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FROM: DALO
DATE: 28 OCTOBER 2020
TO: CHRISTINE DARRAH

BRIEFING ON THE PRINCIPLES OF THE CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

SUMMARY

Business Area: Speeding Up Justice – Justice Performance Team

Issue: Briefing on the principles of the Criminal Justice (Committal Reform) Bill, for which Executive approval to introduce was endorsed on 22 October.

Restrictions: Official – Policy in development.

Action Required: Members to note the written briefing ahead of the oral briefing on 5 November.

Attendees: Glyn Capper, Head of Justice Performance Team, Access to Justice Directorate
Laura Mallon, Justice Performance Team, Access to Justice Directorate

BACKGROUND

Members are aware that the Minister intends to improve the operation of the criminal justice system by reforming committal proceedings. The Bill makes provisions to remove the use of oral evidence pre-trial and make further reforms of direct committal provisions included in the Justice Act (Northern Ireland) 2015 (*the 2015 Act*). A copy of the Bill and Explanatory and Financial Memorandum is attached (**Appendices A and B**). This paper

sets out the background to the Bill and summaries the key provisions in the Bill. Members will wish to note that Executive Agreement to the introduction of the Bill was granted at the Executive meeting on 22 October.

2. The 2015 Act provided for more fundamental reforms to the committal process, by allowing the direct committal (transfer) of an accused person from the magistrates' court to the Crown Court, in certain circumstances, without the need for a traditional committal hearing. These changes are regarded as key to improving the speed of the justice system¹ and delivering on the Executive's priorities outlined in the New Decade New Approach Deal.

3. It is the Department's intention to eradicate the traditional committal process entirely, in line with a commitment arising from the NI Audit Office report on avoidable delay in the criminal justice system, published in 2018.

4. This is key to improving the speed of the justice system² and reforming the committal process is a priority in The New Decade, New Approach Deal. The contribution to speeding up justice will also assist in increasing confidence in the justice system.

5. The Department previously sought, through the Justice Bill in 2015, to abolish the option to hear oral evidence from victims and witnesses at the 'traditional committal hearing' in the magistrates' court. The experience of giving, sometimes traumatic, oral evidence, particularly under cross-examination, at both the 'traditional committal hearing' and at the Crown Court trial can have a significant impact on victims and witnesses. However, the Department's proposal did not receive sufficient support during the passage of the Act.

¹ Indicator 38 in Outcome 7 of the Programme for Government 'We have a safer community where we respect the law and each other' relates to the increased effectiveness of the criminal justice system.

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6. However, in May 2016, the three person panel appointed by the Executive to report on a strategy for disbanding paramilitary groups recommended that *'the Department of Justice should bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial'* (Recommendation A10). The recommendation was accepted by the Executive in its action plan published in July 2018, which agreed that: *'Committal proceedings will be further reformed. The Department of Justice will bring forward draft legislation in relation to this recommendation.'* This Bill gives effect to that commitment.

7. The Fresh Start Panel Report also recommended that *'the Department of Justice should use the measures already available to it to abolish committal proceedings in respect of those offences most frequently linked to paramilitary groups, including terrorist offences and offences which tend to be committed by organised crime groups'* (Recommendation A11). In response the Executive agreed, through the action plan, that *'Committal proceedings in respect of those offences most frequently linked to paramilitary groups will be abolished. The Department of Justice will work closely with justice organisations to identify suitable offences to be added to the list of offences which can be directly transferred to the Crown Court.'* The Bill supports the delivery of this recommendation by extending the list of offences which are to be removed from the traditional committal process as part of the first phase of implementation.

8. Subsequent external reviews have also identified the need for reform of the committal process:

- a. the Northern Ireland Audit Office Report – Speeding up Justice: avoidable delay in the criminal justice system, published in March 2018, recommended that the Department should establish an action plan and timetable for the eradication of the committal process; and
- b. the 2019 'Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland' recommended that the Department should make

provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process.

- c. The Chief Inspector of Criminal Justice NI (CJINI) has made a number of recommendations in respect of reforming committal proceedings in the past, most recently in its Without Witness Report – A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland, published in November 2018. Amongst the report’s recommendations was that *‘Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015’*.

