

STATES OF JERSEY



CRIMINAL JUSTICE POLICY (P.118/2007): AMENDMENT (P.118/2007 Amd.) – COMMENTS

**Presented to the States on 19th November 2007
by the Minister for Home Affairs**

STATES GREFFE

COMMENTS

The amendment to the Criminal Justice Policy proposed by the Deputy of St. Martin seeks to replace the forum for criminal justice policy and planning with a formal body called the Criminal Justice Oversight Council. This would not be the light touch recommended by Professor Rutherford.

In his report 'review of Criminal Justice Policy in Jersey', Professor Rutherford recommended the establishment of a body with oversight responsibility for criminal justice policy. That it should be a "formal" body does not appear anywhere in his recommendation on page 92 of the report, rather that: "*It would give shape and direction in terms of keeping a light touch on the policy tiller across the range of policy-making activities. The establishment of an Oversight Council would encourage a joined up approach that fully respects the independence appropriate to the essential separation of powers.*"

In the footnote to the recommendation, Professor Rutherford goes on to say that: "*It is not envisaged that the Oversight Council would have a centrist and directing role, such as appears to be the case with the National Criminal Justice Board and the associated structural arrangements proposed for England and Wales. What is being urged here is a co-ordination and shared awareness of the issues but not a streamlined and top-down direction of criminal justice.*"

It is critical that the prosecution and judicial functions operate quite independently in relation to particular cases. It would be inappropriate for the Bailiff to play a public role in the discussion of many criminal justice issues. For example, with regard to sentencing, critical views expressed publicly about a particular policy could place the court in a difficult position if the defence were to use that information in relation to a particular case. Moreover, discussions around the detail of some prosecutions that may give rise to policy considerations and also discussions with security implications, do not lend themselves readily to the production of agendas, minutes and annual reports which, on balance, would shackle the ability of the prosecution and the judiciary in particular to engage in frank and productive discussions.

Having discussed the concept with Professor Rutherford at the time he presented his report to the Home Affairs Committee in 2002, he fully appreciated that unnecessary rigidity in any new forum would not be conducive to either the subject matter or the relationships involved. Hence, his "*light touch*" approach, which has been respected in the Policy's recommendation.

Professor Rutherford has recently confirmed his view that a "*light touch*" approach is the right way forward and that the amendment should be resisted for the reasons outlined.

Members are urged to adopt the light touch approach in the criminal justice policy and to reject the amendment of the Deputy of St. Martin.