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Parliamentary Brief

The Law Society

Prevention of Terrorism Bill

Second Reading - House of Commons

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The Law Society welcomes the Government's recognition that Part 4 powers under the Anti-terrorism Crime and Security Act 2001 should not remain on the statute books. The Prevention of Terrorism Bill an important first step by the Government in reassessing its approach to terrorism powers.

However, the Law Society does not believe it is acceptable for the making of control orders - which represent a significant intrusion on individuals' liberty - to be a function of politicians, rather than of the judiciary. Although the Government has come some way in addressing our concerns over judicial control we see no reason why the making of control orders, much like Anti-Social Behaviour Orders, cannot be a function of the judiciary. It is an important principle that restrictions on liberty are imposed only by judges, rather than by politicians.

We welcome the Government's commitment to prosecution as the option of first resort. Prosecution of terrorist suspects in the criminal courts, with appropriate restrictions on the disclosure of sensitive information, must be the preferred option to dealing with the threat of terrorism.

However, the decision to maintain the ban on the use of intercept evidence is disappointing. The Law Society believes the inclusion of intercept evidence would be a positive step forward in supporting the prosecution of terrorist suspects. The Government has not explained why this cannot work in the UK when it is commonplace in other jurisdictions.

It is a fundamental aspect of the rule of law that restrictions on the liberty of an individual should be made by the judiciary, and not at the behest of a member of the executive. We are

opposed to the proposal that the power to make an order limiting an individual's freedom – be it restrictions of movement, of association or use of communications equipment – should be made by the Home Secretary, and based on the standard of reasonable grounds for suspicion alone.

The initial decision to create an order should be made by a judge, following an application made by the Home Secretary, allowing the person affected to make representations as to why the order is unnecessary, excessive or is based on unreliable evidence. This is particularly important given the penalties that will apply in the event of a breach of an order. We are disappointed that the Government has seen fit to propose that the initial decision should be made by the Home Secretary.

In each case, the standard of proof applicable to establish a reasonable suspicion must be at least the standard applicable in serious civil proceedings, such as the standard applicable in relation to proof of conduct for an anti-social behaviour order.

We are also concerned, in light of the House of Lords ruling and some of today's proposals, that the Government wishes to retain the option of derogation from the ECHR.

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