

2. Criminal Procedure and Investigations Bill 2015 – First Reading approved

Mr Coleman to move:

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

The President: We come to Item 2 on our Order Paper, Hon. Members, the Criminal Procedure and Investigations Bill 2015. I call on Mr Coleman to take the First Reading.

Mr Coleman: Thank you, Madam President.

On the face of it, this Bill may appear to be a purely technical Bill dealing with evidence, witnesses and court procedures and something called ‘prosecution unused material’. In a real sense it is. However, in introducing the Bill and before I give a very brief outline of its contents, 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 court 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 ‘not’ have a role in his or her own defence, including making clear what his or her case is so the prosecutor can ensure further material relevant to that case is disclosed and any new lines of enquiry revealed by that defence are properly explored by the Police.

The Bill has the same title and similar contents to a UK Act enacted 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 for the Police or prosecution to point the defence in the direction of the warehouse where all the material held by the Police relating to their client’s case is held, and tell them they may look for suitable unused material without any guidance as to what the material is and exactly where it may be found.

A key aim of the Bill therefore 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 may take issue with the prosecution, details of defence witnesses, expert evidence and 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 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 and provides a structure for the disclosure of material by the prosecution and further disclosure upon the submission, or disclosure, of the defence case.

Further clauses provide for time periods within which the various obligations on the part of both the prosecution and the defence are fulfilled and indicate consequences in the event key obligations

are not fulfilled or are not fulfilled within the time periods provided. The provisions kick in once a person has either pleaded not guilty or indicated that he or she will plead not guilty when formally asked.

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 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.

Clause 26 removes the word 'next' from another Act.

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

Madam President, I beg to move that the Criminal Procedure and Investigations Bill 2015 be read for the first time.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President. I beg to second and could I just point out I think the Hon. Member said it was consulted on between June and July last year. I presume he meant this year – 2015?

Mr Coleman: Yes, I think we were expecting to take this through in January ... No, I am sorry, it was last year; it is 18 months ago.

Mr Crookall: It is 18 months ago. (**Mr Coleman:** Yes.) Okay. Thank you for the clarity.

The President: If no Hon. Member wishes to speak to the First Reading, the motion before the Council is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Bill read a first time.