

3. BILL FOR SECOND READING

**3.1. Criminal Evidence Bill 2018–
Second Reading approved**

Dr Allinson to move:

That the Criminal Evidence Bill 2018 be read a second time.

The Speaker: Item 3, Bill for Second Reading, Criminal Evidence Bill 2018, and I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

5 I rise to move the Second Reading of the Criminal Evidence Bill 2018.

The Bill is about, as the title aptly states, evidence; in this case, the admissibility of evidence during criminal proceedings in court.

The primary motivation here is to address the question of how evidence may be used in court and indeed what evidence may be used in court where it is based on hearsay. This addresses an issue which has recently arisen in the Island's courts.

10 The Bill provides for the introduction of evidence of bad character. The first part of the Bill abolishes the common law rules which currently make such evidence inadmissible in court.

Clauses 4 to 16 also describe the concept of 'matter in issue' and evidence to correct a false impression. These changes are subject to the appropriate safeguards, which will be spelt out at the clauses stage.

15 Clauses 17 to 29 relate to the issues of hearsay.

Clauses 30 to 39 deal with further matters relating to evidence such as that from experts, confessions, evidence previously given by video recording, and the use of documents to refresh one's memory in court.

20 I do think I ought to explain why this Bill was introduced in the other Branch by Her Majesty's Attorney General rather than via the Department in this House. Firstly, it was considered that the matter largely concerns dry legal questions and court practices. Secondly, it was considered important for justice in the round to have the matter drafted swiftly by the legal experts in Chambers and then moved by the learned Attorney in the other Branch.

25 Hearsay evidence has previously been inadmissible in criminal proceedings not because of any statutory prohibition but for the most part because of judge-made rules reacting to the question of whether it is fair to admit certain kinds of evidence in particular circumstances.

Lord Cooke, a distinguished judge from New Zealand speaking in the House of Lords in 2003, was quoted by the Attorney General in the other place as observing:

The rule excluding hearsay evidence and some of the exceptions to it are entirely a creation of the courts over the centuries. Parliament never enacted such a rule.

30 This has resulted over time in a bar to hearsay evidence even when it is of unquestionably high reliability.

One example of the problems caused by the hearsay rule is the case of *Kearley*, where the UK Appellate Committee held that, on a charge of drug dealing, police evidence that within a few hours some 20 customers or would-be customers had called at or telephoned the accused's flat seeking supplies, some of them asking for him personally, was inadmissible. The UK judicial decision in *Kearley* is of particular relevance to us on the Island because the rule which it contains on general inadmissibility of phone records in drug-dealing cases has the capacity to create very serious difficulties in one of the major areas of criminal law on the Island. Without dealers' phone records being admitted there is a real risk that the guilty will walk free on the

40 basis of a rule which is judge-made and comes from a very different time. Rather than simply
making the records of messages to and from an alleged drug dealer's mobile phone admissible,
the decision was made by the legal experts in Chambers to promote legislation through this Bill
that adopts in Manx law the whole of the text of Part 11 of the UK's Criminal Justice Act 2003. If
agreed by Hon. Members in this House, the effect will be to replace judge-made law with
45 appropriate law made by our legislature which provides for the admissibility of hearsay evidence
in criminal proceedings in our Island in a consistent and logical way.

Mr Speaker, I beg to move that the Criminal Evidence Bill 2018 be read a second time.

The Speaker: I call on the Hon. Member for Douglas East, Miss Bettison.

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Miss Bettison: Thank you.

I beg to second and reserve my remarks.

The Speaker: Hon. Member for Ramsey, Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

Strangely enough, the Bill itself, I am not going to comment on. Broadly, it seems okay. The
question I have got really is relating to the comments made about why the Bill was introduced in
the Upper House.

60 I do not really accept the argument that it can be done quicker that way – well, surely all our
legislation should be done quicker, and so surely everything should be introduced straight into
the Legislative Council rather than in this Branch. It is all the same drafters; it is all the same
people. I would like to know exactly what was achieved by the Department introducing it into
the Legislative Council rather than into this House. How much farther ahead, how much further
65 down the process are we now than we would have been otherwise?

