

**Criminal Procedure and Investigations Bill 2015 –  
Clauses considered**

**The President:** Moving to the clauses stage.

The Hon. Member wishes to move clauses 1, 2 and 3 together.

**Mr Coleman:** Thank you, Madam President.

Madam President, in turning to the clauses, Part 1 of the Bill is introductory and 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' and will include the year, subject to it completing its passage through this Branch, that it receives the Royal Assent as announced to Tynwald 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 envisaged 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.

Madam President, I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

**Mr Coleman:** Madam President, clause 4 applies the Act to those cases where the accused has either already pleaded not guilty or indicated they intend to plead not guilty when formally asked. This Bill provides a structure for the disclosure where a trial is to take place. It is not relevant where a person has pleaded or intends to plead guilty.

I beg to move that clause 4 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

**Mr Coleman:** Madam President, clause 5 has nine subsections but in essence sets out the duty of the prosecutor to disclose to the accused material that has not previously been disclosed to the accused and that might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or to state in writing that it has no such material.

Subsection (2) sets out what prosecution unused material is or how it comes into the possession or ambit of responsibility of the prosecution.

Subsections (4) and (5) deal with how disclosure is made, where the material is either information that has not been recorded or where the material is not information but may be inspected.

Other subsections deal with such matters as public interest immunity and the time period within which the prosecution must disclose material.

Madam President, I beg to move that clause 5 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I think this is obviously a very important part of this Bill. I think we tend to always see many of these things dramatised in TV programmes generally, and what really goes on in the real courtrooms is quite different. But I think the principle that is important here is that when a case is brought, the whole purpose is to try and reach the truth; not to try and just get a tick in the box and get a result, so to speak.

I think it is vitally important that in cases there are no surprises, no rabbits pulled out of hats and that everybody has a fair chance at putting the case forward. Because it is the duty, I think, of the Police and the authorities to also prove innocence as well as guilt. I am sure all over the world there have been many, many people found guilty of crimes they have not committed – evidence not brought forward and hidden.

I think this is very, very important and I am pleased to see that we do have provisions like this coming in and I hope it goes some way to help justice in the Manx courts.

**The President:** The mover to comment, reply.

**Mr Coleman:** Thank you, Madam President.

I thank Mr Turner for his comments and his insight into the purpose of this Bill. I think it is true that there have been a number of wrong applications of justice around the world. I think that with the penalties which come with this for not fulfilling the requirements of the Bill: wasted costs orders and things like that, it will encourage and also formalise the way that the whole handling of evidence on both sides is conducted.

I beg to move that clause 5 do stand part of the Bill.

**The President:** The motion is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

**Mr Coleman:** Madam President, clause 6 applies where the prosecution have fulfilled, or consider that they have fully fulfilled, their obligation to disclose to the defence unused material in possession of the prosecution.

The defence must set out their case and disclose it to the prosecution, the court and any other defendant in the case. In setting out their case, the defence must include in their written statement the five matters set out in subsection (2) of clause 6.

Regulations may be made setting out further details of matters that must be included in such statements. A defence statement that discloses an alibi must give adequate particulars in support of the alibi. The defence statement must be provided within the period set out in regulations made under section 15.

Madam President, I beg to move that clause 6 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

**Mr Coleman:** Madam President, clause 7 requires the accused to keep his or her statement up-to-date or to confirm to the prosecution, the court and any other party that the statement under section 6 remains unchanged.

By meeting the requirements of clause 6 and this clause proper and relevant disclosure is enabled to take place, which is beneficial to all parties in the case.

I beg to move that clause 7 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

**Mr Coleman:** Okay. I had proposed to move 8 and 9 together. I think it is missing from the letter that –

**The President:** Yes, you did not advise me of that, but if you wish to do it, that is fine.

**Mr Coleman:** If I may?

Moving clauses 8 and 9 together, as they both require the accused to notify the court and the prosecutor of his or her intention to call defence witnesses or any expert witnesses. It is helpful in terms of the management of a trial for the court and other parties to know what the defence case is and how many witnesses and of what status are to be called.

I beg to move that clauses 8 and 9 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Yes, Madam President.

Can I ask the mover of this Bill with regard to these clauses, it would appear that they are what I would have thought would be in the case management, in the Rules of Court, which as Hon. Members know is an extremely heavy document. I just wondered whether this is covered in that and whether it is a required clause in the Bill, and whether, as I said, it is actually part of the case management in the Rules of Court?

