

# **Public Prosecution Service**

## **CALL FOR EVIDENCE ON THE JUSTICE BILL AND PROPOSED AMENDMENTS**

I refer to your letter to the Director of Public Prosecutions dated 8 July 2014 inviting him to respond to the Justice Committee with the views of the Public Prosecution Service (PPS) on those aspects of the Justice Bill which affect the PPS. The Director has asked me to respond. I apologise for the delay in responding.

As requested, this submission is structured to address the specific clauses and schedules of the Bill and amendments.

The PPS remains committed to delivering a first class prosecution service to the people of Northern Ireland and we welcome any adjustments to the criminal justice system which are intended to make it more efficient and effective.

We would caution, however, that the proposals in the Bill would require an impact assessment to determine the extent to which systematic changes will be required and the potential cost of those changes.

Turning now to our submission.

### **PART 1**

#### **SINGLE JURISDICTION FOR COUNTY COURTS AND MAGISTRATE'S COURTS**

The provisions contained within this part of the Justice Bill propose abolishing the existing County Court boundaries and Petty Sessions Districts and replacing them with as yet undefined Administrative Divisions. The PPS is structured around the present County Court boundaries and any changes to this system could leave the PPS regional structure differing from that of the Courts with Regions cutting across Administrative Divisions. Were we to change our structure to fit with the new Court Boundaries this would have a considerable

impact on the PPS organisation and resources the extent of which we are not yet able to assess. We are also aware that the PSNI are considering changes to their District structure which could again have a significant impact on the PPS.

We would have further concerns that the ability to move cases from one Magistrate's Court venue to another, potentially at short notice, would have a significant impact on those victims and witnesses who wished to or were required to attend the court proceedings. We note the guidance issued by the Department of Justice and we would expect that guidance to be administered in such a way as to minimise the inconvenience to victims and witnesses. We note that the circumstances where the Court could depart from the guiding principle that most criminal offences should be prosecuted in the court division where the offence occurred or the defendant resides includes the provision that this principle could be departed from to assist "the efficient management of court accommodation" and "to facilitate the effective distribution and disposal of business". We would hope that these considerations would not be given priority over those that are protecting the interests of victims and witnesses.

## **PART 2**

### **COMMITTAL FOR TRIAL**

We intend to deal with all the provisions of this part together. We welcome the changes to the committal process in the criminal courts and in particular the abolition of preliminary investigations and mixed committals.

We have previously indicated in correspondence dated 26<sup>th</sup> October 2012 to the Minister of Justice that the proposals in the Bill are more limited than we would have wished. We recognise that Committal reform is a staged process however the PPS position in respect of committal proceedings remains that they should be abolished altogether.

We note the provisions for direct transfer for trial of cases where an indication of an intention to plead guilty has been made and for specified offences. Whilst we will return to the provisions around early guilty pleas later in this letter we do, however, have concerns around the provisions for the direct transfer of specified offences. We observe that the Bill as currently drafted does not provide that where a defendant faces charges in addition to the specified offences or where a co-defendant is charged with a non-specified offence that those additional

charges or the co-defendant can also be directly transferred to the Crown Court. We consider it in the interests of justice to permit the additional charges or the charges faced by a co-accused to be prosecuted at the same time as the specified offence so a jury can hear all the relevant evidence. We are concerned there is no structure to allow this to happen contained within the Bill.

Whilst the specified offences at this time are limited to the offences of murder and manslaughter we note that provision exists at Article 12(4) for the list of specified offences to be expanded. We hope that should the limited reform proposed prove successful in reducing delay without prejudicing defendant's rights that the list of specified offences can be expanded.

We would consider that in those cases that do directly transfer robust case management will be essential and we shall return to this issue later.

## **PART 3**

### **PROSECUTORIAL FINES**

The option for a prosecutor to offer an offender a prosecutorial fine is something we believe has the potential to reduce the number of cases of low level offending that go to court and result in small fines but at the same time take up valuable court and prosecutor time to no apparent benefit and require an offender to attend Court or retain the services of a solicitor to represent them. We therefore welcome in principle the introduction of prosecutorial fines however we make the following observation. In the present environment police have a number of non-court disposals which they are able to offer for low level offending; PNDs (Penalty Notice for Disorder), Fixed Penalty Notices and police use of discretion has taken out of the court system a large number of low level cases. In these circumstances a smaller number of low level cases are being submitted to the PPS for decision.

Our own enquiries have lead us to conclude that if the power to offer prosecutorial fines is one that is to be of significant benefit to the Public, the PPS and the Courts it must be designed in a way that captures not only all those low level cases in which a monetary penalty alone could be imposed but also all the low level road traffic cases in which mandatory penalty points would be imposed at a court hearing. To this end we feel that for prosecutorial fines to be effective, prosecutors should, in addition to the provisions to offer a fine and in appropriate cases compensation to an offender, have the power to offer penalty points to an

offender in those cases where there are mandatory penalty points attached to an offence. We appreciate this may require an amendment to the present Bill however we feel such a change is necessary to make this provision effective.

We have no comment to make on the proposal that a prosecutorial fine would not result in a criminal conviction but we consider that a record of the imposition of a prosecutorial fine should be recorded in the same way as cautions are.

