

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 10th MARCH 2015**

Question

Further to written question 8634 of 24th February 2015, will the Attorney General advise:

- (a) whether it is a legal requirement for all enforcement actions to be referred to the Law Officers' Department to determine whether to bring a prosecution in the Magistrate's or Royal Court, and, if not, in what circumstances actions would not be expected be referred;
- (b) whether this has changed during the last 10 years and why;
- (c) whether he is satisfied that Centeniers have the relevant expertise to assess the evidential and public interest tests in Planning and Environment enforcement cases without reference to the Department;
- (d) how many times over the last five years:
 - (i) Centeniers have, and have not, referred cases to the Department for advice before prosecuting, filing charges or actioning charges lodged by Planning and Environment enforcement officers in the Magistrate's Court;
 - (ii) Centeniers have prosecuted cases based solely on reports submitted by enforcement officers, or accepted charges lodged in the Magistrate's Court by enforcement officers;
 - (iii) Planning and Environment enforcement prosecutions have been brought in the Magistrate's Court and the number of times the charges in these cases were amended before being determined and the reasons for these changes.

Answer

- (a) There is no legal requirement for all enforcement actions to be referred to the Law Officers' Department. However, guidance has been issued that it is best practice for officers in regulatory departments to refer potential prosecutions to a Legal Adviser in the Law Officers' Department to decide whether a prosecution should be brought.

The Department of the Environment is responsible for enforcement actions across a wide range of legislation. This includes matters relating to planning and building, wildlife protection, environmental protection, animal welfare and agriculture. The Attorney General, to the best of his knowledge, understands that the Department follows the guidance referred to above.

There is, however, an exception with respect to charging decisions relating to marine resource matters, which, due to the nature of the legislation, are often referred to the Honorary Police for straightforward cases to be dealt with by the Magistrate's Court or in Parish Hall Enquiries. The Honorary Police deal with these matters both appropriately and proportionately and there is no good reason to change this practice.

- (b) Guidance for regulatory departments was last updated in 2008 and the procedures that should be followed have not changed since then. On occasion, guidance has been provided to clarify the procedures to be followed, as referenced in the answers to the Deputy's questions on 3rd June 2014 (Written Question 8320) and 9th December 2014 (Written Question 8561).
- (c) With respect to regulatory matters administered by the Department of the Environment, the Honorary Police routinely make charging decisions without reference to the Law Officers' Department in relation to the narrow area of legislation referred to above. The Attorney General has full confidence that the Honorary Police make appropriate charging decisions and that, when necessary, they will seek advice from a Legal Adviser in the Law Officers' Department.
- (d) (i) The records which the Law Officers' Department holds do not necessarily reveal whether a request to provide pre-charge advice has been made by the Department of the Environment or by a Centenier. The Law Officers' Department has no records of the occasions upon which it was not consulted before proceedings were commenced. As the Attorney General indicated in his answer of 9th December 2014, there were two planning cases (one in 2012 and one in 2013) in which charges had been brought without reference to the Law Officers' Department. In both of those cases, the defendants entered not guilty pleas and, from thereon, the Law Officers' Department dealt with the cases.
- (ii) It is for the Centenier or Legal Adviser to ensure that they have sufficient information and/or evidence to ensure that both the evidential and public interest tests are satisfied. In most cases, it is not possible to identify from our records what paperwork was provided in a particular case at the time a decision was taken.
- (iii) The Minister for Planning and Environment has already committed to provide the Deputy with details of the number of cases his Department has brought in the Magistrate's Court in the last five years without reference to the Law Officers' Department. There are many reasons why charges may be amended during the life of any case. Prosecutions brought under the legislation administered by the Department of the Environment are no different. Without retrieving the case papers for each of the cases and conducting a full review of the history of each case, it would not be possible to identify in how many of the cases the charges were amended and the reasons for those amendments.