Committal Reform Bill

9. At its meeting on 14 December 2016, the Executive approved the drafting of a Committal Reform Bill to deliver the following policy aims:

- a. making a further attempt to abolish oral evidence at the ‘traditional committal hearing’ stage in line with Fresh Start recommendation A10, given that the Assembly voted down this proposal during the passage of the 2015 Act. The 2015 Act also provides a new process in cases directly committed to the Crown Court. This process - ‘Application to Dismiss’ (AtD) - allows the defence to apply to the Crown Court for some or all of the charges to be dismissed on the basis that the evidence is insufficient for the accused to be properly convicted. The 2015 Act allows oral evidence in the AtD process. However, to ensure consistency with the policy objective of victims and witnesses not giving evidence before trial, the draft Bill also includes a provision to remove oral evidence in the AtD process;
- b. ensuring related offences can be transferred to the Crown Court together with specified offences; and

- c. allowing the Public Prosecution Service (PPS) to withdraw charges between the direct committal of an accused under Part 2 of Chapter 2 of the 2015 Act, and the presentation of an indictment to the Crown Court. These powers, known as ‘discontinuance’, are limited to direct committal cases and regarded as essential to the smooth operation of the new direct committal process.
10. In addition, as the draft Bill has been developed, and as justice organisations have worked together to plan for the introduction of direct committal, two further provisions have been deemed necessary:
- a. Following extensive engagement with relevant criminal justice organisations, the Bill will seek to repeal section 10 of the 2015 Act. Section 10 of the 2015 Act provides that a magistrates’ court will directly commit an accused to the Crown Court if they indicate, prior to a traditional committal hearing, an intention to plead guilty. Whilst the Department recognises the benefits to victims and witnesses, and indeed defendants, of this approach, a number of significant operational complexities and risks, have been identified by justice partners in relation to the implementation of section 10. Section 10 is also an interim measure - once direct committal is fully rolled out it would become obsolete - and, although it is not possible to quantify with any certainty, it would potentially apply to a relatively small number of cases. On balance, therefore, the Department considers that focussing efforts on a more expansive rollout provides a better and less complex basis on which to implement the changes required, and speed up the justice system. However, recognising the benefits to victims, witnesses and defendants of ‘fast-tracking’ cases in which the accused wishes to plead guilty, the draft Bill also includes powers, were an individual is charged with committing a relevant offence and expresses an indication to plead guilty, to allow the magistrates’ court to order the necessary reports in preparation for Crown Court.

- b. In line with recommendations arising from the recent reports by the NI Audit Office, Sir John Gillen and CJINI, outlined above, the draft Bill includes provisions to expand the list of offences that will be directly committed at this stage. Following a review, the Department now seeks to add all offences that, in the case of an adult, are triable only on indictment, to the list of cases which will bypass the traditional committal process, to be directly transferred to the Crown Court. This list of offences will apply to both adult and youth cases and will include terrorism related offences and serious sexual offences.
- c. The Bill also makes a number of more minor changes in relation to the direct committal process. These include powers for magistrates' courts to help speed up the provision of reports which might expedite the sentencing of an accused where there is an indication of a guilty plea, and provisions to provide consistency with present arrangements for handling Crown Court cases which proceed via the traditional committal method.

Further detail on provisions

11. A more detailed overview of the key provisions contained within the Bill, by way of a clause by clause explanation, is provided at **Appendix C** should Members find this helpful.

Engagement with stakeholders

12. There has already been detailed consultation on 'Reform of Committal Proceedings' and 'Encouraging Earlier Guilty Pleas' in advance of the Justice Bill (NI) 2015. As noted above, provisions relating to abolishing oral evidence before trial formed part of the Fresh Start Panel's Report and the subsequent Executive Action Plan. There was also considerable engagement with the Justice Committee as the 2015 Act was developed, and the Committee was strongly in favour of the proposal to remove oral evidence before trial.

13. In relation to the repeal of section 10 (in relation to directly commit an accused to the Crown Court if they indicate, prior to a traditional committal hearing, an intention to plead guilty), stakeholder views on earlier guilty pleas have been obtained via previous consultation and the decision to repeal section 10 was taken following extensive engagement with all relevant criminal justice organisations and agreed by the Criminal Justice Board³.

