected decision to strengthen protection against unfair dismissal

for people requesting flexible working – removing an anomaly whereby employees could claim flexible working after 28 weeks' employment, but were unprotected against unfair dismissal until they had completed 12 months' employment.

We are disappointed that the Government have failed to implement the changes to TUPE that were announced in a consultation in 2001.

FINANCE BILL

Background to the Bill

The Finance Bill will be preceded by the Pre-Budget report in December 2003 and the Budget which is expected in March 2004.

What the Bill does

The Bill will:

- Implement the tax changes announced in the Budget in March 2004.

The Law Society's position

It is difficult to comment at this early stage. The only provisions we know will be included in next year's Finance Bill are those relating to Stamp Duty Land Tax ("SDLT") which was introduced by the Finance Act 2003. The introduction of SDLT was introduced following consultation on Modernising of Stamp Duty which was first announced at the time of the Budget in April 2002.

The Finance Bill may also contain provisions to deal with some aspects of the proposals announced in the consultation document published by the Inland Revenue in August 2003 entitled "Corporation Tax Reform".

In particular, we expect the Bill to include provisions to implement the proposed changes to the UK's thin capitalization and transfer pricing regimes. The proposals are designed to address uncertainty about the compatibility of English law in this area with EU law. It will have a material impact on existing arrangements and future transactions. The Society has submitted a response to the consultation document in which we put forward various suggestions designed to mitigate the potentially adverse consequences of these proposals for UK business.

HOUSING BILL

Background to the Bill

The Bill contains proposals to introduce home information packs (formerly the Sellers' Pack).

There have been a number of consultation papers on this issue, to which the Law Society has responded. Other aspects of the Bill have their background in consultation papers including "Licensing of Houses in Multiple Occupation - England 1999" and "Selective Licensing of Private Landlords 2001". The Society also responded to the consultation on the draft Bill.

The draft Bill was published in April 2003. The ODPM Select Committee carried out an inquiry into the proposals. In their report they concluded that much more research needed to be carried out before the home information packs were introduced on a compulsory basis.

What the Bill does

The Bill will:

- Introduce compulsory home information packs which will have to be completed prior to the marketing of a dwelling house. Packs will include a home condition report and local authority and other searches on the property.
- Introduce a licensing scheme for houses in multiple occupation, and give Local Authorities a selective power to licence private landlords in areas of low demand housing or where there is a significant impact on the community arising from the poor management of properties. There will also be changes to the right to buy scheme.

The Law Society's position

Home Information Packs

The considerable developments taking place in the home buying and selling arena with the National Land Information Service (NLIS), e-lodgement at the Land Registry and proposals for electronic conveyancing, are all developments that will "ease the process of buying and selling homes" far more effectively than the proposals contained in the Bill.

The proposal to have obligatory home information packs prepared prior to the marketing of any residential property add considerably to the cost of moving home, especially when buyers feel unable to trust a survey commissioned by the seller and therefore commission their own in any event.

Packs should not be compulsory. Sellers should simply be requested to make it clear when they are not using the home information packs.

If home information packs were to be made compulsory then the home condition report element of the pack should be optional.

Home condition reports will be produced by a new type of qualified inspector. Questions still remain about whether the public will be properly protected if they rely on a report which

subsequently turns out to be false or misleading. The Society believes that insurance along the lines of the solicitors' indemnity insurance arrangements is needed to protect consumers if things go wrong.

Licensing proposals

The Law Society welcomes the proposals to introduce a mandatory, national licensing scheme for houses in multiple occupation ("HMOs") and to give local authorities powers to licence all landlords in areas of low housing demand. It is well documented that HMOs tend to be unsafe. Research carried out for the DETR found that in bedsit-type accommodation occupants were six times more likely to die as a result of fire than adults in an ordinary house¹.

Statutory Tenancy Deposit Scheme

We believe that the Government should use the opportunity presented by the Housing Bill to introduce a statutory tenancy deposit scheme.

The proper management of deposits is a significant issue. If disputes about deposits are not resolved satisfactorily, tenants may not have the necessary funds to move onto the next property in the private rented sector. This affects people's mobility and may exacerbate homelessness. In addition research has shown that help with deposits leads to low-income families securing better-quality housing.²

The introduction of an independent deposit scheme would make the private rented sector more attractive, benefiting both landlords and tenants. This would complement one of the main aims of the Housing Bill, which is to address the poor management of the private rented sector through the use of licensing schemes. The Bill would be the most appropriate piece of legislation in which to include a clause establishing a statutory tenancy deposit scheme.

