



Isle of Man
Government

Reilrys Ellan Vannin



Department of Home Affairs

CRIMINAL PROCEDURE AND INVESTIGATIONS BILL 2014

SUMMARY OF RESPONSES TO THE CONSULTATION

November 2014

1 Criminal Procedure and Investigations Bill 2014

- 1.1 Currently the disclosure of material acquired during the investigation into an alleged criminal offence and upon which the prosecution subsequently does not intend to rely on in evidence (i.e. prosecution "unused material") is undertaken following the principles of the case of R – v- Keane.
- 1.2 The purpose of the Bill, therefore, is to provide a statutory framework within which the disclosure of unused material may take place. The objective is to further improve the criminal justice system insofar as the timely, appropriate, and proper disclosure of unused material is a fundamental aspect of fair justice

2 The consultation

- 2.1 The Department published the draft Bill and Impact Assessment for consultation on 16th June 2014 and the consultation closed on Tuesday 29th July 2014.
- 2.2 The consultation document, in line with the Isle of Man Government's Code of Practice on Consultation, was sent directly to various persons or organisations, including the following –
 - Tynwald Members
 - Attorney General
 - Local Authorities
 - Chief Officers
 - Isle of Man Law Society
 - Liberal Vannin
 - Mec Vannin
 - Positive Action Group
 - Chief Constable
 - Social Affairs Policy Review Committee of Tynwald
- 2.3 This document was also published on the Isle of Man Government's consultation website.

3 Outline and summary of responses to the consultation

- 3.1 The Department received ten responses to the consultation either by letter or email, of which –
- one was from a Third Sector body concerned with the criminal justice system;
 - four were from Local Authorities; and
 - five were from Government bodies;
- 3.2 In issuing the Bill for public consultation the Department accepted the issue the Bill addresses was one most likely to only be of particular interest to those persons or bodies directly involved in the criminal justice process. Consequently four of the respondents appreciated being given an opportunity to see the consultation but indicated they had no comment to make. One respondent indicated his organisation's support for the content of the consultation document. The consultation document posed four questions and a summary of the responses to the questions and to other matters mentioned by the other five respondents, along with the Department's response, is provided below.

4 Question 1:

The Department is aware of two views. The first is that it would be helpful, to ensure the smooth transition from common law disclosure to these statutory provisions, if the Bill was applied in stages with the first stage applying the provisions only to cases at and from committal for trial in the Court of General Gaol Delivery and later stages to trials in the Summary Courts also. If you do not think this approach is correct it would be helpful to receive your reasons why.

Alternatively, if you think this approach is correct it would be helpful to know why.

The second view is that this Bill should be applied immediately to all cases that are to go for trial, whether in the Summary Courts or in the Court of General Gaol. If you do not think the Bill should be applied in this way it would be helpful to know why and to receive your suggestions as to how the Bill can be introduced smoothly and effectively.

- 4.1 The clear view of the five respondents to the question was that the Bill should be implemented in its entirety and applied equally to both summary cases and those before the Court of General Gaol Delivery. The view was that it is not in the interests of justice generally for there to be different procedures in respect of each Court.

5 Question 2:

This Clause provides for two types of disclosure by the defence of their case. The first is compulsory and applies where the prosecution have not only disclosed unused material but also the evidence upon which the case against the accused is based. The second is voluntary disclosure of the case by the defence where the prosecution have disclosed unused material but not yet handed over the evidence upon which the case against the accused is based.

Do you think it is useful, or helpful, to provide for two types of disclosure or should there only be provision for compulsory disclosure of the defence case? It would be helpful to receive your reasons for your position.