Finance

14. The main aim of direct committal is to transfer cases to the Crown Court more quickly than at present, and consequently shorten the overall length of time it takes to complete these cases. In effect, there will be a rebalancing of resources - less work will be done in the lower court tier (magistrates' court) but more work will be done in the higher court tier (Crown Court). A business case is being prepared to capture the relevant costs for criminal justice organisations and these costs will be factored into prioritised plans for future budget periods.

15. Capital expenditure – relating to IT development – is largely complete and any remaining costs will be met from existing capital budgets.

Way forward

16. Subject to the Speaker's clearance the Minister intends to introduce the Criminal Justice (Committal Reform) Bill into the Assembly, on Monday 2 November. Officials will brief the Committee on the principles of the Bill on 5 November and are happy to answer any queries that Members may have.

³ The Criminal Justice Board is the main strategic oversight group for the criminal justice system in Northern Ireland. The Board is chaired by the Minister of Justice and members include the Lord Chief Justice, Sir Declan Morgan; the Chief Constable, Simon Byrne; the Director of Public Prosecutions, Stephen Herron; and the Permanent Secretary for the Department of Justice, Peter May.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Mánnystrie O tha Laa

www.justice-ni.gov.uk

I trust the Committee will find this briefing helpful.

[signed]

DALO



APPENDIX A

CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

See separate attachment

APPENDIX B

**EXPLANATORY AND FINANCIAL MEMORANDUM FOR THE CRIMINAL JUSTICE
(COMMITTAL REFORM) BILL**

See separate attachment

APPENDIX C

OVERVIEW OF CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

This appendix provides a description of the clauses in the draft Bill.

Clauses 1-3 of the Bill are fairly straightforward and relate to the abolition of oral evidence within the traditional committal process. Clause 4 provides for the introduction of the direct committal process. Clause 5 relates to the timing of introduction and 6 contains the short title of the Bill.

Clause 1: Abolition of preliminary investigations

A Preliminary Investigation is a process whereby the committal proceedings are conducted via the calling of witnesses. This clause removes from legislation this process as an option for cases being progressed via the traditional committal process.

Clause 2: Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry

Mixed committal proceedings use both written evidence and also the calling of witnesses during committal proceedings. This clause removes from legislation this process as an option for cases being progressed via the traditional committal process.

Clause 3: Consequential amendments and repeals

This Clause points to the Schedule which contains minor repeals and amendments. Most of the changes are to do with removing references to preliminary investigations or mixed committals in other existing pieces of legislation.

Clause 4: Direct committal for trial: miscellaneous amendments

This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.

Subsection (2) amends section 9 of the Justice Act (Northern Ireland) 2015 to provide operational clarity to criminal justice practitioners that cases to which Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981, or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 apply, shall only be directly committed to the Crown Court, subject to meeting the criteria set out in section 11, after a magistrates' court has decided not to deal summarily with the case.

Subsection (3) repeals section 10 of the Justice Act (Northern Ireland) 2015 which provides for the direct transfer to the Crown Court of an accused, upon his or her indication to a magistrates' court (before it has begun to conduct traditional committal proceedings) of an intention to plead guilty to an offence to be prosecuted on indictment.

Subsection (4) amends section 11 of the 2015 Act to amalgamate and streamline sections 11 and 12 of the 2015 Act following the decision by the Department to extend the list of offences to which direct committal will initially apply. The subsection extends the application of direct committal to include all offences which, in the case of an adult, would be considered to be triable only on indictment. This applies irrespective of the age or circumstances of the accused or the procedural route by which the accused comes to be tried on indictment. The test for the court is whether the offence is, in the case of an adult, triable only on indictment. The subsection also provides the Department with the power to bring forward an order(s) to designate any other offence(s) to which direct committal under Chapter 2 of Part 2 of the 2015 Act will apply. The amendment brings within section 11 the process originally provided for in section 12 of the 2015 Act, whereby an accused, charged with an offence not falling within the direct committal offence types, can be directly committed to the Crown Court if the offence is related to an offence for which an co-accused has been directly committed.

Subsection (4) also introduces other changes to support the introduction of direct committal.

- It amends Chapter 2 of Part 2 of the 2015 Act to provide that in cases where an accused is directly committed to the Crown Court for a qualifying offence under

that Chapter, the magistrates' court shall at the same time directly transfer any other offence(s) for which the accused is charged that it considers to be related. The subsection defines a related offence as one which the court determines could be included on the same indictment as the offence which is to be directly committed.

