

Education and Home Affairs Scrutiny Panel

Draft Criminal Procedure Law Sub-Panel

Record of Meeting

Date: 23rd February 2018

Present	Deputy S. Y. Mézec, Chairman Deputy R.J. Renouf
Apologies	Deputy T. A. Vallois, Vice-Chairman
Absent	
In attendance	Deputy K.L. Moore, Minister for Home Affairs [item 2 only] Mr R. MacRae Q.C., H.M. Attorney General [item 2 only] Mr M. Berry, Senior Legal Advisor [item 2 only] Dr H. Miles, Director of Criminal Justice [item 2 only] Mr N. Fox, Assistant Director of Criminal Justice [item 2 only] Ms B. Shaw, Magistrate [item 1 only] Mr P. Harris, Assistant Magistrate [item 1 only] Mr A. Harris, Scrutiny Officer

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	<p>1. Meeting with the Magistrate and Assistant Magistrate</p> <p>The Sub-Panel received Ms B. Shaw, Magistrate and Mr P. Harris, Assistant Magistrate for a meeting to discuss the Draft Criminal Procedure (Jersey) Law 201-("the draft law").</p> <p>The Magistrate explained that she had been a member of the steering group that had been involved in developing the draft law and acknowledged that it was a huge area to update. It was noted that further details would be brought forward by regulation and rules of court so as to not overburden the actual law. It was explained that the current criminal procedure law (Loi (1864) Régplant la Procédure Criminelle) was a 'bare bones' law that had been added to by good practice over the years.</p> <p>The Magistrate explained that the draft law was to be welcomed but would involve significant cultural changes for lawyers and law practice in the Island. It was hoped that the changes would lead to more specialist knowledge being required, which in turn would lead to a better qualified junior bar.</p> <p>It was explained that the changes would provide litigants with greater confidence that there was a route through the criminal justice system.</p> <p>The Magistrate and the Assistant Magistrate then addressed the following aspects of the draft law with the Sub-Panel:</p> <p><u>Defence case statements – Article 84</u></p> <p>The Sub-Panel raised the issue of the defence case statement infringing the defendant's right to silence. The Magistrate explained that there was</p>	

a misconception about the right to silence as a defendant will at some point have to raise their defence with the court and potentially give evidence. It was noted that the draft law still allowed a defendant to place the burden on the prosecution to prove its case, however this would have to be articulated in the defence case statement.

It was explained that the purpose of the defence case statement was to allow for effective case management, and preventing unknown defences from halting proceedings to allow further investigation by the prosecution.

It was also noted that the defence case statement would allow the prosecution to better target lines of inquiry and also narrow the potential areas for examination based on the defence provided. It was noted also that no adverse inference could be drawn if a defence case statement was provided.

The Sub-Panel discussed the issue of the defendant bearing the costs of the prosecution in the event that a trial is halted. The Magistrate agreed that a defendant should have to bear costs in the event that the court's time was wasted, although this should be at the discretion of the court.

The Magistrate highlighted a potential drafting error with the Sub-Panel in Article 84(5)(b) where reference was made to Article 84 paragraph 2(b) as opposed to 2(d). The Sub-Panel confirmed it would raise this issue with the Attorney General.

Evidence of Bad Character

The Magistrate explained that in current law, evidence of a striking similarity was able to be admitted to show a defendant's propensity to commit offences. This had proven to be problematic, especially in cases of domestic violence.

It was explained that the addition of Article 82F within the Police Procedures and Criminal Evidence (Jersey) Law 2003 was a big change to the current system and its application would need to be set out clearly in the rules when they were established.

The Magistrate explained that a prosecution's case could not rely solely on evidence of bad character, however it was a useful tool to apply on top of other evidence to help add weight to a case. It was noted that the final say on whether evidence of bad character could be admitted lay with Court.

The Sub-Panel questioned whether this change could have an undue influence on a jury by distracting them from the facts of the case (i.e. making a judgement based on previous convictions alone). The Magistrate explained that the decision of the jury was ultimately up to them, however trust needed to be placed in the system. It was noted that clear direction as to how the evidence was to be viewed would also be given to the jury from the presiding officer.

Committal proceedings in the Magistrate's Court

	<p>The Sub-Panel questioned the Magistrate on her views regarding the abolition of committal proceedings in the Magistrate’s Court, which had been raised as a concern by the Law Society of Jersey.</p> <p>The Magistrate explained that the removal of committal proceedings was a simplification of the current process and a case was now able to be sent straight to the Royal Court if deemed necessary. It was noted that the concept of committal proceedings dated back to a time when centeniers charged defendants, after which the Magistrate would hear witnesses to confirm whether or not there was a case to answer.</p> <p>It was explained that the current system could allow unscrupulous lawyers to question vulnerable witnesses twice, which in turn could lead to witnesses refusing to testify in the Royal Court. It was noted that victims of sexual abuse had likened this cross examination to being abused all over again.</p> <p>The Magistrate explained that the Attorney General had adopted a specific approach for elevating some cases to the Royal Court in certain situations where it was clear that vulnerable witnesses may need to testify.</p> <p><u>Schedule One – Compellability of spouses to give evidence</u></p> <p>The Magistrate raised a point in relation to the draft law and the compellability of spouses to give evidence under schedule one. It was noted that the current drafting of the law meant a spouse would be compellable to give evidence in a murder trial, but not in a trial in relation to death by dangerous driving.</p> <p>It was acknowledged that the list of offences to which spouses would be compelled to give evidence provided in the draft law was not perfect, however, it was expected that further work would be undertaken when the regulations were developed.</p>	
	<p>2. Public hearing with the Minister for Home Affairs</p> <p>The Sub-Panel received Deputy K.L. Moore, Minister for Home Affairs, Mr R. MacRae Q.C., H.M. Attorney General, Mr M. Berry, Senior Legal Advisor, Dr H. Miles, Director of Criminal Justice and Mr N. Fox, Assistant Director of Criminal Justice for a public hearing in relation to the Draft Criminal Procedure (Jersey) Law 201-. A recording was made so that a transcript could be produced.</p>	