



House of Commons
Justice Committee

**Joint Enterprise:
Government Response
to the Committee's
Eleventh Report of
Session 2010–12**

First Special Report of Session 2010–12

*Ordered by the House of Commons
to be printed 14 March 2012*

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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The following Members were also members of the Committee during the Parliament:

Mrs Helen Grant (*Conservative, Maidstone and The Weald*); Mrs Siân C James (*Labour, Swansea East*); Jessica Lee (*Conservative, Erewash*); Claire Perry (*Conservative, Devizes*); Mrs Linda Riordan (*Labour/Co-operative, Halifax*); and Anna Soubry (*Conservative, Broxtowe*).

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.

Publication

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/justicecttee.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Tom Goldsmith (Clerk), Sarah Petit (Second Clerk), Hannah Stewart (Committee Legal Specialist), John-Paul Flaherty (Inquiry Manager), Ana Ferreira (Senior Committee Assistant), Sonia Draper (Committee Assistant), Greta Piacquadio (Committee Support Assistant), Frances Haycock (Sandwich Student) and Nick Davies (Committee Media Officer).

Contacts

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First Special Report

The Justice Committee published its Eleventh Report of Session 2010-12, *Joint Enterprise*, on 17 January 2012, as House of Commons Paper No. 1597. The response to this Report from the Government was received on 13 March 2012 and is published as an appendix to this Special Report.

Appendix: Government Response

I am grateful to the Justice Committee for looking at this important area of law and have now had time to consider its recommendations in detail. The Committee's main recommendations were that:

- The Government should consult on the Law Commission's Report on Participating in Crime (which covers the common law on joint enterprise) as a matter of urgency, with a view to enshrining the joint enterprise doctrine in statute.
- The Crown Prosecution Service should publish new guidance for prosecutors on dealing with joint enterprise cases
- Data should be collected on the number of people charged under joint enterprise law and outcomes of those cases, including whether they were successfully appealed.

With regard to the third recommendation above, you will be aware that the Crown Prosecution Service has already indicated that it will consult my department on the best way forward for collating statistics around cases involving joint enterprise. With regard to the second recommendation, I have noted the commitment made by the Director of Public Prosecutions to publish new guidelines for prosecutors on handling joint enterprise cases. This will include guidance on the proper threshold at which association with an offender potentially becomes evidence of criminality. I look forward to viewing the draft guidelines in due course.

I think it would make sense for the impact of new prosecutors' guidelines to be assessed before any decisions are taken about consulting on new legislation. As Crispin Blunt made clear in his evidence to you, we remain to be convinced about the need for law reform. If two or more people embark on an agreed plan to commit an offence, they will be liable for any offences they foresaw might be committed by the other members of the group when putting that plan into effect. They will not be liable for offences they could not have foreseen would be committed by others (the 'fundamental difference rule'). In my view, these are sound legal principles and I am keen to avoid consulting on measures that could weaken the law in this area or undermine the Government's efforts to tackle crimes committed by gangs.

I have noted the Committee's recommendation that the Law Commission's report on 'Participating in Crime' should form the basis of any consultation on this issue. As Crispin Blunt explained during the Committee's oral evidence session, that report goes much wider and covers not only joint enterprise but the law on secondary liability generally. Although

the report suggests some improvements to the way the fundamental difference rule as regards joint enterprise operates, it does not propose a relaxation of the overarching principles which apply in joint enterprise cases. I am not therefore persuaded that implementing the recommendations as regards joint enterprise would alter the way the courts deal with these cases. Prosecutors would still have to consider all the evidence about a defendant's alleged involvement in a joint criminal enterprise before making a charging decision. And the jury would still have to weigh up all the facts about a defendant's alleged involvement in a particular enterprise prior to any decision to convict.

While I accept there are some aspects of the law on secondary liability which might benefit from clarification in the future —and I have said as much to the Lord Justice Munby—this would be a major piece of work which we do not intend to take forward in the life time of this Parliament. Although you suggest that reforms on secondary liability should be taken forward independently of reform of the murder laws, I am not convinced that the two issues are easy to disentangle. At this stage, therefore, we will not be accepting the Committee's recommendations in relation to consulting on new legislation.

The Rt Hon Kenneth Clarke QC MP
Lord Chancellor and Secretary of State for Justice

13 March 2012