- It amends Chapter 2 of Part 2 of the 2015 Act to allow for certain functions of the magistrates' courts, other than those related to committal proceedings, to continue after a case has been directly committed for trial. This provision seeks to maintain consistency with existing arrangements for cases which proceed to the Crown Court through the traditional committal process. This amendment is designed to allow, for example, an accused who is alleged to have breached the conditions of his or her bail in respect of an offence(s) which has been directly committed to the Crown Court, to be brought before a magistrates' court to answer those allegations. Magistrates' courts sit more frequently than Crown Court, and at a greater number of venues across Northern Ireland and this amendment facilitates prompt access to a court so that such allegations can be heard. This in turn is important in order to protect the administration of justice, particularly where there is a risk a defendant might attempt to interfere with the criminal justice process.

Subsection (5) makes some minor amendments to section 13 of the 2015 Act to add flexibility to the nature of court rules required to support the direct committal process, by adding that further arrangements in respect of the documentation associated with direct committal can be provided for in either magistrates' court rules, or Crown Court Rules. This change is primarily designed to allow Crown Court Rules to provide further detail on arrangements for serving documents containing the evidence on which the directly committed charge is based, should those documents not be available to the magistrates' court at the point when the accused is to be directly committed to the Crown Court.

Subsection (6) provides the magistrates' court with powers to order the making of inquiries and reports relevant to the sentencing of the accused, should an accused

indicate an intention to plead guilty to the offence(s) to be directly committed to the Crown Court. The purpose of this change is to provide the Crown Court with documentation required to support the early disposal, if appropriate, of the case should the accused enter a guilty plea at an early stage in the Crown Court. The subsection provides that the prosecution and the accused must be provided with the opportunity to put forward their views prior to the magistrates' court making a decision regarding the ordering of relevant inquiries or reports.

Subsection (7) provides new powers for the Director of Public Prosecutions for Northern Ireland to discontinue proceedings, directly transferred to the Crown Court under Chapter 2 of Part 2 of the 2015 Act, between committal and the time that an indictment has been presented in the Crown Court. The clause also sets out the arrangements for discontinuing proceedings in such circumstances.

Subsection (8) amends the process whereby the accused or his representatives can apply to dismiss charges on which he has been directly committed for trial under section 14 of the 2015 Act. This change is designed to maintain consistency with the Department's commitments to remove the option for victims and witnesses to be called to provide oral evidence on oath in advance of trial.

Subsection (9) makes a number amendments to Schedule 2 to the 2015 Act, which are mostly minor in nature, or consequential to the changes made to Chapter 2 of Part 2 of the 2015 Act by this Bill. The most substantive change made by the subsection relates to an amendment to paragraph 8 of Schedule 2 to the 2015 Act, which in turn amends the Criminal Procedure and Investigations Act 1996, to define a timeframe in which a prosecutor must disclose to the defence copies of, or provide access to, material which could reasonably be considered to undermine the prosecution case or assist the case of the accused in cases directly transferred under Chapter 2 of Part 2 of the 2015 Act. The duty on the prosecution is to provide this material as soon as is reasonably practicable after the service of the notice of committal and the evidence on which the charge(s) is based as referred to in the revised section 13(2A) of the 2015 Act.

Subsection (10) updates a reference in section 102(7) of the 2015 Act relating to the arrangements by which the Department can bring forward an order to extend the list of specified offences.

Subsection (11) repeals section 57 of the Justice Act (Northern Ireland) 2016 following the amendment made to section 9 of the 2015 Act by this Bill.

Clause 5: Commencement and transitional provisions, etc.

Clause 5 provides that the provisions relating to the abolition of oral evidence from the traditional committal process, and direct committal will not apply to proceedings instituted before the Department has commenced the relevant provisions of the Bill. Paragraph 4 of Schedule 8 to the 2015 Act provides further definition as to when proceedings are instituted.