**The President:** Hon. Member, Mr Anderson.

**Mr Anderson:** Thank you, Madam President.

May I just ask the mover – I am not *au fait* with this sort of legislation – is it normal that dates of birth should be included when giving names and addresses? This seems to be something I had not realised had to be supplied at the time when they are giving evidence.

**The President:** The mover to reply.

**Mr Coleman:** Thank you, Madam President.

In response to Mr Turner, I think one of the purposes of this Bill is to put into one place the information which needs to be going between the two parties, rather than it being piecemeal: part of the Rules of Court, part common law, part of it precedent. What this does is to put in statue, ‘This is what you do and this is when you do it and if you do not do it, this is what is going to happen.’

With reference to Mr Anderson, I think that the information that is being given or is required is for the other party to be able to research those people, specifically as to their credibility in the case of expert witnesses: their educational background and their competence in being an expert witness. I think if you have that information, then you definitively tie down who you are looking at. And if you are looking at an ordinary person who says, ‘I was in a pub with this guy and I know he was not there’, it would be nice to know where he lives, that he does exist and when he was born, simply to make sure that you have got the right guy.

**The President:** Just one point: the requirement for an age or a date of birth is not required for an expert witness it would seem.

**Mr Coleman:** One would hope that we had an expert witness of sufficient age to be able to be an expert. *(Interjection and laughter)*

**The President:** I will put the two clauses separately, Hon. Members.

Clause 8: those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 9: those in favour, please say aye. The ayes have it – against no, sorry. The ayes have it. The ayes have it.

Clause 10.

**Mr Coleman:** Thank you, Madam President.

Clause 10 is technical in that its purpose is to ensure that there is no doubt that, where an advocate gives a statement on behalf of the accused under the previous provisions, it is given with the authority of the accused.

Subsection (2) requires the court to warn an accused person of the risk of an adverse inference being drawn at trial where he or she fails to comply with disclosure obligations.

Madam President, I beg to move that clause 10 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

**Mr Coleman:** Madam President, clause 11 sets out the continuing duty of the prosecutor to review the material within his or her possession and to disclose to the defence at any time any further material that meets the disclosure criteria. That is material that is relevant and may assist the defence case or can reasonably be considered capable of undermining the prosecution case. This is crucial for justice.

This duty is particularly focused where the defence statement reveals a defence position or as a result of which further evidence or material is obtained and underlines additional material that is or may not be relevant to the defence.

As before, the duty on the prosecution to disclose is subject to public interest immunity or is prohibited by section 1 of the Interception of Communications Act 1988.

Madam President, I beg to move that clause 11 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

**Mr Coleman:** Madam President, 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 disclosure criteria, the defence have reasonable cause to believe the prosecution have further relevant material.

I beg to move that clause 12 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Now, you wish to move 13 and 14 together.

**Mr Coleman:** Madam President, clauses 13 and 14 together deal with the failure of the prosecution to observe time limits or any failure by the accused or his or her defence in relation to disclosure obligations.

In respect of clause 13, the failure of the prosecution to observe time limits will not in itself constitute grounds for staying proceedings for abuse of process. However, if the prosecution's failure is such as to deny the accused a fair trial, then grounds for proceedings to be stopped will exist.

Whilst clause 14 is much longer and more detailed in respect of failures by the defence, it essentially boils down to two types of case set out in subsections (2) and (3).

The first case sets out at length concerns about any failure to make an initial, or having made an initial, an updated defence statement. Needless to say the giving of an inconsistent defence statement or any of the matters mentioned in paragraph (f) will not assist the defence either. One of the objects of the defence statement is to clarify issues in the case, assist with the case management and ensure the prosecution have no excuse for improper or just plain inadequate disclosure of unused material.

The second scenario is set out in subsection (3) and concerns the giving of a witness notice or at trial calling a witness not included or adequately identified in a witness notice. This is important because a trial may be delayed because of the calling of an unexpected witness.

Other provisions deal with the consequences of a failure on the part of the defence as set out in the two scenarios.

Subsections (4) to (7) indicate that and how the court or any other party may comment on the defence's failure and the jury draws such inferences as appear appropriate.

