Submission from the Law Society of Scotland

SERIOUS CRIME BILL LEGISLATIVE CONSENT

The Criminal Law Committee of the Law Society of Scotland (the Committee), welcomes the opportunity to comment on the motion lodged by the Minister of Justice with regard to legislative consent. The motion is as follows:

“that the Parliament endorses the principle that the offence of breaching a Serious Crime Prevention Order should be extended to Scotland and that amendments to the Proceeds of Crime Act 2002 relating to the use of force in executing search warrants in Scotland under Section 387 of that Act and the extension of production orders and search warrants to include cash seizures as set out in the Serious Crime Bill should be considered by the UK Parliament”.

The Committee note that the consent of the Scottish Parliament is required with regard to the above.

1. Application of the offence of breaching a serious crime prevention order issued in England, Wales or Northern Ireland to Scotland.

The Committee previously submitted written evidence in response to the Home Office’s Green Paper entitled “New Powers Against Organised and Financial Crime” in October 2006. The Committee at that time stated that it had concerns about such an order. It was noted that while the order to be imposed against either individuals or organisations would not be punitive, it would impose binding conditions to prevent individuals or organisations facilitating serious crime. The Committee note that the penalty for breach of such an order in terms of Clause 25 (2) of the Bill is, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or on conviction or indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both. The Committee further notes that, in terms of Clause 5 of the Bill, there is no limit with regard to the type of provision that may be made by such an order but that examples or prohibitions, restrictions or requirements that may be imposed on individuals are listed in terms of Clause 5 (3) and examples of prohibitions, restrictions or requirements that may be imposed on bodies corporate, partnerships and other incorporated associations are further listed at Clause 5 (4) of the Bill. The Committee remains concerned that such prohibitions, restrictions or requirements will encroach upon the liberty of either an individual or an organisation in the absence of a criminal conviction and accordingly carry with it the connotation that either an individual or an organisation has been found guilty of being involved in organised crime without the fact of any criminality ever having been proved to the accepted criminal standard. The Committee questions whether such an order can be justified in the absence of a criminal conviction and to this end would refer to the House Of Lords Library Note LLN 2007/00/ published on 2nd February 2007. The Committee would therefore question the offence of breach of such an order being applied to Scotland given its concerns with regard to the use of the order itself.
2. Extension of production order and search warrants under the Proceeds of Crime Act 2002 for detained cash investigations.

The Committee note that production orders are at present used when granted in connection with civil recovery and other investigations requiring the production of material beneficial to an investigation such as the obtaining of a copy of bank statements from financial institutions in order to determine if any income has been received in addition to any legitimate income. The Committee notes that the Scottish Executive would like to see the availability of production orders extended (with the associated ability to apply for search warrants under Section 387 of the Proceed of Crime Act 2002) to cash seizures so that information can be obtained from financial institutions and legitimate income can be determined. The Committee notes the Executive’s comment that this will extend powers of investigation and to allow investigating authorities in Scotland to have the same powers as their colleagues in England, Wales and Northern Ireland and has no specific comment with regard to this point.


The Committee notes that in terms of Section 387 of the Proceeds of Crime Act 2002 a search warrant can be issued in connection with confiscation, civil recovery and money laundering investigations. The Committee further notes that there is no power at present to use force to execute that warrant. The Committee is of the view that it is appropriate to amend Section 387 to allow reasonable force in executing a search warrant in Scotland with regard to alleged money laundering and confiscation in relation to drug offences which are reserved areas and again welcomes this proposal.

I trust this information is sufficient for your purposes but should you require to discuss this matter any further, please do not hesitate to contact me.

Yours sincerely,

Alan McCreadie
Deputy Director