¹ *Fire Risk in House in Multiple Occupation Research Report*, 1998, HMSO, London.

² *Helping people on low income secure private rented accommodation*, Housing Research 193, September 1996, Joseph Rowntree Foundation.

IMMIGRATION AND ASYLUM BILL

Background to the Bill

On 27 October 2003, the Government announced new asylum measures in anticipation of the Queen's Speech on 26 November 2003. The proposals were contained in a consultation letter with a response date of 17 November 2003.

What the Bill does

In relation to asylum the Government proposes to:

- Replace the current structure of the Asylum and Immigration Appeals System with a single appeal to a new single-tier tribunal, the Asylum and Immigration Tribunal (AIT), headed by a President.
- Introduce measures which would ensure that asylum seekers who fail to provide documents without any explanation and/or have travelled through a safe third country and/or who claim late, would have this taken into account when considering the credibility of their claim.
- Create two criminal offences, of being undocumented without reasonable explanation and of failing to co-operate with re-documentation.
- Legislate so that a person will not be able to challenge their removal to certain safe countries on the basis of the way they will be treated.

In relation to regulation of Immigration Advisers:

- The Bill would extend the powers of the Immigration Services Commissioner (ISC) to enable the Office of the Immigration Service Commissioner (OISC):
 - When investigating a complaint, to enter a solicitor's office, require the production of documents and an explanation of them.
 - When investigating a complaint of suspected sham supervision of an unqualified immigration adviser by a solicitor, to enter a solicitor's office and seize material, subject to obtaining a court warrant.

The Bill will also provide for:

- A duty on Designated Professional Bodies to provide timely information to the OISC and to co-operate fully with any reasonable request from his staff.
- An extension of the OISC's power to enter a private or business residence of anyone suspected of providing immigration or advice services from those premises, when unqualified to do so, subject to obtaining a court warrant.
- A new criminal offence of advertising or offering to provide immigration advice or services when unqualified to do so.

The Law Society's position:

The Law Society believes that a second tier appeal is currently essential in view of the poor quality of Home Office decision-making at the initial stage, which means that in many cases adjudicators are, in effect, the first instance decision-making body. If the Government proceeds with the removal of the IAT second tier appeal it is absolutely essential that improvements to Home Office initial decision-making are made concurrently.

We are concerned that the proposals on undocumented passengers will breach Article 31 of the Refugee Convention 1951, penalise those who are trafficked rather than their traffickers and lead to the refusal of asylum for those who genuinely require it.

We also oppose the use of blanket assumptions in relation to the safety of certain countries, as it may result in a failure to consider the particular facts of each case. We believe that this proposal breaches Article 33 of the Refugee Convention.

The Society believes that the proposals concerning the OISC powers are disproportionate. The proposals are likely to have an impact on legal professional privilege, which needs to be considered carefully. If powers are to be extended in relation to solicitors, the Society, as the regulator of the profession, should have those powers conferred on it – not OISC.

DRAFT CHARITIES BILL

Background to the Bill

The draft Bill arises from the consultation "Private Action; Public Benefits" published in 2002. The Government is keen to modernise the legal framework in both the charitable and voluntary sectors, to make them dynamic and vibrant, while maintaining public confidence in the charity and voluntary sector brands.

What the Bill does

The Bill will:

- Confirm the common law requirement that public benefit must be demonstrated in order for charitable status to be conferred.
- Require that charities charging high fees for services should demonstrate that they do not exclude large sectors of the population from benefit.
- Introduce additional new heads of charity in order to broaden the scope of activities which can be designated as charitable. The four existing heads are relief of poverty, advancement of education, advancement of religion and other beneficial purposes. Proposed new heads include advancement of amateur sport, advancement of culture, arts and heritage and social and community advancement.
- Reform the legal framework dealing with smaller charities, requiring fewer smaller charities to register with the Charity Commission.
- Introduce reforms which allow some charities to trade more freely.

The Law Society's position

The Law Society welcomes the general aim of modernising the legal framework regulating the charitable and voluntary sectors.

