

# Education and Home Affairs Scrutiny Panel

## Draft Criminal Procedure Law Sub-Panel

### Record of Meeting

Date: 19th February 2018

Present	Deputy S. Y. Mézec, Chairman Deputy R.J. Renouf
Apologies	Deputy T. A. Vallois, Vice-Chairman
Absent	
In attendance	Mr R. MacRae Q.C., H.M. Attorney General Mr M. Berry, Senior Legal Advisor  Mr A. Harris, Scrutiny Officer

Ref Back	Agenda matter	Action
	<p><b>1. Draft Criminal Procedure (Jersey) Law 201-</b></p> <p>The Sub-Panel received Mr R. MacRae, H.M. Attorney General and Mr M. Berry, Senior Legal Advisor to discuss the Draft Criminal Procedure (Jersey) Law 201-“the draft law”.</p> <p>The Sub-Panel received law drafting instruction from the Senior Legal Advisor that intended to amend the following areas of the law in light of submissions made to the Sub-Panel:</p> <ul style="list-style-type: none"> <li>• Article 36(3) – this amendment would not allow the Royal Court to impose a greater sentence or fine than the Magistrates Court. It was noted that the drafting of the current law allowed this issue to occur.</li> <li>• Article 50 - the Law Draftsman was instructed to amend Article 50 to provide that where the trial court has communicated its view of the facts to the sentencing court then the sentencing court may proceed to sentence on the basis of the facts communicated</li> <li>• Article 66 – this amendment changed the position in the law whereby reserve jurors could be dismissed prior to the Bailiff’s summing up. It was noted that should the amendment be accepted, the reserve jurors could be dismissed only after the Bailiff had summed up.</li> <li>• Article 75(4)(b) – It was noted that a minor change had been made to this article that meant a verdict of a lesser offence would only be asked for in appropriate cases and not all cases as was currently drafted.</li> <li>• Article 81 (4) – (6) – This amendment was intended to allow for the defendant to require that proceedings continue</li> <li>• Article 83(3) – This amendment was designed to reflect Section 3(6) of the Criminal Procedure and Investigations Act 1996 in England and Wales, whereby a prosecutor could withhold material on the grounds of public interest only if an application is made to the Court and accepted.</li> </ul>	

- Article 98 – this amendment would allow for the power of arrest for failure to attend when warned in the same terms as laid out in Article 100(3) of the draft law (i.e. the court may order the arrest of someone who fails to attend before the court at a time and place stated in the summons)
- Schedule 3 – New Article 82G (1) – this amendment was a minor typographical change to remove words from the paragraph.

H.M. Attorney General explained that further concerns has been discussed from the submissions, but no further amendments were to be brought forward at this time. The Sub-Panel discussed the following concerns that had been raised from its submissions:

Article 63 - Eligibility for Jury Service

The Sub-Panel noted submissions that had disagreed with the inclusion of local advocates, solicitors, prosecutors and centeniers on juries, with the caveat that they had not participated in criminal proceedings for the 12 months prior to serving on the jury. It was noted from the meeting with the Law Society that concerns were raised as to whether inclusion of legal professionals on a jury could create an undue influence on the rest of the jurors. It was recalled that lawyers may have knowledge of criminal and court proceedings that would not be known amongst lay persons, which could in turn be used to influence.

H.M Attorney General explained that the rationale for this change was down to the large increase in legal professionals in the Island (it was noted that there were over 400 practicing), most of whom were involved in the finance industry and therefore rarely, if at all, attended court.

Article 84 – Duty to provide a defence case statement

The Sub-Panel raised a concern from the Law Society in relation to the draft law creating a duty of the defence to provide a defence case statement (DCS) outlining its case. It was noted that the opinion of the Law Society was that this breached the defendants right to silence, and in turn did not allow the defence to approach a case by placing full burden on the prosecution to make its case.

The Attorney General explained that the introduction of the DCS was in keeping with the overriding objective of the law, and therefore removing this would create significant issues. It was explained that the addition of the DCS would reduce the risk of a late adjournment through ‘trial by ambush’ and was in the best interest of justice.

Article 75 – Verdicts

The Sub-Panel received a paper from the Senior Legal Advisor outlining the rationale for the introduction of retrials in the draft law. It was noted that Jersey was the only common law jurisdiction to not have the concept of retrials. It was explained that in the United Kingdom, instances of retrials were in fact incredibly low (it was reported that 0.7% of all trials required retrials in 2017).

	<p>The Attorney General explained that the purpose of Article 75 was to encourage more juries to reach unanimous verdicts. If, after sufficient time had passed, the jury was unable to reach a unanimous verdict then the presiding officer would instruct them to achieve a majority verdict. It was expected that the instance of a retrial would be rare.</p> <p>The Attorney General explained that this particular change had been included in all of the consultation drafts that were looked at by key stakeholders, including the Bailiff and the Law Society of Jersey. It had also been put forward to the Criminal Justice System Board in February 2016.</p> <p><u>Schedule 3 – Part 9A – Evidence of bad character.</u></p> <p>The Sub-Panel questioned the inclusion of the provisions that would allow evidence of previous convictions to be admitted if it showed a propensity for the defendant to commit similar offences.</p> <p>The Attorney General explained that it was wrong that a jury could not take previous convictions into account, although it was confirmed that only relevant previous convictions may be used (i.e. in the case of a grave and criminal assault case, a previous conviction for drink driving would not be admissible). It was noted that this change mirrored the 2003 act in England and Wales and created six gateways to admissibility of character evidence.</p> <p>It was also noted that the judge would have the final say on whether evidence could be admitted or not.</p>	
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