

## OPEN AGENDA

No: 82/2020

### Memorandum for Executive Council

#### SUBJECT

Criminal Procedure (Amendment) Bill, 2020

Memorandum by the Chairman, Social and Community  
Development Committee

#### ADVICE SOUGHT

1. **Executive Council is asked to consider and advise whether the attached Criminal Procedure (Amendment) Bill, 2020 (Annex A) should be printed and published and tabled as Government business at the forthcoming formal meeting of the Legislative Council.**

#### BACKGROUND & CONSIDERATIONS

2. Part VII of the Criminal Procedure Ordinance 1975 sets out the criteria for deciding if criminal matters should be tried in the Magistrates Court or the Supreme Court.
3. Section 164A was added as part of the 2017 Law Revision. The basis was that it provided clarity to the current practice. Section 164A as currently enacted states:

*Unless otherwise specified in the provision creating it –*

*(a) an offence for which a person is liable to be sentenced to a term of imprisonment of 14 years or more is triable only on indictment;*

*(b) an offence for which a person is liable to be sentenced to a term of imprisonment of less than 14 years, or to an unlimited fine, is triable either summarily or on indictment as provided by section 165.*

4. This contains a drafting error. 164A (a) should have stated more than 14 years and not included 14 years. 164A (b) should have included 14 years not just less than.
5. As currently drafted this is inconsistent with section 19(1) of the Magistrates' Court Ordinance 2011 which was in effect before the law revision and states:

*Subject to subsection (1A) and to any other law in force in St Helena, the Court has jurisdiction to try summarily any criminal offence except an offence punishable with imprisonment for a term exceeding 14 years.*

6. It is also currently inconsistent with practice in England and Wales where there are offences with sentences of 14 years or less that can be tried in both the Magistrates and Supreme Court.
7. The Criminal Procedure (Amendment) Bill corrects the drafting error in 164A and makes it consistent with the Magistrates'

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## OPEN AGENDA

Court Ordinance.

8. The Chief Justice and Chief Magistrate have requested that the Attorney General request this amendment is made as a matter of urgency. This is so that if relevant cases arise they can be sent to what is the correct jurisdiction and the conflict between the two provisions is remedied.

### FINANCIAL IMPLICATIONS

9. There are no financial implications as this is a correction of the Ordinance which clears up an inconsistency.

### ECONOMIC IMPLICATIONS

10. None

### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

11. N/A

### PUBLIC/SOCIAL IMPACT

12. None

### ENVIRONMENTAL IMPACT

13. None

### PREVIOUS CONSULTATION/ COMMITTEE INPUT

14. Public Consultation is not required as the Bill is correcting an error in the law. The SCDC at the time of the Memo are considering the Bill and their advice will be given in due course.

### PUBLIC REACTION

15. There is not expected to be significant public reaction. There could be criticism that an error was made in the law revision.

### PUBLICITY

16. The Bill will be published before the Legislative Council session.

### SUPPORT TO STRATEGIC OBJECTIVES

17. N/A

### LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

18. N/A

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**IMPLEMENTATION  
OF POLICY/  
LEGISLATION** 19. N/A

**OPEN/CLOSED  
AGENDA ITEM**

20. This paper is recommended for Open Session.

AAG

*26<sup>th</sup> November 2020*

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