However, the Society has some reservations about how thoroughly the full consequences of certain proposals have been thought through. In particular, there is concern about the type of organisations that could inadvertently be able to claim charitable status if legislation is not very carefully framed.

It should be noted that the draft Bill is linked to proposals to introduce not-for-profit sector entities called community interest companies. These proposals are included in the Companies (Audit, Investigations & Community Enterprise) Bill announced in the Queen's Speech.

DRAFT CORPORATE KILLING BILL³

Background to the Bill

The Government published a consultation paper on reform of the law on involuntary manslaughter in May 2000. This was based on the Law Commission Report, "Legislating the criminal code- involuntary manslaughter".

Following an amendment being tabled to the Criminal Justice Bill on corporate killing the Government announced its plans to publish a draft Bill on corporate killing.

The Government believes that the legislation will address the failure in current legislation to hold companies properly accountable for deaths that occur as a result of systemic management failure, and to protect the public and ensure that justice may be done.

What the Bill does

The Bill will:

- Clarify and make coherent the law in this area.
- Make corporations criminally responsible for deaths attributable to a corporation's negligence or direct actions. The criminal liability of individual directors is not targeted by the proposals, rather the focus is to increase corporate liability for manslaughter.

The Law Society's position

The Law Society welcomes the clarification of law in this area and measures to ensure that corporate bodies will be made responsible for their actions.

We have consistently lobbied for corporate killing to include crown liability and are disappointed that this will not be included in the provisions.

We will be looking very closely at the detail of the definition of the "corporate entity" that will be responsible for the offence. If the definition is too widely drawn then this could deter individuals from accepting the onerous responsibility of becoming a director.

³ Although this was not contained in the Queen's Speech, the Home Office has announced that there will be a Draft Bill this session.

DRAFT CRIMINAL DEFENCE SERVICE BILL

Background to the Bill

The Bill aims to impose greater control on spending on criminal legal aid cases.

The changes proposed were not explicitly contained in the Department for Constitutional Affairs consultation, "*Delivering Value in the Criminal Defence Service*" June 2003 , but have been raised for discussion by officials in meetings and at conferences since.

What the Bill does

- The Bill will transfer power for granting criminal legal aid for legal representation from the magistrates' courts to the Legal Services Commission.
- The Bill may enable means testing to be introduced for criminal cases before the magistrates' courts.

The Law Society's position

The Law Society recognises the importance of ensuring consistent application of the 'interests of justice' test for the grant of criminal legal aid. The Society would not oppose the transfer of the power to grant legal aid from the courts to the Legal Services Commission, providing arrangements are made to ensure that decision-making is speedy and there are proper avenues of approval. We would question, however, whether this will lead to the cost-savings the Government expects.

Means testing for criminal legal aid in the magistrates' courts was abolished because the cost of carrying out the assessments was disproportionate. Any reintroduction of a means test must avoid that problem. It must therefore be based on a simple power to refuse legal aid to those who can plainly afford the cost of magistrates' court proceedings, rather than a complex assessment.

DRAFT DISABILITY DISCRIMINATION BILL

Background to the Bill:

Earlier this year the Government announced its intention to publish a draft Disability Bill. The Government is building on earlier work that established the Disability Rights Commission and the implementation of the Disability Discrimination Act (DDA), which represented an extension of rights for disabled people.

The draft Bill will include new measures proposed by the Disability Rights Task Force building on the legislation that has already been introduced. For example, the introduction in 2004 of the Disability Discrimination Act's final duties on service providers to make reasonable adjustments for disabled customers and the implementation of the disability provisions of the Article 13 Employment Directive, which will significantly extend employment protection for disabled people.

What the Bill does

New measures to be in the draft Bill include:

- Changes to the DDA affecting the public sector, transport and premises, and some widening of the definition of disability.
- Membership of larger private clubs will be covered by the DDA. The Government will consult widely on how and when the practical changes involved would take effect.

The Law Society's position:

The Law Society welcomes the clarification this Bill seeks to achieve. In particular we welcome the widening of eligible groups to include those with terminal illnesses and depressive illness. The Law Society will be working closely with disability groups to ensure that the stated objectives of the Bill are reflected in the text, and to ensure that any proposals made will be workable.