Subsection (8) requires the court to consider whether there was any justification for defence action or inaction in relation to witnesses.

Subsection (9) makes clear a person cannot be convicted solely on an inference drawn from subsection (4).

Madam President, the purpose of these two clauses is to ensure that both the prosecution and the defence participate fully in the trial process and understand their participation is so important that any failure to do so may have serious consequences.

I beg to move that clauses 13 and 14 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** I put the clauses separately.  
The motion is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 14: those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 15.

**Mr Coleman:** Madam President, clause 15 provides for time periods to be set out in regulations which are to be laid before Tynwald.

In preparing the regulations, the Department will consult with the key interested parties such as the courts, the Law Society, the Prosecution Division of the Attorney General's Chambers and the Chief Constable in order to ensure the time periods placed in the regulations – within which matters set out in the Bill are to be complied with – are both achievable and further the purposes of justice.

I beg to move that clause 15 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

**Mr Coleman:** Madam President, clause 16 deals with disclosure and the public interest.

It is sometimes the case that the prosecution has information in its possession, the disclosure of which or at least the disclosure of which in unedited form would not be in the public interest. This clause makes provision so the accused has the right to apply to the court for the disclosure of all or part of the material withheld in the public interest.

The court may conclude, having reviewed the matter, that some or all of the material should in fact be disclosed to the accused. If the accused makes an application in respect of a matter and the person other than the prosecution has an interest in the matter, subsection (4) means that the court cannot order disclosure until that person has been heard.

Madam President, I beg to move that clause 16 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

**Mr Coleman:** Madam President, clause 17 concerns confidentiality in relation to unused material and provides that the accused must respect the nature of the document, object or information he or she is given or allowed to inspect and must not use or disclose it other than as set out in subsections (2) to (4).

Clearly the accused must be permitted to use the material disclosed in connection with his or her defence or further proceedings, such as an appeal. The accused may also use the object or information to the extent it has been displayed or communicated in open court.

If granted permission on application to the court, under subsection (4) it provides that the accused may use or disclose the document or information to the extent permitted by the court.

Subsection (6) provides that where the prosecutor or a person claiming to have an interest in the object or information applies to be heard, the court may not grant the accused permission to use or

disclose the object or information until the prosecutor or that person has been given an opportunity to be heard in court.

Other provisions concern contempt of court for contravention of the foregoing provisions.

Madam President, I beg to move that clause 17 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The motion is that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18.

**Mr Coleman:** Madam President, clause 18 confirms the power of the Clerk of the Rolls to make Rules of Court. In this case, Rules of Court may be made about any matter mentioned in the Act.

I beg to move that clause 18 do stand part of the Bill.

**The President:** The Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Just on a technical query, Madam President: presumably any Rules of Court made under this, would they be consolidated into the main Rules of Court document?

**The President:** The mover to reply.

**Mr Coleman:** I have to confess I do not have the answer to that. Maybe, the assistance of the Attorney General ...

**The President:** Perhaps the learned Acting Attorney General can help.

**The Acting Attorney General:** I would be delighted if I could possibly help, Madam President.

I do not actually know what you are talking about when you refer to the main Rules of Court document. There are a number of documents which constitute the Rules of Court. There are the Rules of the High Court which are essentially the civil rules. Then, of course, as is referred to here, we are looking at Rules which are made under the Summary Jurisdiction Act.

So they are separate, but certainly any Rules made under this provision would form part of the Rules which govern the summary courts and these criminal courts, but as distinct from the civil court. So we are not consolidating everything into one place here – if that helps.

**Mr Turner:** Thank you.

**The President:** Thank you.

The motion is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Coleman:** Madam President, clause 19 concerns other rules as to disclosure. In particular, subsection (1) provides that unused material disclosure provisions in sections 5 to 12 are in effect in addition to any other legal requirements to provide material to the accused or to be provided by the accused.

Subsection (2) provides that where the accused indicates he or she will plead not guilty, the rules of common law do not apply to things failing to be done after this Part comes into operation.

Subsection (3) states that subsection (2) does not affect the rules of common law relating to the question of whether disclosure is in the public interest.

Madam President, I beg to move that clause 19 do stand part of the Bill.

**The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** The motion is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 20.

**Mr Coleman:** Madam President, 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 accused in his or her defence statement and/or the witness notice given under section 8.

