The Law Association's Submission on the Miscellaneous Provisions (Summary Courts and Preliminary Enquiries) Bill, 2017

The Law Association is in general agreement with the objectives of the Miscellaneous Provisions (Summary Courts and Preliminary Enquiries) Bill, 2017 but proposes the amendments recorded in track changes in the attached marked-up draft Bill for the following reasons:

1. Section 6 (2A) of the Summary Courts Act

   i) Lest the conferral of the power on the new Magistrate to continue the trial or start a new one is construed as precluding a submission that it is an abuse of process to take either course, it is proposed that the right to take this and any other point should be expressly reserved.

   ii) The order in which the options are presented is reversed in order to make clear that the Magistrate should first consider whether to continue the trial and should only consider starting afresh where the option to continue is rejected.

2. Section 6 (2B)(g)

   It is proposed that "appointment to an office outside the magistracy" be added as a reason for the exercise of the power under section 6(2A) in order to preclude any argument that this event is not captured under the other headings. The Law Association has made public its concern, in relation to the recent appointment of the Chief Magistrate to the High Court, that the part heard matters left behind must be catered for. The Association is mindful that this Bill is in part an attempt to provide for those cases and we are therefore concerned to ensure that the outstanding cases are clearly captured in the language of the Bill.

   Section 6 (2C)

3. Given that the defendant is already being forced to suffer delay for the reasons itemised in section 6 (2B), it is important to impress upon the new Magistrate the need to proceed expeditiously.

   Section 6(2D)

4. Given that one of the purposes of the Act is to address recent events, it is important to make clear that the Act applies retroactively.

Section 14(5)

5. The comments made in paragraph 1 are here repeated.

Section 14(5A)

6. The comments made in paragraphs 3 are here repeated.

Section 14(5B)

7. The comments made in paragraph 4 are here repeated.

Section 23(8)(c)(vii)

8. The comments made in paragraph 2 are here repeated.

Section 23(10)

9. The justification for this proposed provision is self-evident. Where a Magistrate decides to continue the preliminary enquiry or hold a new one, it would be affront to the judicial process for the DPP in effect to discontinue those proceedings by preferring an indictment.

Section 23(11)

10. The DPP's power under section 23(8)(c) is exercisable where a preliminary enquiry is already part-heard before a magistrate, in which case there may have been evidence led which bears upon the viability of a continued prosecution. The DPP ought therefore to be obliged to take that evidence into account when deciding whether to prefer an indictment. It would be wrong to do otherwise.

Section 23(12)

11. It is proposed that the word "written" be deleted in order to ensure consistency with the proposed section 23(11) which obliges the DPP to take account of evidence which may have been adduced orally at the aborted preliminary enquiry.

Section 23(13)

12. The existing section 23(11) may be susceptible to an interpretation that the only submission that an accused may make is that the evidence does not support the indictment. The proposed amendments seeks to preserve the accused's right to object on other grounds including abuse of process, having regard in particular to the circumstances under section 23(8)(c) under which the DPP has preferred the indictment.

Section 23(14)

13. The comments made in paragraph 4 hereof.

The existing section 23(12)

14. It is proposed that this be deleted because it is unrealistic to expect that an accused will be able to make the application within six months. As it now stands, it takes years before an indictment is set down for case management, far less for trial, and it would be wholly unreasonable to expect the accused to make the application earlier. Under current arrangements, applications of this sort are taken at trial, and there is no reason to change this.

Section 28(7)

15. i) The Law Association thinks it a good idea to entitle persons who are charged with non-bailable offences to be eligible for bail where, through no fault of their own, a new preliminary enquiry must be started.

ii) It is proposed that the word "new" be inserted to make clear that the power to reconsider bail would only arise where a new enquiry is to be held, not where the old one is to continue.

16. The Law Association has noted concerns raised by members of the profession that the proposed Act might infringe the prohibition against ad hominem legislation. Respectfully, we do not share those concerns. The Act is framed in general language not applicable to any particular case and in any event it is not impermissible to pass legislation with particular events in mind and to provide solutions for perceived injustices arising out of those events.

9th August 2017