The second question I have got is: the hon. mover just mentioned that parts of this Bill are
replicating the UK's Criminal Justice Bill from 2003. Why has it taken the Department of Home
Affairs 15 years to make what is, quite honestly, a straightforward and rather sensible set of
amendments to keep up with the ever-changing pace of technology? Is this going to keep
70 happening? This is not the first time that the Department of Home Affairs has brought a Bill to
this House to try and address issues from long in the past.

So my question to the hon. mover is: what is being done within the Department to stop this
kind of thing happening again, and again, and again?

75 **The Speaker:** Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

I would like to commend the Member for Ramsey for bringing forward this important Bill to
modernise the admission of evidence in our courts. He mentioned phone records and text
80 messaging, perhaps can he clarify: will it also cover social media messaging, which is increasingly
prevalent?

Thank you.

The Speaker: I call on the Hon. Member, Dr Allinson to reply.

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Dr Allinson: Thank you very much, Mr Speaker.

I would like to thank both of the Hon. Members for their questions and also their input.

If I can turn to Mr Hooper, he asks why this bit of legislation was introduced in the Upper
House. This is very much legislation that was deemed necessary through the court process, with
90 a number of recent cases where it was found that our laws were lacking in the ability to clearly

state which parts of evidence were admissible, and to try and get round the judge-made rules that seem to be being used by certain judges in certain courts.

95 I think it is very important that we do maintain this separation between the Department of Home Affairs and the judiciary, and so certainly it was found that in this case it was completely applicable that the changes were brought in by the Attorney General's office, very much at the instigation of the judiciary, who made them aware of this issue. So I think it is perfectly appropriate that what we are doing here is not deciding policy, it is simply fine-tuning the procedures that happen in court and making sure that we, as the Government and as Tynwald, actually direct the courts to institute the right type of law.

100 In terms of how much further ahead we would be if we had gone through this House – that is a rather existential question. The reality is the Department of Home Affairs is progressing a number of different parts of legislation – some is updating existing legislation; some is creating new offences and dealing with new threats to our society. And so this was brought in very much on the back of a legal case and at the instigation of the Attorney General.

105 He does make the very valid point, as usual, about the delay it has taken in bringing in these changes. The Criminal Justice Act 2003 is a rather lengthy document that goes on for 247 pages and has got a whole range of issues there including: drug testing for under 18-year-olds; taking fingerprints without consent; offences committed on bail; trial without jury; disclosures; live links; retrials for serious offences; and a whole section on sentencing. It is a massive bit of work.

110 Whilst the Department of Home Affairs tries to, as much as possible, horizon-scan and look at new bits of legislation as they come in, it is often not until these parts of the legislation have been tried and tested by UK courts that it is identified that we need to update our legislation as well. I completely agree that 15 years is far too long to wait to bring in what is seen as an important change, but it only became an important change relating to *our* ability to bring to justice drug dealers relatively recently, and then the Department has worked quite swiftly.

115 But if I can assure the Hon. Member, and other Hon. Members within this House, that the Department is doing as much as it can now to look forward, to look at changes in UK legislation – and legislation in other jurisdictions – to make sure that we make the necessary changes that we need to do to keep our laws as up to date as possible to protect the people of this Island.

120 I would like to thank Mr Shimmins for his statement that what this does is modernise the admission of evidence, and I completely agree with him. This is not changing policy, it is just making it far more specific and making sure that we, as Tynwald, determine the right policy and the laws that are then brought into play by the judges and by the judicial system.

125 He does talk about social media messaging and I think one of the aspects that has happened since 2003 and our legislation, is the range of different ways that people can commit crimes and can harass victims; and certainly social media messaging, the use of electronic media and the use of texts is all being encompassed by this bit of legislation. So where it is relevant to recall a case, given the right safeguards, it can be admissible in evidence.

130 Again, there have been some concerns whether this law seems to go too far in addressing the balance between people being innocent until proven guilty, and actually effective implementation of the legal system. I think what we are doing here is updating our laws in a pragmatic response to the way that the courts work and to the way that the Police work, and I would recommend that Members agree to this going through its Second Reading so we can move to the clauses stage and perhaps deal with some of these smaller intricacies in more detail at that stage.

135 Thank you very much, Mr Speaker.

The Speaker: The question is that the Criminal Evidence Bill 2018 read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.