Clause 6: Short title

Criminal Justice (Committal Reform) Bill

Committal Reform

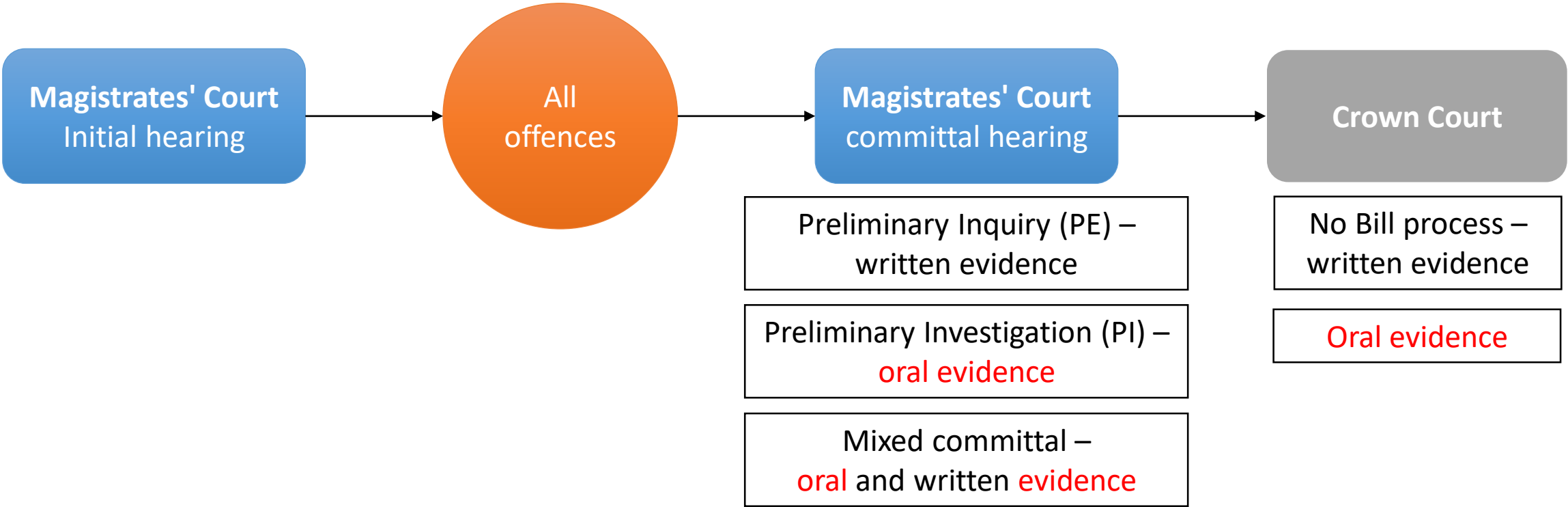


Department of
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V1 October 2020

