

Powers to Restrict Gang Members 'Could Bring the Law Into Disrepute'

Francis Bennion interviewed by Neasa MacErlean for LNB News, 20 April 2010

The Crime and Security Act 2010 contains many controversial measures, including new powers to prevent gang-related violence. Barrister Francis Bennion tells Neasa MacErlean why he objects to the way the Bill was developed and why he is concerned these provisions undermine the authority of the criminal law.

The Home Office described its Crime and Security Bill 2009/10 as its 'flagship bill' for that period. But this description is something Francis Bennion, a former parliamentary draftsman, strongly objects to. 'I take exception to the idea that the Home Office should have a flagship bill every year' he says. 'You should legislate because you have some burning issue that needs legislation, not because you want to boast of having a 'flagship'.

Bennion is concerned at the way he views the Home Office as working now:

'It has civil servants designing new measures to modify existing laws on a very piecemeal basis, rather than trying to create major pieces of legislation which can stand the test of time. This Act is a good example of what I describe as law-churning. There is a constant stirring up and tinkering with the law so that it is never settled and straightforward. In practice, law-churning makes it far more difficult for lawyers to carry out their role with the confidence they need, as they will often have nagging doubts about whether legislative updates have been introduced.

One example of this in the Crime and Security Act 2010 is the greater emphasis being placed on parental responsibility when children misbehave (through parenting orders and parenting needs assessments). Making parents responsible for their children's behaviour is a general principle that should not be dealt with in odd fragments. Also likely to prove controversial are sections aimed at preventing the spread of gang violence. These give powers to the police and local authorities to apply for County Court injunctions against young people aged 14 or above in cases where, for instance, the aim is to stop a young person meeting a named gang member or from going to a particular territory. This brings the criminal law into disrepute. Young people think nothing of getting a notice from a police officer or, even worse, a local authority official. They won't take it seriously at all. This should not be happening.'

Bennion remembers the days when 'the might of the law' put a terror into young people. He believes that this kind of respect for authority is undermined by moves such as these sections on gang members. He is worried the traditional and much-respected parts of the criminal justice system such as the Crown Prosecution Service, the courts and juries lose some of the respect they command when criminal powers are diffused too widely to other players. So the idea of local authority officers prohibiting young people from going into certain areas, for instance, concerns him. 'The Act is giving power to give orders to young people to the wrong people', he stresses.

Bennion dislikes the shortened processes the government is using in making some laws - apparently developing certain ideas without sufficiently taking into account the likely consequences. He concludes: 'The law should be a settled, monumental thing'.