

5. CONSIDERATION OF CLAUSES

5.1 Criminal Procedure and Investigations Bill 2015 – Clauses considered

The Speaker: We turn now to Item 5, consideration of clauses.

We start with the Criminal Procedure and Investigations Bill. I understand from the Minister that he wishes to move clauses in groups, the groups being clauses 1 to 3, 4 to 20 – as they are all interdependent – 21 to 24, and then 25 and 26 separately.

So, with that advice to the House, I call Mr Watterson to move clauses.

Mr Watterson: Thank you, Mr Speaker.

Before turning to the individual clauses, it may be helpful to refer to some issues raised by Members during the debate on the Second Reading.

As I indicated in respect of Mr Houghton's question about the difference in treatment of unused material, such material will now be disclosed within a statutory framework, which will replace the current custom-and-practice approach. Subject to consultation on secondary legislation, such as codes of practice, it is envisioned the Police will maintain a schedule of unused material which will assist the prosecutor in determining whether or not each item of unused material is relevant and ought to be disclosed to the defence. There will be codes of practice guiding the Police as to the performance of their role in ensuring unused material is properly and appropriately disclosed both to the prosecutor and to the defence. These are major improvements, and I emphasise again the main difference is replacing disclosure by case law or custom and practice with disclosure as a statutory duty in which all parties play a part.

Mr Houghton also asked if the Bill would deter the prosecution from withdrawing cases at the door of the court. The Bill is not designed to address this issue, as the decision as to whether to proceed with a case and what evidence to offer, or whether to accept a different plea, is a matter for the prosecutor. What the Bill is designed to facilitate is a framework by means of which both the prosecution and the defence are informed of relevant material in a timely fashion, which it is envisaged will enable both parties, and indeed the Court, to determine the way forward in respect of a case to better effect.

Mr Speaker, turning to the clauses, part 1 is introductory. I propose to move clauses 1 to 3 inclusive together.

Clauses 1 and 2 provide that the short title of the Bill is the Criminal Procedure and Investigations Act 2015 and it will come into operation by Appointed Day Order. If passed by the Branches, the Department will prepare and consult on the secondary legislation. It is envisioned the Act would be brought into operation around six months after the announcement of Royal Assent.

Clause 3 provides for the expiry of clause 26, which makes a minor amendment to another Act.

Mr Speaker, I beg to move that clauses 1, 2 and 3 be approved.

The Speaker: Hon. Member, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: In that case, I shall put the question that clauses 1 to 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 4 to 20, Hon. Member.

Mr Watterson: Mr Speaker, part 2 of the Bill details the disclosure provisions consisting of clauses 4 to 20 inclusive, and I propose to move this part and the clauses mentioned together. This is

because taken together they provide a structure for the disclosure of unused material and either stand or fall together as a block.

Clause 4 applies the Act to those cases where the accused has either already pleaded not guilty or indicated that they intend to plead not guilty when formally asked. This Bill provides a structure for disclosure where a trial is to take place; it is not relevant where a person has pleaded, or intends to plead guilty.

Clauses 5 to 19 provide the structure whereby the prosecution discloses not only the evidence upon which it intends to rely but also any immediate relevant material upon which it does not intend to rely at trial. The defence set out their case and, based on that, the prosecution re-examines the material in its possession to see if there is any further unused material that is relevant and may assist the defence case or can reasonably be considered capable of undermining the prosecution's case. This will be referred to as the 'disclosure criteria'.

In any event, clause 11 places the prosecution under a continuing duty to keep the material in its possession under review and to disclose to the defence at any time material that meets the disclosure criteria. This is crucial for justice.

Clause 7 requires the defence to review its case and keep the other parties involved aware of any changes in its position. As I said in my Second Reading speech, it really helps no one if the prosecution merely gives the keys of a warehouse to the defence, saying, 'Anything related to your client is in there – take a look and see what you can find.' By meeting these requirements ... and key to this, relevant disclosure is enabled to take place, which is beneficial to all parties in the case.

Clauses 8 and 9 are about defence witnesses or defence experts in a case.

Clause 12 offers the defence a further opportunity to obtain unused material upon application to the Court, where, despite the prosecution disclosing in accordance with the criteria, the defence have reasonable cause to believe the prosecution have further relevant material.

