



House of Commons
Justice Committee

Counter Terrorism Bill

Third Report of Session 2007–08

Report, together with formal minutes

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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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Rt Hon Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

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

All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecom

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), Jane Trew (SPIRE Pilot Manager), Chryssa Poupard (Secretary), Henry Ayi-Hyde (Senior Office Clerk), Gemma Buckland (Committee Specialist) and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk

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1 Counter Terrorism Bill

1. Part 6 of the Counter Terrorism Bill in the current session provides for the Secretary of State to certify that a coroner's inquest may be held without a jury and to appoint a particular security cleared coroner in inquests which are expected to involve the consideration of material that should not be made public—importantly, this includes intercept evidence. The provisions allow for intercept evidence to be admissible in such inquests.

2. These provisions were not mentioned in the Government's consultation document published in July 2007. There has therefore been no opportunity for the Justice Committee or the Joint Committee on Human Rights properly to examine them. There is no analysis of the human rights applications of these provisions in the Explanatory Memorandum.

3. The Constitutional Affairs Committee maintained a close interest in reform of the Coroners' system, which the Justice Committee has continued. The Eighth Report of Session 2005-06 from the Constitutional Affairs Committee on Reform of the coroners' system and death certification,¹ and the Government's response,² focused on the draft Coroners Bill which had been published on 12 June 2006. The draft Bill had been prepared in response to publicity surrounding both the Shipman Inquiry, chaired by Dame Janet Smith, and the Report of a Fundamental Review of Death Certification and Investigation in England, Wales and Northern Ireland, chaired by Tom Luce. As a result of the Committee's Report, in which it made serious adverse comments about the Bill, the Draft Bill in its original form was withdrawn.

4. On 27 February 2007 the Government announced its Response to the latest Draft Coroners Bill Consultation by way of a Written Statement.³ That said that the replacement Draft Bill aimed to do three things: improve the way that the system serves the public interest and meet bereaved families' concerns; strengthen coroners' work by establishing a transparent appointments system for a new cadre of full time coroners; and create a national structure for coroners' work.

5. The provisions in the Counter Terrorism Bill may be judged controversial because:

- It is not clear that they sufficiently guarantee independence of investigation and involvement of victims' families. Article 2 of the European Convention on Human Rights (Right to Life, protected by law) requires that where a person has been killed by the use of force, the person carrying out the investigation must be independent from those indicated in the events, there must be sufficient element of public scrutiny to secure accountability in practice as well as theory, and investigation must involve the next of kin of the deceased to the extent necessary to protect their legitimate interests.⁴ A minister could be making the decision to choose the

1 HC 902; published on 1 August 2006

2 Cm 6943; published in November 2006

3 HC Deb., Col. 80WS

4 See, for example, the comments of the Joint Committee on Human Rights on these provisions in its Ninth Report of Session 2007-08, HC 199, HL Paper 50, paragraphs 4-8.

coroner and exclude the jury in cases involving either a service for which he had direct responsibility (such as the Prison Service) or in cases involving other State authorities for which he shared collective responsibility, such as hospitals or the armed services.

- There is inconsistency in the rules permitting the use of intercept evidence in inquests (where it is proposed that the use of such evidence be allowed) and criminal trials (where it will not be allowed unless the conditions set out in the Report of the Privy Council Review of Intercept as Evidence have been fully met).⁵ This raises the possibility that a criminal court might convict defendants who are exonerated as the result of an inquiry held by the coroner.

6. We are very concerned that these provisions create special rules which are independent of the Government's planned "root and branch" reform of the coroner system. We have had no time to scrutinise them in Committee. We would have wished to examine the extent to which the Government's stated aim (and its obligation under the European Convention on Human Rights) was adhered to in relation to independence of investigation and involvement of victims' families as well as the possible conflict of outcome in courts with different rules of evidence.

7. We draw the attention of the House to the need for special care in consideration of these provisions and propose that they be withdrawn pending more detailed scrutiny and the Introduction of the Coroners Bill.

5 Cm 7324; and see the Statement by the Prime Minister of 6 February 2008, HC Deb, col 959.

Formal Minutes

Tuesday 4 March 2008

Members present:

Mr Alan Beith, in the Chair

Siân James
Alun Michael
Jessica Morden
Julie Morgan

Virendra Sharma
Andrew Turner

Draft Report (Counter Terrorism Bill), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 7 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 13 March at 10.45 am, The Vermont Hotel, Newcastle.]

Reports from the Constitutional Affairs (now Justice) Committee during the current Parliament

Session 2007-08

First Report	Protection of Private Data	HC 154
First Special Report	The Creation of the Ministry of Justice: Government Response to the Committee's Sixth Report of Session 2006-07	HC 140
Second Report	Work of the Committee in 2007	HC 358
Second Special Report	Constitutional Role of the Attorney General: Government Response to the Committee's Fifth Report of Session 2006-07	HC 242
Third Special Report	Protection of Private Data: Government Response to the Committee's First Report of Session 2007-08	HC 406

Session 2006-07

First Report	Party Funding <i>Government response</i>	HC 163 <i>Cm 7123</i>
First Special Report	Party Funding – Oral evidence from the Lord Chancellor on the role of the Attorney General	HC 222
Second Report	Work of the Committee 2005-06	HC 259
Third Report	Implementation of the Carter Review of Legal Aid <i>Government response</i>	HC 223 <i>Cm 7158</i>
Fourth Report	Freedom of Information: Government's proposals for reform <i>Government response</i>	HC 415 <i>Cm 7187</i>
Fifth Report	Constitutional role of the Attorney General	HC 306
Sixth Report	The creation of the Ministry of Justice <i>Government response</i>	HC 466 <i>HC 140</i>

Session 2005-06

First Report	The courts: small claims <i>Government response</i>	HC 519 <i>Cm 6754</i>
Second Report	The Office of the Judge Advocate General	HC 731
Third Report	Compensation culture <i>Government response</i>	HC 754 <i>Cm 6784</i>
Fourth Report	Legal Services Commission: removal of Specialist Support Services	HC 919
Fifth Report	Compensation culture: <i>NHS Redress Scheme</i> <i>Government response</i>	HC 1009 <i>Cm 6784</i>
First Special Report	Legal Services Commission's response to the Fourth Report on removal of Specialist Support Services	HC 1029
Sixth Report	Family Justice: the operation of the family courts revisited	HC 1086
Seventh Report	Freedom of Information—one year on <i>Government response</i>	HC 991 <i>Cm 6937</i>
Eighth Report	Reform of the coroners' system and death certification <i>Government response</i>	HC 902 <i>Cm 6943</i>