

OPEN AGENDA

Copy No:

No: 28/2021

Memorandum for Executive Council

SUBJECT

Police and Criminal Evidence (Amendment) Bill, 2021

Memorandum by the Chairman, of the Social and Community
Development Committee

ADVICE SOUGHT

1. Council is asked to advise whether the attached Police and Criminal Evidence (Amendment) Bill, 2021 (Annex A) should be printed and published and tabled as Government business at the forthcoming formal meeting of the Legislative Council.

BACKGROUND & CONSIDERATIONS

2. The Police and Criminal Evidence Ordinance, 2003 (PACE) makes provision for the arrest of a person, the procedures to be followed upon the arrest of a person and the procedure for charging a person after the person has been arrested.
3. At present PACE requires a person who has been detained to be charged within 24 hours. Pursuant to PACE, a person may be placed on conditional bail after being charged but not before.
4. In England and Wales it has been the position for a considerable time that the police can impose pre-charge conditional bail. It is often referred to there as police bail. The St Helena Police have requested that the Attorney General's Chambers urgently bring forward a Bill so that pre-charge conditional bail can be used in St Helena. This is considered to be an essential tool in modern policing. The request is to adapt the UK legislation for St Helena including the safeguards it includes for suspects. AGs Chambers has done so in this Bill in consultation with St Helena Police.
5. This matter is particularly urgent as until recently the St Helena Police considered that they had this power. It then became apparent from a decision of the Chief Magistrate that they do not have such.
6. The Bill would enable a police officer, after applying certain criteria, to place a person on bail after the person is arrested but before the person is charged. Such bail would be subject to specified conditions which, as provided, could be varied

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by a police officer or by a court.

7. The provisions are drafted in line with the provisions of the Police and Criminal Evidence Act, 1984 of the United Kingdom.
8. The Bill would insert section 28A into the PACE Ordinance. This clause would establish, for a police officer, the ability to grant bail to a person arrested, after giving consideration as to whether it would be “necessary and proportionate” in the circumstances to grant bail. This clause would also outline the conditions to which bail must be subject and would specify the circumstances to which a police officer must give consideration in respect of imposing the conditions of bail.
9. The Bill would also insert clause 28B into the Ordinance which would specify that a notice must be issued in respect of bail and the contents of such notice. This clause would also require that a bail end date be specified so that a person cannot be placed on bail indefinitely.
10. Clause 28C would permit the re-arrest of a person in the event that new evidence with respect to the person on bail is brought to light.
11. Clause 28D would specify that bail conditions may be varied by a police officer and the circumstances applicable for such variation.
12. Clause 28E would specify that bail conditions may be varied by a court and the circumstances upon which such application may be made to the court.
13. Clause 28F would detail what would obtain as a consequence to the failure to answer bail or to a breach of a condition of bail.
14. The amendments to sections 17, 28, 31 and 37 are consequential amendments to the insertion of the clauses dealing with pre-charge bail.
15. There are no financial implications resulting from the amendment of the PACE Ordinance.
16. There are no economic implications resulting from the amendment of the PACE Ordinance.

FINANCIAL IMPLICATIONS

ECONOMIC IMPLICATIONS

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- CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES** 17. N/A
- PUBLIC/SOCIAL IMPACT** 18. The amendment will allow additional protection to victims, witnesses and the general public. It will also prevent custody having to be used in some cases.
- ENVIRONMENTAL IMPACT** 19. There will be no environmental impact from the application of this legislation.
- PREVIOUS CONSULTATION/ COMMITTEE INPUT** 20. The Bill was approved by the majority of SCDC on 19th May 2021. **The Bill was approved subject to amendments to the time limits for pre-charge conditional bail to be added. These are currently being drafted and will be made available for the Executive Council Meeting.** The urgency of the Bill was also discussed by the Acting Chief of Police and that is why the matter is being expedited.
21. The Chief Magistrate has been consulted on the technical aspect of the Bill.
- PUBLIC REACTION** 22. Public reaction to this legislation is likely to be favourable since it improves the criminal justice system and in allowing pre-charge conditional bail provides protections for victims and the public at large.
- PUBLICITY** 23. Executive Councils decision will be covered in the media briefing following the meeting. If approved the Bill will be published on the SHG website in advance of the Legislative Council meeting.
- SUPPORT TO STRATEGIC OBJECTIVES** 24. N/A

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LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

25. N/A

IMPLEMENTATION OF POLICY/ LEGISLATION

26. The Police Directorate, having requested this amendment, has had sight of the Bill and provided comments. The Police Directorate will be instrumental in the implementation of the legislation.

AAG

OPEN/CLOSED AGENDA ITEM

27. This paper is recommended for the Open Session.

Central Support
Service

20th May 2021

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