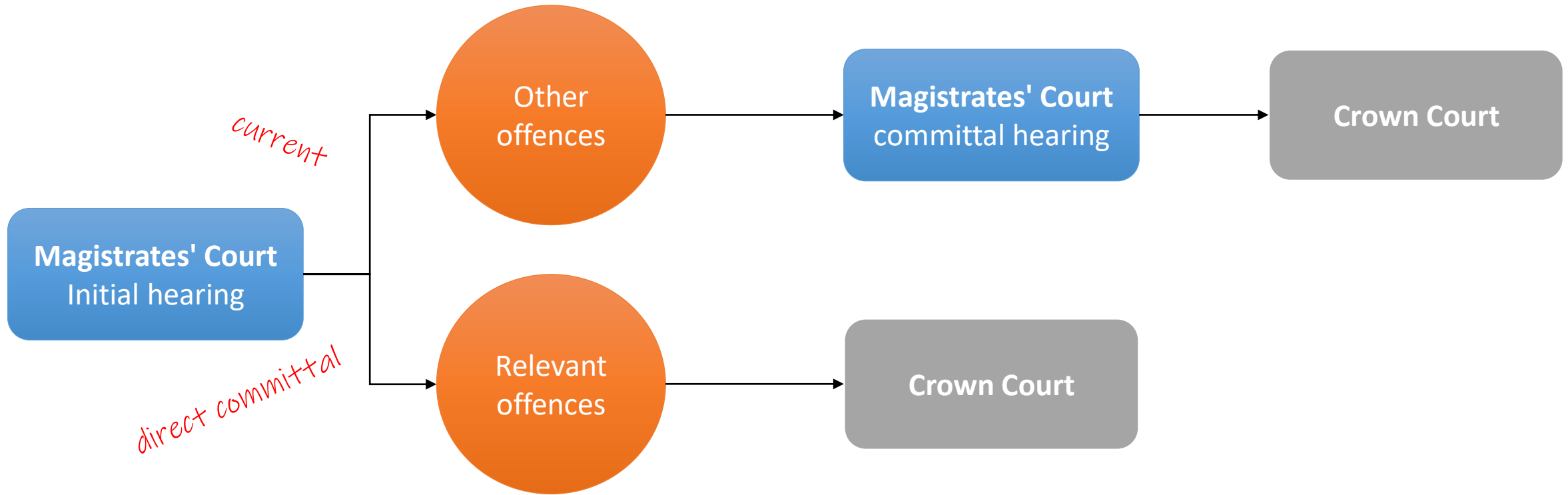
Crown Court committal process



External recommendations

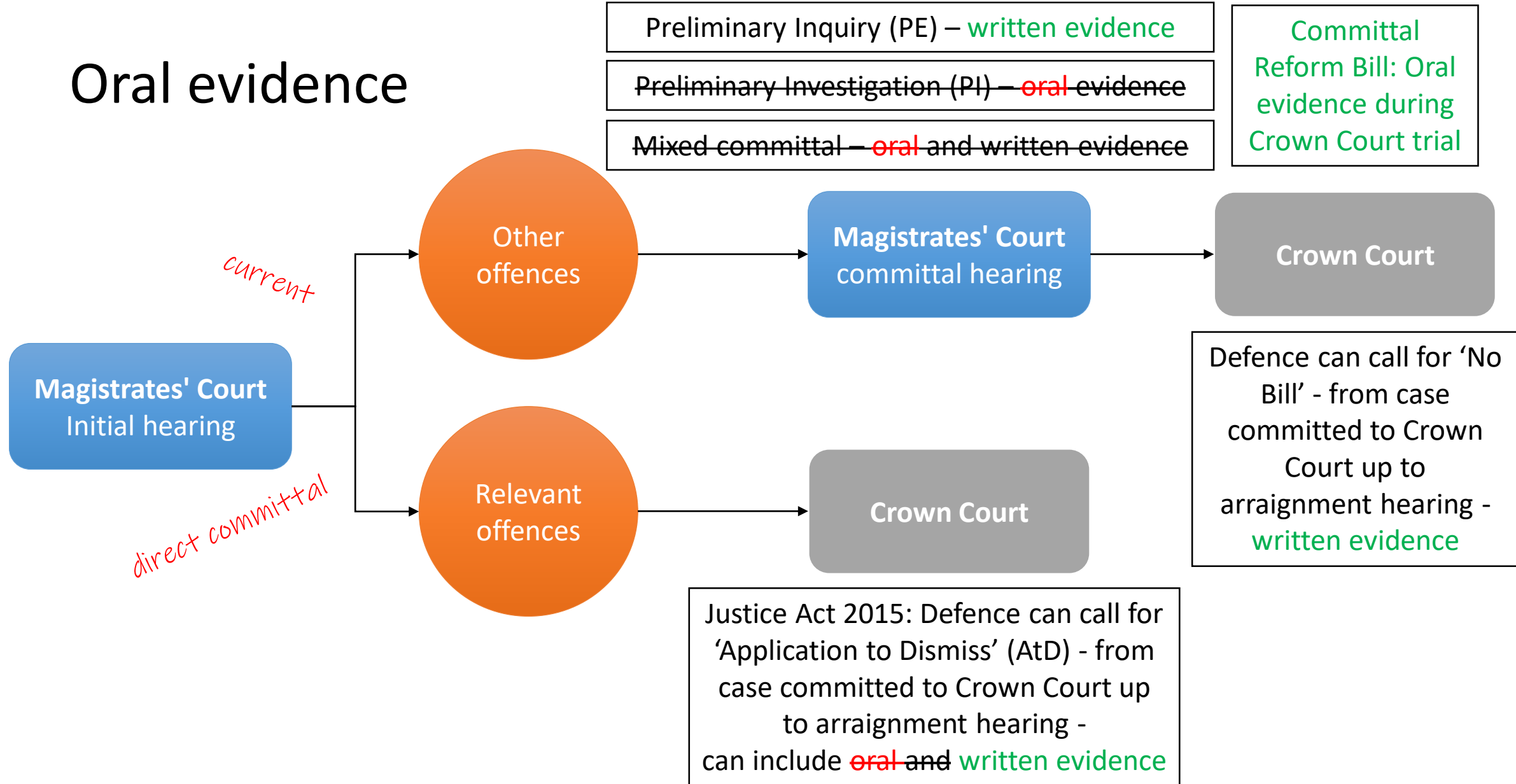
2016	Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland	remove the need for oral evidence before trial abolish committal proceedings in... terrorist offences and offences which tend to be committed by organised crime groups
2018	NI Audit Office - Speeding Up Justice	timetable for the eradication of the committal process
2018	Criminal Justice Inspection NI - Without Witness Report	rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act
2019	Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland	direct transfer of serious sexual offences to the Crown Court , bypassing the committal process
2020	New Decade, New Approach Deal	the Executive will deliver committal reform to help speed up the criminal justice system, benefiting victims and witnesses