Subsection (2) requires the code to give guidance in relation to the five aspects set out in paragraphs (a) to (e). Guidance includes such matters as the information to be given to the witness and the accused in relation to the interview; who should be in attendance and who should be notified regarding the interview.

Police officers must follow such guidance or render themselves liable to disciplinary proceedings.  
Madam President, I beg to move that clause 20 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Turner.

**Mr Tuner:** Can I just ask the mover with regard to the code? It says:

A code under this section is to be brought into operation by an order under section 23.

– which we have not obviously got to yet, but if I may just refer to that. It says:

[The] code under section 20 ... is to be brought into operation by order, which order, along with the code, must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve the order, it ceases to have effect.

Could I just ask why the Department did not think there should be the straightforward approval process and why they have used that particular method to approve this code, which is quite an important part of the operation of this Bill?

**Mr Coleman:** The rationale used by the Department in this case – may I refer to Mr Bateman who is in the Department of Home Affairs and worked on this Bill?

**The President:** Yes we can. We need to use the microphone.  
Can I invite you for the purposes of *Hansard* to give your name and role, please?

**Mr Bateman:** Madam President, Tom Bateman. I am the Legislation Manager, Department of Home Affairs.

The principal reason, to be honest, Madam President, is in importing and adapting the Act from the UK model. That is the former procedure, as adapted from the UK pattern. That model of approval of secondary legislation is increasingly to be found, both in our legislation and in the UK of legislation being able to be placed before – in our case, Tynwald. In some cases it is used so that the

legislation can be implemented immediately, but subject to the provision that it must be approved by Tynwald. That is the positive affirmation procedure.

That, Madam President, is the honest, most straightforward answer to that question.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Yes, thank you, Madam President.

Our procedures are of course quite different from those in Westminster. I am just a little concerned about ... We have what is quite an important code of practice. Departments naturally want to get their orders and regulations in quickly, but the purpose of any parliament is to have appropriate scrutiny time of those rules and regulations.

I just feel in this particular case, really it is important that the Department, when making these codes of practice, need to not hide legislation away in laying before. Obviously I would urge Members then, when these items appear on Order Papers elsewhere that I hope they are given full scrutiny. My own fear is that when documents are laid before, they are not subject to the same level of scrutiny and debate that items that need the full approval.

I think the Department should be considering some of these issues when bringing forward important codes of practice, because they do have quite a high level of public interest attached here and this is what the police are going to be operating to as their framework.

So I would again hope that when these regulations do come and are laid before Tynwald, they do garner the proper scrutiny

**The President:** The mover to reply.

**Mr Coleman:** I think one of the benefits of this procedure is identified in 23(2) in that these codes of procedure could be subject to reasonably frequent amendment.

**Mr Turner:** Even more so!

**Mr Coleman:** Well, this means that the lengthy procedures would enable ... A lot of these codes, changes to them, come as a result of operational expediency. We just have to get things in quickly. Now if you look at things like changing the rules at the prison. How many Custody (Amendment) Bills have we put through in the last 12 months? This I think is something whereby the amendment to the procedure, after a period of time, will be quite limited.

Again with all legislation or changes to codes and regulations that go through Tynwald, I make the assumption that people scrutinise them adequately. (**A Member:** Hear, hear.) (**A Member:** Absolutely.)

So in that case I beg to move.

**The President:** The motion is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now you wish to move Part 3, clauses 21 to 24 together.

**Mr Coleman:** Yes, Madam President.

Part 3 of this Bill, as it says, consists of clauses 21 to 24 inclusive.

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 in order to ensure all reasonable steps are taken and lines of inquiry pursued. This will 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. That

meaning, anything which is identified as evidence will be recorded and that will be passed onto the other side.

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.

Subsection (3) enables the code to specify the form in which information is to be recorded. The last point is important because if information is recorded clearly and in easily 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 proceedings.

Clause 22 provides examples of disclosure provisions that may be included in the code under section 21. It is important not least because it will enable schedules to be drawn up of which one may set out material that is regarded as sensitive and the other for material that is not sensitive and therefore whose disclosure in whole or in part would not be contrary to the public interest.

These provisions are important for clearly setting out what unused material is in the possession of the police and therefore within the knowledge of the prosecution.

Section 23 is 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.