- 5.1 The broad consensus was that if there is to be a requirement for disclosure of case by the accused it adds nothing useful to provide for voluntary disclosure. There should simply be a compulsory requirement for disclosure by the accused.
- 5.2 One respondent felt the requirement for disclosure in clause 5(1) imposed a greater burden on the accused than on the prosecution. However, the accused is only required to give a defence statement if the prosecution has complied with its obligations under clause 4 to disclose material to the defence. The only obligation on the accused that may arise, if obligation is the right word, is a responsibility to hold the prosecution to account before the

Court in a timely manner for any failure on the part of the prosecution to fulfil its obligations to the accused (and indeed to the court).

- 5.3 Another respondent felt that the requirement on the accused to make a defence statement of case performed the useful role of focussing minds and consequently avoiding unnecessary delays due to lack of focus.

6 Question 3:

Clauses 12 and 13 outline consequences for the prosecution and the defence if either fails to comply with any obligation set out in this Bill. Do you think those consequences are too weak or, on the other hand, too severe. If so, please explain why and set out what consequences you think should flow from a failure on the part of either the prosecution or the defence to comply with any or all of their obligations (including complying in a timely fashion)?

- 6.1 There was broad agreement that the consequences set out in the Bill were adequate. There was recognition that the staying of proceedings is a very severe sanction and a concern was expressed about victims being denied justice due to the failings of one or more parties. Two respondents suggested the Court should be specifically empowered to make an order for wasted costs against the prosecution or the defence as that might be the more appropriate sanction in some cases.

7 Question 4:

What time limits do you think the Department should specify in the regulations? (7 days? 14 days? or different periods for different parts of the process?)

- 7.1 Various periods were suggested with agreement that a period of 7 days was too short but otherwise there was no consensus. Suggestions included 14 days for summary disclosure and 28 days for cases before the Court of General Gaol, 14 days throughout or 21 days all in order to enable disclosure or consideration of disclosed material.

8 Other matters

- 8.1 In addition to issues relating to the correction of spelling or grammatical errors in the draft there were other queries relating to technicalities in the draft.
- 8.2 Key criminal justice participants have asked that the Bill include provision to amend the Summary Jurisdiction Act 1989 to enable existing plea before venue provisions to apply also to cases triable on information only. Plea before venue provisions enable a person who wishes to plead guilty at the earliest opportunity to do so, and to have their case proceed to conclusion much more quickly. The provisions have worked well for those charged with summary only offences or offences that are triable in either a court of summary jurisdiction or the Court of General Gaol Delivery. The request is to extend provision to include those cases that currently may only be dealt with in the Court of General Gaol Delivery (i.e. information only cases) as there are some persons charged with more serious offences who nevertheless wish to admit their guilt at the earliest opportunity.
- 8.3 Other requests included in responses to the consultation were to provide court security officers with legal powers to support the functions they perform, to supplement sexual offences legislation relating to the sexual offenders register and sexual offences prevention orders. Further requests related to the way to give or cross-examine evidence from vulnerable witnesses

9 Outcome of the consultation

- 9.1 The Department, having considered the responses to the consultation, will address the drafting issues highlighted by some consultees, and indeed is grateful for their attention.
- 9.2 The Bill will be amended to provide for implementation of its provisions equally in respect of both summary cases and those in the Court of General Gaol.

- 9.3 In respect of question 2, clause 5 will be amended to remove the unnecessary provision about voluntary disclosure by the accused. In respect of question 3, additional provision will be made to enable the Court to impose a wasted costs order against any party where the Court considers the party has failed, without reasonable cause, to comply with an obligation imposed by this Bill. The Department appreciated the suggestions concerning time limits to be included in secondary legislation, question 4, and will bear them in mind in the event the Bill proceeds through the Branches and it prepares the necessary regulations.
- 9.4 The Department intends to introduce provision for plea before venue in respect of cases triable only on information through this Bill and to address other issues raised in the consultation through other Bills within the Legislation Programme.

21 November 2014
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Reilhtys Ellan Vannin



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Department of Home Affairs
"Homefield", 88 Woodbourne Road, Douglas, IM2 3AP
Tel.: 694300 E-mail: dhaconsultation@gov.im
www.gov.im/dha/consultations.gov