

## Open Agenda

Copy No:

No: 41/2020

### Memorandum for Executive Council

#### SUBJECT

#### MAGISTRATES' COURT (AMENDMENT) BILL 2020

Memorandum by the Chairman of the Social and Community  
Development Committee

#### ADVICE SOUGHT

1. Council is asked to consider and advise whether the Magistrates' Court (Amendment) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council. A copy of the Bill is at Annex A.

#### BACKGROUND & CONSIDERATIONS

2. The Magistrates' Court (Amendment) Bill, 2020, amends the Magistrates' Court Ordinance 2011 ("Principal Ordinance") in the following three areas:

#### **Power and Authority of Chief Justice when sitting in the Magistrates' Court**

3. Pursuant to the Principal Ordinance the Magistrates' Court is duly constituted when it is held either before -
  - (i) The Chief Magistrate, either sitting alone or with one or more Justices; or
  - (ii) Two or more Justices.
4. When the Chief Magistrate sits, unless he decides otherwise, he presides as chair and has a casting vote on any issue which is equally divided.
5. In criminal proceedings, when the court is constituted of two or more Justices, it has sentencing powers limited to 18 months imprisonment and a £5000 fine.
6. When the Chief Magistrate is sitting, either alone or with Justices, the court has increased sentencing powers limited to 5 years imprisonment and a £20,000 fine.
7. The Chief Justice is an ex-officio Justice pursuant to the Principal Ordinance. Therefore, at present when he sits he does not do so with the same authority and sentencing powers as the Chief Magistrate but instead with those of an Ordinary Justice.

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8. The Magistrates' Court (Amendment) Ordinance, 2020, amends the Principal Ordinance so that when the Chief Justice sits he does so with the same power and authority as the Chief Magistrate.
9. The Amendment clarifies that if the Chief Justice and Chief Magistrate both sit in those circumstance it is only the Chief Magistrate who sits with the power and authority of the Chief Magistrate.
10. This Amendment is required to address situations where St Helena does not have a Chief Magistrate, or there is a case for which the Chief Magistrate is conflicted, and the case is one that could need increased sentencing powers.

### Remote Attendance outside of St Helena

11. The Amendment also addresses the situation where a Justice (including the Chief Justice and Chief Magistrate) sits remotely and is outside St Helena. In such circumstances the court can be considered outside of the jurisdiction and not properly constituted. The Amendment addresses this to deem such attendance as constituting the court.
12. This Amendment is needed to address a situation where the Chief Magistrate or Chief Justice is off Island but the case requires either of them to sit. Following the amendment they will be able to do so.

### Selection of Chair of Justices

13. When Ordinary Justices sit they may select the Chair between them. Currently the Principal Ordinance has the effect that all Justice present must agree to do this and in default of agreement the most senior Justice present sits as the Chair. In order to clarify that this procedure also includes Justices who may be sitting remotely where "present" is stated it is now amended to state "attending the sitting".

#### FINANCIAL IMPLICATIONS

14. No direct financial implications.

#### ECONOMIC IMPLICATIONS

15. No direct economic implications

#### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

16. N/A

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**PUBLIC/SOCIAL IMPACT** 17. Would have a beneficial impact as would allow the Magistrates' Court to operate at times where at present it may not be able to do so.

**ENVIRONMENTAL IMPACT** 18. No environmental impact.

**PREVIOUS CONSULTATION/ COMMITTEE INPUT** 19. The Bill has been approved by the Social and Community Development Committee. It has also been endorsed by the Chief Justice and the Chief Magistrate.

**PUBLIC REACTION** 20. A positive public reaction is expected as the amendments allow the court to operate more efficiently.

**PUBLICITY** 21. The decision will be covered in the radio briefing following the meeting. If agreed to be presented as Government business at the next formal meeting of the Legislative Council the Bill will be published via the normal process ahead of this Meeting.

**SUPPORT TO STRATEGIC OBJECTIVES** 22. N/A

**LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS** 23. N/A

**OPEN/CLOSED AGENDA ITEM** 24. This paper is recommended for the open agenda.

AAG

Corporate Support  
Corporate Services

28<sup>th</sup> May 2020

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