Madam President, I beg to move that Part 3 of the Bill, consisting of clauses 21 to 24 inclusive, do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** The clauses are linked, Hon. Members, so I will move them together.

The motion is that Part 3, clauses 21 to 24 inclusive, 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 Coleman:** Madam President, clause 25 is a new provision and the UK law on which this Bill is based does not have this.

This 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 that one or more parties are seriously put out or even that the case had to be abandoned by the court dealing with the particular case.

It is possible the court may feel this provision assists in other instances outside the specific remit of this particular piece of legislation where advocates or agents, employees or subordinates act improperly, unreasonably or negligently or fail to act, but that is a matter for the court to determine.

Madam President, I beg to move that clause 25 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

Wasted costs order: I think on the surface this is a good provision. However, obviously each case is going to be different so it is very difficult to ask this question, but I will ask it anyway for the purpose of the debate. If we have a scenario where quite often we hear that there are criminal proceedings funded by the legal aid fund, depending on where that improper, unreasonable, negligent act comes about, if it is on the part of the defence's advocates, is there a chance that this order could be then funded by the legal aid fund? Because what we have is one part of the government pot funding the prosecution side of the case; we have the legal aid, which is also a government funded pot, funding the other side.

Whereas I think this is an important provision, I am just trying to understand quite how far-reaching it goes. Because what I would not like to see is if there was improper, negligent or unreasonable actions on the side of an advocate working for the accused, then they simply add the costs onto what is coming out of the legal aid pot – if that makes sense. So I would just like to understand a bit further about that.

Would the subsection (4), 'Rules of Court may make provision'...? Is this an application of Rules that may already exist and this is simply giving those Rules the power to allow them to link through to the provisions in this where it says,

Rules of court may make provision  
(a) for regulating matters relating to the costs of those proceedings;

Those proceedings are obviously listed in this new Bill. Therefore, is this an application or would they require to make new Rules or does it give them the power to apply existing Rules and make new Rules?

**The President:** Lord Bishop.

**The Lord Bishop:** Madam President, I am intrigued by the mover's comment that this clause does not apply in the equivalent Act of the UK Parliament and I am just a little bit concerned that this might prove in the future to be a liability, a kind of blank cheque.

I have no specific knowledge that would relate to this, but I read that clause and wonder whether that question should not be answered.

**The President:** The mover to reply.

**Mr Coleman:** I think in the case of the defence who are getting legal aid, it is in essence a zero cost isn't it? Because they will pay that into the court, which comes back essentially into government, so it is just a moving around of money. If it is the prosecution having to pay wasted cost orders, then it is going to come straight out of the budget. It would have to.

I would defer to the Hon. Acting Attorney General on that particular point as to whether that would be the case.

**The President:** Learned Acting Attorney General, would you care to comment?

**The Acting Attorney General:** Madam President, if I could help with some of the queries here.

At the moment wasted costs orders are and so can be made. Unfortunately there have been situations where, for example, a prosecution may have failed for one reason or another and the court has felt able to make a wasted costs order against the prosecution. It can also make a wasted costs order at present in relation to proceedings that are defended.

What this is actually doing is extending the court's power, because what it does not have at the moment is the power to make an order against the advocate or anybody acting for or representing the defendant.

So that is the mischief that is being addressed here insofar as it may or may not exist. Of course, it is not the advocate then who has legal aid, it is his client. So this is really an order that could be made against an advocate personally with reference to wasted costs.

I can remind you it is a matter which is under the control of the court. The court will take into account any reasons why he may or may not have acted in a particular way.

So that is where it differs from what already exists.

I hope that is of some help to you.

**Mr Turner:** Thank you.

**Mr Coleman:** Attorney General, I think as far as the Lord Bishop's point about why we have got it in and they have not, well, maybe they are just not as up-to-date as we are! We feel that this might be an example of *pour encourager les autres*.

**The Lord Bishop:** *Possibilité!*

**Mr Turner:** All proceedings in English!

**Mr Coleman:** Sorry, I understand that our proceedings must be in English or Manx. *(Laughter)*

**The President:** I think we understand. *(Laughter)*  
Right.

**Mr Coleman:** I beg to move.

**The President:** The motion, then before the court is that clause 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 26.

**Mr Coleman:** Madam President, 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 do stand part of the Bill.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.  
I beg to second and reserve my remarks.

**The President:** The motion is that clause 26 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of Item 1.