Clauses 13 and 14 deal with the failure of the prosecution to observe time limits or any failure in relation to defence disclosure obligations.

Clause 15 provides for time limits to be set out in regulations, which are to be laid before Tynwald.

Clause 16 deals with disclosure and the public interest.

Clause 17 deals with disclosure and issues of confidentiality.

Clauses 18 and 19 are about rules of court.

Clause 20 is important because it requires the Department to issue a code of practice to guide police officers when interviewing witnesses disclosed by the defence. A police officer must follow such guidance or render themselves liable to disciplinary proceedings.

Mr Speaker, I beg to move that part 2 of the Bill, consisting of clauses 4 to 20 inclusive, be approved.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: If no one wishes to speak, I put the question that clauses 4 to 20 be voted on collectively. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 21 to 24.

Mr Watterson: Thank you, Mr Speaker.

This part is titled 'Criminal Investigations'.

Clause 21 provides for a code of practice to be made to guide police officers in the conduct of investigations. This is especially important as it guides them to ensure all reasonable steps are taken and lines of inquiry pursued to ensure proper recording during the investigation, that information is

retained, that the information is revealed to the person involved in the prosecution of criminal proceedings arising out of the investigation and to the accused person.

Subsection (2) provides for the code to require a specified police officer to be identified as responsible for carrying out the requirements within the code, and subsection (3) enables the code to specify the form in which the information is to be recorded. This last point is important because if information is recorded clearly and easily in an accessible form it is most likely proper disclosure will take place, and the burden of compliance falls most on the prosecution and particularly the officer in the case.

Other provisions are related and include applying the code to persons other than police officers who are charged with the duty of investigating offences and noting that a police officer who fails to comply with any provision of a code is liable to disciplinary procedures.

Clauses 22 and 23 are supplementary. A code of practice under this part or clause 20 is subject to the affirmative Tynwald procedure. That means the Order containing the code must be laid before Tynwald as soon as possible after being made, and if not approved at that sitting or the next sitting it will cease to have effect.

Clause 24 deals with common law rules relating to criminal investigations and the disclosure of material by the person conducting an investigation to a person involved in the prosecution of criminal proceedings. The clause states that where a code of practice under clause 21 has come into operation the common law rules no longer apply.

Mr Speaker, I beg to move that part 3 of the Bill, consisting of clauses 21 to 24 inclusive, be approved.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I beg leave to second.

The Speaker: I put the motion that clauses 21 to 24 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25, Mr Watterson.

Mr Watterson: Mr Speaker, part 4 of the Bill is appropriately titled 'Miscellaneous and Supplementary'.

Clause 25 is a new provision and the UK law on which it is based does not have this. The clause is placed in the Bill specifically to address the kind of scenario whereby, as a result of any improper, unreasonable, or negligent act or omission on the part of any party to the proceedings, a key disclosure requirement has either not been carried out properly or has not been carried out at all, with the result one or more parties are seriously put out or even that the case has had to be abandoned by the court.

During the Second Reading debate, Mr Karran raised a question about wasted costs where the prosecution abort a case, for whatever reason, at a late stage in proceedings. Whilst I understand his concern, it must be recognised that there are legitimate reasons why a case may be concluded without the trial taking place. To be frank, it is possible the court may feel this provision assists in other instances where advocates or their agents, employees or subordinates act improperly, unreasonably, or negligently, or fail to act, but that is a matter for the court to determine.

Mr Speaker, I beg to move that clause 25 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: I beg leave to second, Mr Speaker.

The Speaker: I put the question that clause 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 26.

Mr Watterson: Mr Speaker, clause 26 amends subsection (3) of section 17 in the Summary Jurisdiction Act 1989 by removing the word 'next'. The effect of this change is to enable a case committed for sentence to be heard at a sitting of the court when all parties are ready to proceed to the sentencing hearing or process, rather than be required to go to before literally the next sitting of the Court of General Gaol Delivery.

I beg to move that clause 26 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I be leave to second.

The Speaker: I put the question. Clause 26: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That would appear to conclude consideration of the clauses stage of the Criminal Procedure and Investigations Bill.

I must say, Hon. Members, in 20 years in the House I have never seen a Bill with 26 clauses be approved with no debate whatsoever, but I am quite satisfied that you will be satisfied that it has had proper scrutiny at its earlier stages and I thank the Minister for progressing the Bill in the way he has done.