House of Commons

Justice Committee

Counter Terrorism Bill: Government Response to the Committee's Third Report of Session 2007–08

Fourth Special Report of Session 2007–08

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

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Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Dr Rebecca Davies (Second Clerk), Ruth Friskney (Adviser (Sentencing Guidelines)), Ian Thomson (Committee Assistant), Hannah Stewart, Committee Legal Specialist, Sonia Draper (Secretary), Henry Ayi-Hyde (Senior Office Clerk), Gemma Buckland (Committee Specialist) and Jessica Bridges-Palmer (Committee Media Officer).

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Fourth Special Report

The Justice Committee published its Third Report of Session 2007–08 on the Counter Terrorism Bill on Thursday 20 March 2008, as HC 405. The Government response was received on 11 June 2008 in the form of a letter from Bridget Prentice MP, Parliamentary Under-Secretary of State, Ministry of Justice, to the Chairman of the Committee which is appended below.

Appendix: Government response

Following the publication of your committee's report on the Counter Terrorism Bill on 20 March, I am writing to you, as Minister responsible for coroner policy, to address the issues the report highlighted about our proposals to ensure that coroners have all the necessary information relevant to an investigation into a death.

You and the other members of the Justice Committee were disappointed that there was no opportunity for consultation or for the Committee to scrutinise these proposals as the clauses were added to the Bill at a later stage. We became aware of circumstances in which a coroners' inquest may need to consider material that cannot be disclosed publicly or shown to a jury, as the finders of fact, without harming the public interest (for example, for reasons of national security). This creates the potential for coroners' inquests to be incompatible with Article 2 of the European Convention of Human Rights (ECHR) where the sensitive material is central to the inquest. I am sorry that more time was not available to consult more widely.

I understand that you are concerned as to whether the provisions in the Bill ensure that coroners' investigations will comply with Article 2 of the ECHR which requires the State to conduct an investigation into the broad circumstances of the death when actions of state representatives may have caused or contributed to the death. What we propose will ensure that coroners' inquests will always be fully compliant with Article 2 of the ECHR because the independent finder of fact will be able to see all relevant material even if it cannot be made public or disclosed to a jury. The current law prevents coroners from seeing and using very sensitive material which may have relevance, either directly or more generally, as to how someone met their death. This is the sort of material which, if it was known about publicly, could damage national security and endanger lives either in the present or the future.

I know that you are concerned that under our proposals Ministers will be involved in the appointment process for coroners dealing with these types of cases. Once the Secretary of State has certified an inquest, a specially appointed coroner will be appointed to hold the inquest. Coroners holding certified inquests, as independent judicial officer-holders, will have obtained developed vetting on a voluntary basis. This will not in any sense compromise their independence. Requiring them to be security vetted, on a voluntary basis, will simply provide us with the reassurance that any responsible government would seek before allowing material that is potentially very sensitive to be disclosed to them. I

want to assure you that the Government has no intention of interfering with the judicial independence of coroners. Similarly we do not intend to assemble a cadre of compliant coroners who are briefed to handle their inquests in a way designed to cover up acts or omissions of state agents that should be rightfully subject to public scrutiny.

One of the purposes of Clause 65 was simply to have a mechanism in place that would enable one of this small group of security cleared coroner volunteers to be matched to the certified inquest. This would always be on the basis of practical factors such as availability and geographical location. Given the Justice Secretary's oversight of the coronial system, it was considered he was best placed to carry out this function. His officials are familiar with the coroner system and already provide regular and routine policy advice to those who work within it. However, as Tony McNulty indicated at Committee on 13 May, we accept that the policy would benefit from further consideration. We are considering a range of options, including whether there may be a role for the Lord Chief Justice in the appointments process.

You also question the exclusion of a jury from an inquest involving non-disclosable material under our proposals in the Bill. The solution we have proposed would replace the jury with a coroner as the finder of fact, as already happens in 98% of coroners' inquests. The specially appointed coroners would be security cleared to the appropriate level in anticipation of these types of cases arising. Since they are independent judicial officers, we believe that it is right for them to have access to, and be able to reach conclusions based on, all relevant material. The proposals will affect a very limited number of cases in exceptional circumstances.

You question the apparent inconsistency in the rules permitting the use of intercept evidence in inquests (as we propose in the Counter Terrorism Bill) and criminal trials. The Chilcot report has been published and there is ongoing work to see how we can satisfy the "tests" set out in the report that would allow intercept to be used as evidence without jeopardising national security. But the review itself recognises that, different considerations would apply in civil cases such as coroners inquests, compared with criminal cases, since there is no discretion not to proceed. An initial inquest is started and then formally adjourned until a decision has been made on criminal proceedings—therefore criminal proceedings have primacy—whatever procedure is set out for criminal proceedings would apply before the inquest is resumed.

It may be that by the time the inquest is resumed, that all the relevant material is in the public domain—in which case the test for certification is unlikely to be satisfied. However, there will be cases where there are no criminal proceedings (which may well be because an investigation has been conducted and decision has been made not to prosecute because there is sensitive material that cannot be disclosed to the defendant as would be required in criminal proceedings by Article 6). If the death occurred in circumstances where Article 2 requires an inquest to be held and the sensitive material is relevant to how the individual met their death, there is the insurmountable difficulty that the investigation into the death must proceed but such material cannot be disclosed in open court without damaging an important public interest such as national security. In such cases, the inquest cannot safely be held by a coroner sitting with a jury.

Your report highlights concern that these provisions create special rules which are independent of the planned reform of the coroners' service. As I explained earlier, we became aware of circumstances in which a coroners' inquest may need to consider material that cannot be disclosed publicly or shown to the jury, as the finders of fact, without harming the public interest. As there was no space for the Coroners Bill in the current Parliamentary session, the Counter Terrorism Bill was the best vehicle to bring these changes forward at the earliest opportunity. The Government remains committed to reform and a Bill will be brought before Parliament as soon as time allows. A Coroners and Death Certification Bill was included in the Draft Legislative Programme for the next session published for consultation on 14 May.

You are concerned that the families of the deceased should have the opportunity to be involved in the coroner's investigation into a death. Any inquest certified under these proposals would continue to be held in public as far as possible. Only those parts involving material which cannot be disclosed publicly without harming the public interest would be held in private. Under our proposal, the interests of the families will be fully safeguarded by independent Counsel. Counsel will be able to see all the material relevant in an individual case. But neither the families, their legal representatives of choice (if they have them) nor any other member of the public will be able to see material that cannot be disclosed publicly without harming the public interest. We believe that our proposal provides an adequate safeguard so that the involvement of the family are balanced against other public interests as Article 2 requires.

Bridget Prentice MP
Parliamentary Under-Secretary of State
Ministry of Justice
11 June 2008