

## 4. BILL FOR SECOND READING

### 4.1. Criminal Procedure and Investigations Bill 2015 – Second Reading approved

Mr Watterson to move:

*That the Criminal Procedure and Investigations Bill 2015 be read a second time.*

**The Speaker:** Thank you.

Item 4, Bill for Second Reading and we are dealing with the Criminal Procedure and Investigations Bill 2015.

I call on the mover, the Hon. Member for Rushen, Mr Watterson.

**Mr Watterson:** Mr Speaker, on the face of it, this Bill may appear to be a purely technical Bill dealing with evidence, witnesses and court procedures – and in a real sense, it is. However, before I give a very brief outline of the Bill I would like to explain why this Bill is important for justice as a whole.

Over the years, certainly in other jurisdictions, such as the UK, there have been some cases of miscarriages of justice where at least one of the issues has been the failure on the part of the prosecution to properly disclose to the accused, or the team acting for the accused, material that, whilst not being used as evidence in the court case against the accused, might reasonably be considered capable of undermining the case for the prosecution or of assisting the defence.

Over time, case law has developed addressing the issue of the obligations on the prosecution team in respect of disclosure. One must be careful in apportioning responsibility for justice to one party alone. Important though it is for the Police to conduct their investigations with diligence and integrity, and for the prosecutor to make disclosure to the accused person, the accused does have a role in his or her own defence including making clear what his or her case is so that the prosecutor can ensure further material relevant to the case is disclosed; and that any new lines of enquiry revealed by that defence are properly explored by the Police.

The Bill is very substantially based on an Act enacted by the UK in 1996. Its aim, quite simply, is to provide a statutory framework for the disclosure of relevant unused material. It is enormously wasteful of everyone's time and public money to say to the defence: 'Here are the keys to the warehouse where all the material held by the Police relating to your client's case is held, go and see what you can find.'

A key aim is to ensure the defence are provided with all 'relevant' unused material relating to their client. However, in order to achieve this it is important for the defence to know what their client's case is and to disclose the key elements of their case, points on which the defence take issue with the prosecution, details of defence witnesses, expert evidence, alibis, etc. Based on this information the prosecution can then undertake a further review of the material in its possession and make available to the defence any additional relevant unused material and/or interview any further witnesses revealed by the defence case.

Naturally, at this point, the prosecution will further assess its case. The structure provided by the Bill, it is envisaged, will enable cases to be better prepared for trial and ensure that trials are more likely to be effective because all parties will have played their part.

The Bill itself consists of 26 clauses in four Parts: Part 1 is introductory; Part 2 contains clauses 4 to 20, which comprise the main provisions relating to disclosure.

Clause 4 states the provisions apply from the time either a not guilty plea is entered or a person indicates, or is taken to indicate, they intend to plead not guilty.

Clauses 5 and 6 are about the duty of the prosecution to disclose material, and once that is done the defence must set out its case, detail witnesses, any alibis or expert evidence in the case. The

prosecution has a continuing duty to keep its material under review and make further disclosure if relevant to the defence case.

Clause 12 empowers the accused, if he or she has filed a defence statement, to apply to the court for further disclosure where it is believed relevant material has not been disclosed by the prosecution.

Clauses 12 and 13 are about the consequences for either party where they fail to perform their statutory duties, either at all or within the time limits set out in regulations made under clause 15. Other clauses deal with material withheld on public interest grounds, confidentiality, court rules and the making of a code of practice for the conduct of police interviews of defence witnesses.

Part 3 contains clauses 21 to 24 and deals with codes of practice.

Clause 25 in Part 4 is unique to the Island in providing the courts with the specific power to award wasted costs against an advocate – whether prosecution *or* defence – or a representative whose actions or inactions result in costs being wasted.

In the event the Bill is passed, related secondary legislation such as regulations setting out the time periods within which the various obligations on the prosecution and defence must be performed; and the codes of practice setting out guidance for the Police in respect of the conduct of interviews of defence witnesses and, crucially, relating to the conduct of criminal investigations, will be prepared and consulted upon with the courts, the Attorney General's Chambers, the Law Society and the Constabulary and brought before Tynwald before the Bill is brought into operation.

The Bill was consulted on over a six-week-period in June and July last year, and whilst a number of persons or bodies responded, most acknowledged the Bill was of primary interest to practitioners. Careful consideration was given to responses from those practitioners who did respond before the Bill was prepared for introduction into the Branches.

Mr Speaker, I beg to move that the Criminal Procedure and Investigations Bill 2015 be read a second time.

**The Speaker:** I call on the Hon. Member for Douglas West, Mr Thomas.

**Mr Thomas:** Thank you, Mr Speaker.

I beg leave to second and reserve my remarks.

