



LEGISLATIVE COUNCIL
Y Chooneil Slattyssagh

VOTES AND PROCEEDINGS
Reaghyssyn as daaltyn

DOUGLAS
TUESDAY 7TH NOVEMBER 2000
at 10.30 am

PRESENT: The Honourable President of the Council, HM Attorney General, The Lord Bishop, Mrs Christian, Mr Crowe, Mr Delaney, Mr Lowey, Mr Kniveton, Mr Radcliffe, and Mr Waft with the Clerk of the Council.

APOLOGIES: Dr Mann

1. BETTING OFFICES BILL

Motion made -

That this Bill be now read a first time

- Mr Lowey

Motion carried

2. CRIMINAL JUSTICE BILL

Bill considered in Committee

Motion made -

That Clauses 12 to 14 do stand part of the Bill

- HM Attorney General

Motion carried

Motion made -

That Clauses 15 and 16 do stand part of the Bill

- HM Attorney General

Motion carried

Motion made -

That Clauses 17 to 19 do stand part of the Bill

- HM Attorney General

Motion carried

Motion made -

That Clause 20 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 21 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 22 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 23 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 24 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clauses 25 and 26 and Schedule 4 do stand part of the Bill
 - HM Attorney General
 Motion carried
 Motion made -

That Clause 27 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 28 and Schedule 5 do stand part of the Bill
 - HM Attorney General
 Motion carried
 Motion made -

That Clause 29 and Schedule 6 do stand part of the Bill
 - HM Attorney General
 Motion carried
 Motion made -

That Clauses 30 to 35 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 36 and Schedule 7 do stand part of the Bill
 - HM Attorney General
 Motion carried
 Motion made -

That Clauses 37 to 42 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That Clause 43 do stand part of the Bill - HM Attorney General
 Motion carried
 Motion made -

That the following new Clause do stand part of the Bill -

Increase in penalties for breach of money laundering codes.

43A. In section 17F(1)(d), of the Criminal Justice Act 1990 [c. 1] for the words from “on summary” to the end of the subsection substitute -

“-

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for 6 months or to both; and
- (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.”.

- Mr Crowe

Motion carried

Motion made -

That the following new Clause do stand part of the Bill -

Repeal of requirement for Attorney General's consent to disclosure of certain information.

43B. In section 17I of the Criminal Justice Act 1990 -

- (a) subsection (1)(a);
- (b) subsection (4); and
- (c) in subsection (5), the words “(1) or”,

are repealed.

- Mr Crowe

Motion carried

Motion made -

That the following new Clause do stand part of the Bill -

Disclosure of suspicion of money laundering.

43C. After section 17I of the Criminal Justice Act 1990 insert -

“Failure to disclose knowledge or suspicion of money laundering.

17J. (1) A person is guilty of an offence if -

- (a) he knows or suspects that another person is engaged in laundering the proceeds of criminal conduct;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his

attention in the course of his trade, profession, business or employment, and

- (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.

(2) Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a constable -

- (a) his suspicion or belief that another person is engaged in laundering the proceeds of criminal conduct, or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to his employer or, where his employer has established a procedure for the making of such disclosures, to the appropriate person in accordance with the procedure.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this section "laundering the proceeds of criminal conduct" means doing any act -

- (a) which constitutes an offence under section 17A, 17B or 17C; or
- (b) in the case of an act done otherwise than in the Island, which would constitute such an offence if done in the Island.

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him -

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person -
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.”.

- Mr Crowe

Motion carried

Motion made -

That the following new Clause do stand part of the Bill -

Import and export of proceeds of crime in cash.

43D After Part I of the Criminal Justice Act 1990 insert -

“PART IA

PROCEEDS OF CRIMINAL CONDUCT IMPORTED OR EXPORTED IN CASH

Seizure and detention.

23A. (1) A customs officer or constable may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Island if he has reasonable grounds for suspecting that it directly or indirectly represents any person’s proceeds of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by the High Bailiff.

(3) No order shall be made under subsection (2) unless the High Bailiff is satisfied -

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Island or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(4) An order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding 3 months beginning with the date of the order, as may be specified in the order.

(5) The High Bailiff, if satisfied as to the matters mentioned in subsection (3), may by order authorise the further detention of the cash but so that -

- (a) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
- (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(6) An order under subsection (2) shall provide for notice to be given to persons affected by the order.