Direct committal

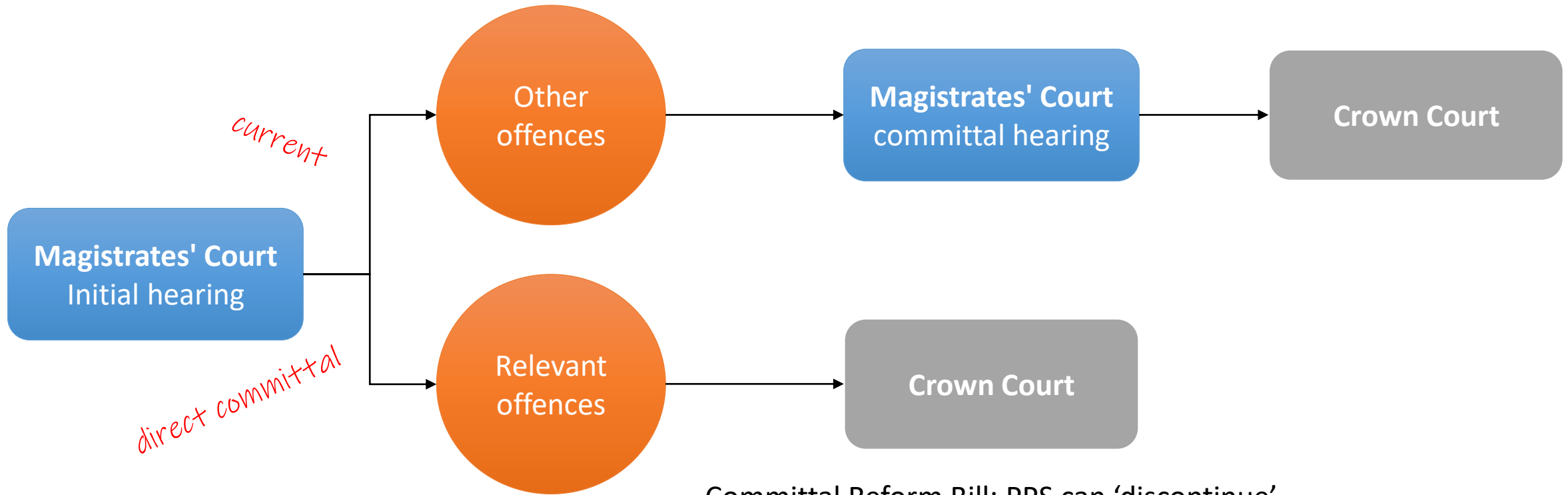


- Justice Act (NI) 2015: murder/manslaughter + specified offences
- Committal Reform Bill: will expand offences that will be directly committed:
 - list of offences: those that, in the case of an adult, are triable only on indictment - will include terrorism related and serious sexual offences
 - list of offences will apply to both adult and youth cases
 - + future additional offences