DRAFT IDENTITY CARDS BILL

Background to the Bill

In July 2002, the Home Office published a consultation paper on the introduction of Entitlement Cards to reduce identity theft and fraud, which the Government estimates costs the economy £1.3 billion annually.⁴

The consultation period on entitlement cards formally ended on 31 January 2003. The Home Office has recently announced that the Government has decided to build a base for a compulsory national identity cards scheme.

What the Bill does

The Bill will:

- Set out the legal framework for identity cards to be introduced throughout the UK and build a base for a compulsory scheme.
- Establish a National Identity Register – a database of information for all UK residents issued with a card, and data-sharing powers to conduct background checks on applicants.
- Set out safeguards to protect individual's data and the circumstances in which specified law enforcement agencies (in cases of serious crime or national security) could have access without an individual's consent.
- Designate existing documentation as part of the identity card scheme, and move towards the inclusion of biometric identifiers on passports and driving licences with costs estimated at £73 for a combined driving licence/identity card and £77 for a combined passport and identity card per person.
- Issue plain identity card for individuals who do not need a passport or driving licence at an estimated cost of £35 per person.
- Set out what information would be required on the cards and safeguards to ensure this is only available to those who need it.
- Allow public authorities and private organisations to use the card and the Register with the person's consent to validate identity before providing services.
- Create new criminal offences around misuse of the card and other identity fraud issues.
- Include enabling powers so that future access to specified public services could be linked to the production of a valid identity card.
- Provide a power to set a date when the scheme would become compulsory, including measures against failure to register.

⁴ Home Office (2002) Entitlement Cards and Identity Fraud – A Consultation, Forward.

The Law Society's position

The Law Society is concerned about the practical difficulties of starting and running a national identity card scheme. In particular we doubt whether such a scheme would significantly reduce the incidence of identity fraud, or of other crimes. It would increase the administrative burden on police and, most importantly, it would have a high price both in money and in liberty.

The Government has failed to provide evidence showing that the adoption of an identity card scheme could achieve any of its stated objectives including a reduction in identity fraud.

For the most part, in order to reap the benefits, identity cards would have to be issued to everyone who was lawfully resident in the UK, and would have to include the highest level of biometric data possible – making its cost prohibitive. We doubt the public's confidence in the Government's ability to produce a safe and secure system. We are concerned about potential violations of human rights and civil liberties and data protection issues.

We are concerned about the costs of the identity card to individuals. It now appears likely that the Treasury will not fund the scheme, resulting in the cost being passed down to the public.

We are concerned by the Home Office's announcement that if conditions were right after the roll out of the first stage, a compulsory card scheme may follow – requiring everyone to have a card and produce it in order to access public services, and the creation of new criminal offences around misuse of the card.

DRAFT MENTAL HEALTH BILL ⁵

Background to the Bill

A draft Bill was published 25 June 2002, following a Law Commission Report in 1995. A new Bill was expected in the last Session but did not appear, in part as a result of strong opposition from a range of lobby groups lead by the Mental Health Alliance (a large body of stakeholder organisations).

The draft Bill proposed an overhaul of mental health provisions in order to make the existing Mental Health Act 1983 Human Rights Act compliant. It also aimed to protect the public from people suffering from untreatable severe personality disorders.

A revised Bill is now to be published which will be subject to pre-legislative scrutiny.

What the draft Bill proposed:

The Bill proposed a new single definition of mental disorder, as well rights to advocacy and a new tribunal system. However, the most controversial aspects are:

- Compulsory treatment of mentally disordered people living in the community.
- Detention of dangerous people with severe personality disorders even if they have not committed a crime.

The Law Society position

The Law Society believes the proposals in the draft Bill are fundamentally flawed. While we welcome some parts of the Bill, such as rights to advocacy and a new tribunal system, the main thrust of the proposals - to increase the number of people who can be detained against their will and made subject to treatment – are unacceptable. What the Bill lacks is any right for people to receive the mental health services they need.

On 12 November 2003 the Society launched a joint charter 'Deciding with Dignity' which calls on the Government to ensure this Bill is compatible with the Mental Incapacity Bill, in particular by allowing some detained patients who have capacity to consent to make decisions about their treatment.

We are disappointed that the Government has not announced its intention to press ahead with legislation on mental incapacity.

⁵ Although this was not contained in the Queen's Speech, the Department of Health has announced that there will be pre legislative scrutiny of a revised Bill.