## **PART 4**

### **VICTIMS AND WITNESSES**

We have worked with the Department of Justice in assisting with the development of the Victim's Charter for some time. We welcome the enshrining in law of the Victim's Charter and those provisions of the EU Directive on Victim's Rights which are contained within it. We consider this document a valuable addition to the work we have been carrying out with victims and witnesses, to give them a greater say in the criminal justice process, to provide them with sufficient support and services in the lead up to criminal proceedings and to give them access to enough information in a timely manner to allow them to be fully engaged in any case in which they are involved.

## **PART 5**

### **CRIMINAL RECORDS**

The PPS has no comment upon this provision.

## **PART 6**

### **LIVE LINK IN CRIMINAL PROCEEDINGS**

We welcome the provisions within this section which extend the use of live links to a range of court hearings and to witnesses outside of the United Kingdom which presently is not available to us. We also welcome the provisions that make it easier for expert witnesses to give evidence by live link thus avoiding their unnecessary attendance at court.

## **PART 7**

## **VIOLENT OFFENCES PREVENTIONS ORDER**

Whilst such Orders fall within the sentencing responsibility of the Judiciary the PPS welcomes their introduction as a further means of protection for those who might otherwise be at risk from Violent Offenders. We will work with the other Criminal Justice Agencies to make the most efficient use of this provision.

### **PART 8**

#### **MISCELLANEOUS**

We intend to deal with the miscellaneous parts as they arise.

- (i) **Jury Service.** We have no comment to make on this provision.
- (ii) **Early Guilty Pleas.** We note the provisions in Section 77 provide for the sentencing Judge to inform a defendant who is considered not to have pleaded guilty at the earliest reasonable opportunity of the sentence they would have received had they done so. We consider that informing a defendant at this stage, when they cannot change how they have approached the case to date, on its own will have limited impact on the number of early guilty pleas. We suggest that provision should be made obliging a Judge to enquire of a defendant's Advocate if they have advised the defendant of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 – which contain those provisions around a reduction in sentence for a guilty plea entered at the first reasonable opportunity - **before** they have entered any plea to the charges they face. The Court can then be satisfied that the defendant would then be fully informed of the benefits of entering a guilty plea at the earliest reasonable opportunity.

We note that Section 78 places a duty on the Solicitor to advise their client of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 and the impact of entering a guilty plea at the earliest reasonable opportunity will have on their sentence. We observe that the proposal we have made above would give this duty even more significance and should assist in encouraging early guilty pleas. We suggest, however, that the duty to advise should sit with the *advocate* whether that advocate is a solicitor advocate or counsel and it they who will be asked by the judge whether they had advised the defendant as suggested above.

Consideration should, in our view, be given to a statutory provision providing an additional discount to those who avail of the early guilty plea provisions. We understand that this has been very successful in England and Wales.

- (iii) **Avoiding delay in criminal proceedings.** The PPS makes significant efforts to avoid delay in both Crown Court and Magistrates Court proceedings. We note the provisions that the department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings and that these regulations must take into account the needs of victims, witnesses and persons under the age of 18. Whilst we have no difficulty in principle with these provisions, we question whether in light of the efforts we make on a regular basis to achieve these ends, they are necessary as far as the PPS is concerned.

The PPS welcomes the provisions around case management regulations. We welcomed the introduction of the Protocol for Case Management in the Crown Court by the Lord Chief Justice in his Practice Direction of 2011 and believe the case management regulations referred to by the Bill have the potential to mirror the positive impact on effective case management in criminal cases that the introduction of the Criminal Procedure Rules has had in England and Wales.

- (iv) **Public Prosecutor Summonses.** The PPS welcomes this provision which allows a summons' to be issued by a public prosecutor. We believe giving prosecutors this power will result in efficiencies in the initiation of criminal proceedings and, as a consequence, will facilitate the electronic submission of complaints to a Court Office without the need for the involvement of a lay magistrate.

We note that the provision contained in Article 81(4) is limited to the power to re-issue those summons' issued by a public prosecutor in the first instance. We consider there would be merit in extending this power to include those summons originally issued by a lay magistrate.

- (v) **Defence access to premises.** The PPS has no comment to make upon this provision.

- (vi) **Powers of Court Security Offices.** The PPS has no comment to make upon this provision.
- (vii) **Aims of the Youth Justice System.** The PPS notes the provisions contained within this section but has no comment to make upon them.
- (viii) **Amendment to Section 10 of the Criminal Justice Act (Northern Ireland) 2013.** The PPS has no comment to make upon this section.

## **PART 9**

### **SUPPLEMENTARY PROVISIONS**

The PPS has no comment to make upon this part of the legislation.

We shall now turn to the amendments contained within the legislation as set out in your letter of 8<sup>th</sup> July 2014.

#### **The Department of Justice's proposed amendments**

The PPS has no comment to make on any of the proposed amendments put forward by the Department of Justice.

#### **The amendment proposed by Mr Jim Wells MLA**

##### **New Clause, Ending the Life of an Unborn Child**

The PPS has no comment to make upon this amendment.

This concludes any commentary we have on the Justice Bill as currently formulated. We would be more than happy to attend with the Justice Committee to expand on any of the comments contained within this correspondence or to give evidence to the Committee on the Bill generally.

Yours faithfully

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