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### Possible Measures for Inclusion in a Future Counter Terrorism Bill

#### *The Law Society of Scotland's Response*

October 2007

#### 1 INTRODUCTION

The Law Society of Scotland welcomes the opportunity to comment on the paper entitled "Possible Measures for Inclusion in a Future Counter Terrorism Bill".

The Criminal Law Committee (the Committee) of the Society considered this paper and have the following comments to make:

#### 2 POST CHARGE QUESTIONING

The Committee has serious reservations about this proposal. It is a fundamental principle of Scots Law that the police are prevented from questioning a suspect after they have been charged. The Committee sees no reason to make a distinction in terrorist cases. It is the firm view of the Committee that matters that relate to fairness and propriety in the investigation of crime should not be disregarded simply because one is dealing with terrorism.

*The Committee understands that in England post-charge interviews and questioning is inadmissible. This is certainly the position in Scotland. Indeed, once the police in Scotland take the view that they have sufficient evidence to charge a detainee, he or she is then arrested, charged and no more questioning takes place. The Committee*

*therefore sees no reason to depart from this practice no matter how imperative it is to secure evidence.*

In general terms, the proposal contains references to the Police and Criminal Evidence Act 1984 (PACE), which only applies to England and Wales. Also, reference is made to the form of caution used only in England and Wales. It is therefore of considerable importance that any future counter terrorism legislation takes full account of the differences in procedure that exist under Scots Law.

## **2 DETENTION PERIOD**

The Committee recognises the serious nature of terrorist activity but the detention period has already been extended from 14 to 28 days and the Committee would be concerned at any proposal to further increase the time police have to question accused persons.

It is the view of the Committee that the 28 day detention period is more than adequate to allow time to interview suspects. If sufficient evidence has not been brought to light within that timescale then it is unfair to the accused to allow further questioning.

In any event, previous experience has demonstrated that a significant number of terrorist detentions result in no charges being preferred against the detainee. According to recent Home Office figures, of the 1165 people arrested under the Terrorism Act 2000, 669 were released without charge.<sup>1</sup> Increasing the period of detention any further would, in the Committee's opinion, exacerbate this problem.

It is of concern to the Committee that in the determination to secure powers to charge and convict real terrorists there is a danger that injustices may be done to innocent people. The Rule of Law must not be undermined just because we are dealing with terrorism.

## **5 Terrorist Notification Requirements**

The notion that if a terrorist incident takes place the police can visit all those who are subject to these requirements to "rule them out of enquiries" is unfair. Whilst the Committee does not oppose notification requirements, it should not become a vehicle whereby persons are subject to police questioning every time a terrorist incident takes place. It is the Committee's view that all convicts, including terrorist convicts, have to be allowed to get on with their lives after they have completed their sentences.

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<sup>1</sup> <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/>