Oral evidence

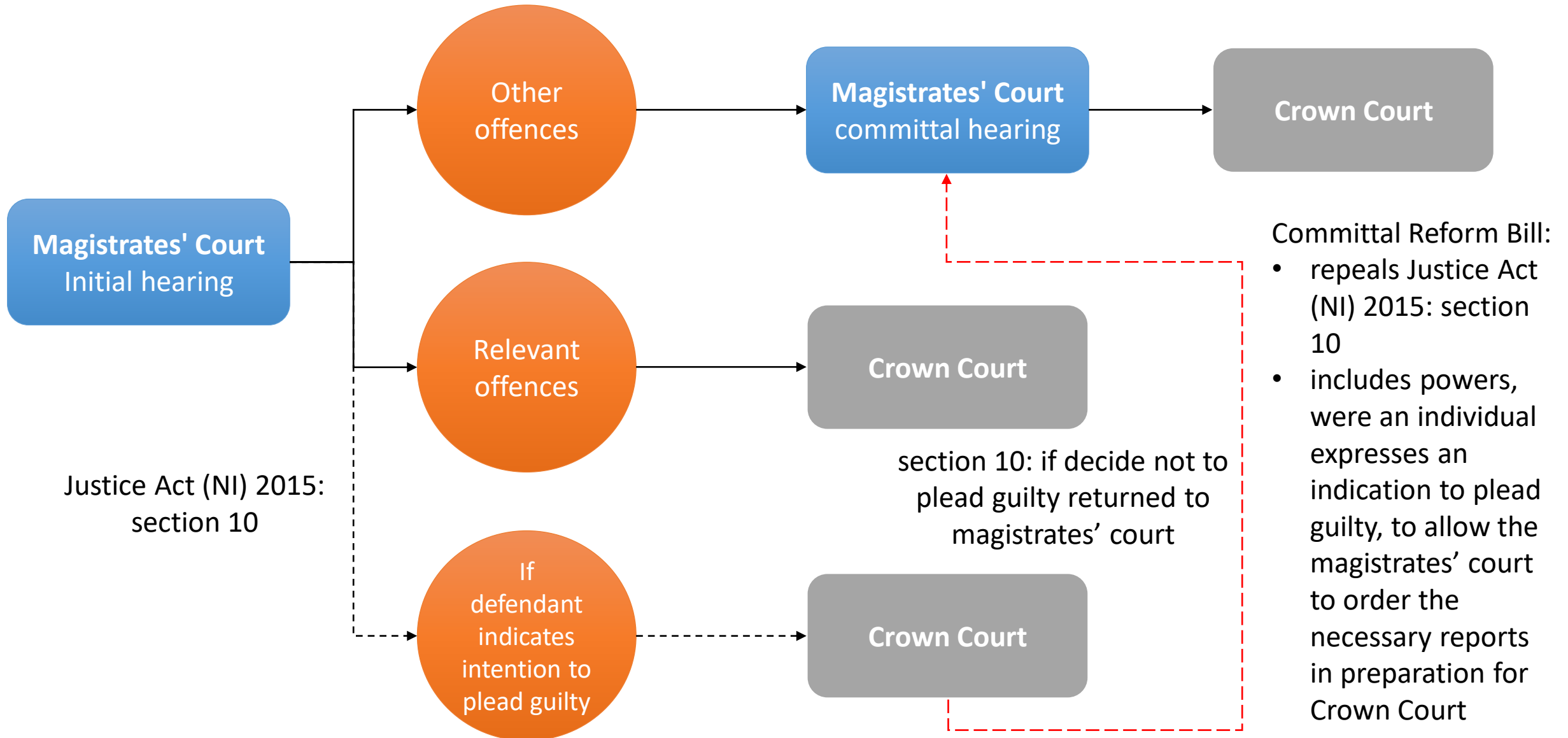


Operational outworkings (1)



Committal Reform Bill: PPS can 'discontinue' a case from when committed to Crown Court to indictment presented

Operational outworkings (2)



Committal Reform Bill

1. Expand direct committal to Crown Court for additional 'relevant' offences
2. Abolishing oral evidence pre Crown Court trial:
 - a. at the traditional committal hearing – until direct committal fully rolled out for all offences
 - b. in the 'Application to Dismiss' process in direct committal
3. Resolve operational outworkings

Next steps

1. Committal Reform Bill
2. Abolish oral evidence pre trial
3. Committal Reform Programme
 - Legislation, IT, Legal Aid, Business Change
4. Implement direct committal – 2022