**The Speaker:** I call on the Hon. Member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker.

I am in support of this Bill. (**A Member:** Hear, hear.) But I have three questions for the Minister and if he could put as much detail as he could on *Hansard* I think I would be very grateful.

The first one is of course this Bill deals with an awful lot to do with unused evidence, unused material. Can the Minister explain in detail what are the differences between the dealing of unused material now, currently – there are some major issues that get dealt with now before the criminal courts and what the difference is which the Bill intends to bring forward once it has been enacted?

Also, if the Minister could elaborate as to what this Act, or this Bill once it is enacted, will do to deter the number of cases that are taken to the steps of the court only to be withdrawn right on the – not the eleventh hour – but almost the twelfth hour because the prosecution is no longer content for the case to be prosecuted.

Finally, Mr Speaker, and I refer to page 5 of the Bill, point 32, clause 23, halfway down the page. (**Mr Watterson:** Page 5?) On page 5, Hon. Member, yes. So it relates to clause 23 ... sorry, I do apologise, this is page 5 of the explanatory notes.

**Mr Watterson:** Oh, right, sorry.

**Mr Houghton:** Of the explanatory notes, clause 23, where it goes on about the 'affirmative Tynwald procedure'. What indeed, Mr Speaker, is the 'affirmative Tynwald procedure'? Is that, and the Hon. Member may need advice from elsewhere ... what is an 'affirmative Tynwald procedure'? A funny name, it is a word I have seen sneaking into legislation elsewhere about this 'affirmative Tynwald procedure'. It just does not fit properly in with legislation, yet I have seen it before in other Bills and I would just like, if the Minister does know precisely what that means in that particular regard, then I would be grateful for his opinion on it.

Thank you.

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

In the same vein, if I could ask the Minister too regarding unused evidence. What is the procedure now and what will the procedure be in the future? My interest in it is in evidence which then is destroyed. Is there a time limit on evidence that is now, before it is actually destroyed, or is it just filed away and what will be the difference if the new Act comes in? Will it be destroyed immediately or will it be left even longer for people to get justice?

**The Speaker:** The Hon. Member, Mr Karran.

**Mr Karran:** Can the Shirveishagh son Cooishyn Sthie tell us what safeguards, so that we do not end up with a situation where people have got the pocket of the public purse, using it as poker with people's lives? What safeguards there will be as far as where these people are brought to the line of virtually to the courtroom of the day, at great personal expense to defend their innocence. Will there be any reflection as far as their costs are concerned? As far as anything that is then aborted at such a late time, not leaving people financially ruined, taking on that situation.

**The Speaker:** I call on the mover to reply, Mr Watterson.

**Mr Watterson:** Mr Speaker, I will try and go through the questions put but I think there is probably more I would add at future readings, (*Interjection*) so if Hon. Members will forgive me a brief answer now and a more fulsome answer at a future occasion.

There are quite a few differences between the way things are done now and the way that will be done under this. Of course the first thing that it is in statute law rather than just a body of case law and it has actually been decided by the legislature rather than just forming and mutating out of custom and practice.

The other one is that it will lock the prosecution into a legal obligation to disclose. There is also the requirement going forward of the defence to play its part in terms of defence statements so that the prosecution have a fighting chance of knowing what evidence that they are going to be required to disclose.

So there will be the improvements to justice that the Hon. Member for North Douglas and the Member for Onchan both seek in this.

The wasted costs orders of course are another addition to this and they put that on a statutory footing as well so that it is far clearer what the obligations are on both sides, but also when wasted cost orders can be put forward. Again, that is to respond to the Member for Onchan, Mr Karran's point. A good safeguard to prevent the prosecution ploughing ahead with a case that ultimately will not see through on the basis then that judiciary will be empowered to make a wasted costs order against the prosecution for wasting the defence's time.

The final point I think that was made was about the affirmative Tynwald procedure. I forget whether this was in the Legislation Bill or the Interpretation Bill ... It is the Legislation Bill, thank you to the Secretary for miming loudly. It is the Legislation Bill and that sets out the definition of the

affirmative Tynwald procedure. In other words, it means that it has to be *approved* by Tynwald, as opposed to the negative Tynwald procedure which means that you would lay it before and it would have to be annulled. So the affirmative Tynwald procedure, which is the one that this applies to, means that the order would have to go through Tynwald in the usual way, be put down on the Order Paper, and Tynwald Members would have to vote for it in order for it to pass. Content? Okay.

With regard to some of the other detailed inputs, I am sure I will be able to elaborate on it at clauses if Members so wish.

But for now, Mr Speaker, I beg to move that the Criminal Procedure and Investigations Bill 2015 be read for the second time.

**The Speaker:** Hon. Members I put the question that the Criminal Procedure and Investigations Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.