APPENDIX 1

BILLS FOR THE 2003-2004 PARLIAMENTARY SESSION

(a) **Bills announced in the Queen's Speech**

Armed Forces Pensions Compensation Bill

Child Trust Fund Bill

Children's Bill

Civil Contingencies Bill

Civil Partnership Bill

Companies (Audit, Investigations and Community Enterprise) Bill

Constitutional Reform Bill

Domestic Violence, Crime and Victims Bill

Employment Relations Bill

Energy Bill

European Union Bill

Fire and Rescue Services Bill

Higher Education Bill

House of Lords Bill

Housing Bill

Human Tissue Bill

Immigration and Asylum Bill

Justice (Northern Ireland) Bill

Pensions Bill

Planning and Compulsory Purchase Bill

Public Audit Wales Bill

School Transport Bill

Scottish Parliament (Constituencies) Bill

Traffic Management Bill

(b) Bills carried over from the last session

European Parliamentary and Local Elections (Pilots) Bill

Planning and Compulsory Purchase Bill

(c) Bills announced in draft

Charities Bill

Criminal Defence Service Bill

Disability Discrimination Bill

Gambling Bill

Identity Cards Bill

School Transport Bill

Single European Currency (Referendum) Bill

(c) Bills that were not included in the Speech but which will appear:

Finance Bill

Draft Mental Health Bill

Draft Corporate Killing Bill

APPENDIX 2

LAW SOCIETY LOBBYING IN THE 2002/2003 PARLIAMENTARY SESSION

The Society lobbied on a number of Bills in the last Parliamentary Session. Leading MPs and Peers were fully briefed on the most important and relevant aspects and appropriate amendments were proposed and tabled. In the following note, we outline some of the concessions made by the Government in response to lobbying by the Society and other organisations.

Anti-Social Behaviour Act

The Law Society worked closely with Shelter to successfully lobby on Part 2 of the Bill dealing with housing.

The Government introduced changes which will provide some protection to tenants against landlords who wished to use the process for unscrupulous reasons by ensuring that they must establish the anti-social conduct complained of before applying to the court for the tenancy to be demoted.

Courts Act

We successfully concentrated our lobbying on the issue of full costs recovery. An amendment was accepted which requires the Lord Chancellor to have regard to the need to facilitate access to justice when setting fees.

Criminal Justice Act

A number of significant concessions were made by the Government in response to issues raised by the Society and other organisations. These include:

- The plans to allow judges to preside alone over fraud cases would not be implemented without further Parliamentary decision. As an alternative, there would be further discussion on other ways to deal with complex financial cases.
- The Government dropped proposals to allow defendants to choose to have their case tried by judge alone.
- Restrictions on the admissibility of a defendant's previous convictions in court have been agreed.
- That the Law Society and the Bar Council should be consulted on any changes to PACE Codes of Practice.

Extradition Act

We had a great deal of success on this Bill. All our amendments were addressed

and the majority of our points accepted. These include:

- Clarification that no country using the death penalty will be included under tier 1 provisions, which implement the European Arrest Warrant.
- “Passage of time” has been inserted as a bar to extradition under the European Arrest Warrant.
- Restriction of those who could issue a warrant to police constables and customs officers
- Commitment that a suspect will receive legal advice before irrevocable consent is given to extradition and an obligation for the suspect to be shown the warrant.
- Reliance on summaries of evidence when deciding to extradite to tier 2 countries has been restricted.
- The protections under speciality were reinserted into the Bill.

Finance Act

The Law Society’s briefing and amendments were quoted extensively in the parliamentary debates, particularly regarding the new Stamp Duty Land Tax provisions.

This led to valuable clarification on the meaning of many clauses, which can be relied upon by tax practitioners under the Pepper v Hart principles.

Crime (International Co-operation) Act

We worked closely with civil servants on this highly technical Bill.

The majority of the points we made were accepted. Civil servants particularly valued the practitioner perspective on these points.

Sexual Offences Act

We were supportive of the main aims of the legislation but had a number of concerns surrounding the detail, in particular regarding a number of definitions included within the Bill.

The Government addressed our concerns and provided clarification on the definition of those without the capacity to consent to sexual relations, addressing concerns we shared with MIND, the mental health charity.

We also ensured that the Government widened the scope of family relationships in regard to sexual conduct to include stepfamily members.