(7) Any application for an order under subsection (2) or (5) shall be made by the Attorney General.

(8) At any time while cash is detained under this section the High Bailiff may direct its release if satisfied -

- (a) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds for its detention as are mentioned in subsection (3); or
- (b) on an application made by any person, that detention of the cash is not for that or any other reason justified.

(9) A customs officer or constable -

- (a) may release the cash if satisfied that its detention is no longer justified;
- (b) shall release the cash if directed by the Attorney General,

but shall first notify the High Bailiff.

(10) If at a time when any cash is being detained under this section -

- (a) an application for its forfeiture is made under section 23B; or
- (b) proceedings are instituted (whether in the Island or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(11) Cash seized under this section and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Forfeiture.

23B. (1) The High Bailiff may order the forfeiture of any cash which has been seized under section 23B if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Any application for an order under this section shall be made by the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.

(4) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Appeal against forfeiture order made by High Bailiff.

23C. (1) This section applies where an order for the forfeiture of cash ('the forfeiture order') is made under section 23B by the High Bailiff.

(2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the High Court.

(3) On an application made by the appellant to the High Bailiff at any time, he may order the release of so much of the cash to which the forfeiture order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(4) The High Court when hearing an appeal under this section may make such order as it considers appropriate.

(5) If it upholds the appeal, the High Court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(6) Section 23B(3) applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

Rules of the court.

23D. (1) Provision may be made by rules of court under section 91 of the Summary Jurisdiction Act 1989 with respect to applications to the High Bailiff under this Part, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Bailiff.

(2) Provision may be made by rules of court under section 25 of the High Court Act 1991 with respect to appeals to the High Court under this Part, for the giving of notice of such appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Court.

(3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules.

Receipts.

23E. Any money representing cash forfeited under this Part or accrued interest thereon shall be paid into the General Revenue but not -

- (a) where an appeal is made under section 23C, before the appeal is determined or otherwise disposed of; and
- (b) in any other case where the forfeiture was ordered by the High Bailiff, before the end of the period of 30 days mentioned in section 23C(2).

Interpretation of Part IA.

23F. (1) In this Part -
 “cash” includes coins and notes in any currency;
 “criminal conduct” and “proceeds of criminal conduct” have the same meaning as in Part I;
 “exported”, in relation to any cash, includes its being brought to any place in the Island for the purpose of being exported.

(2) For the avoidance of doubt, references in this Part to importation into or export from the Island include references to removal into the Island from the United Kingdom and removal from the Island to the United Kingdom.”.

- Mr Crowe

Motion carried

Motion made -

That Clauses 44 to 47 do stand part of the Bill - HM Attorney General

Motion carried

Motion made -

That Clauses 48 to 50 do stand part of the Bill - HM Attorney General

Motion carried

Motion made -

That the following new Clause do stand part of the Bill -

Abolition of corroboration rules. P. 1994/33/32

50A. (1) Any requirement whereby at a trial on information it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is -

- (a) an alleged accomplice of the accused, or
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

(2) In section 29(2) of the Criminal Justice Act 1990 [c. 1], (abolition of requirement of corroboration warning in respect of evidence of a child) the words from “in relation to” to the end are repealed.

(3) Any requirement that -

- (a) is applicable at the summary trial of a person for an offence, and
- (b) corresponds to the requirement mentioned in subsection (1) above or that mentioned in section 29(2) of the Criminal Justice Act 1990,

is hereby abrogated.

(4) Nothing in this section applies in relation to -

- (a) any trial, or
- (b) any committal proceedings before a court of summary jurisdiction,

which began before the commencement of this section.

- Mr Crowe

Motion carried

Motion made -

That Clauses 51 to 54
do stand part of the Bill

- HM Attorney General

Motion carried

Motion made -

That Clause 55 do stand part of the Bill

- HM Attorney General

Council divided

For the motion

Lord Bishop
Mr Lowey
Mr Waft
Mr Kniveton
Mrs Christian
Mr Crowe
Mr Radcliffe

= 6
= 1

Against the motion

Motion carried

Motion made -

That Clause 56 do stand part of the Bill

- HM Attorney General

Motion carried

Motion made -

That the following new Clause and Schedule do stand part of the Bill -

Prosecution of offences

Prosecution of offences.

56A. Schedule 8, which makes provision for the prosecution of offences, shall have effect.

SCHEDULE 8

PROSECUTION OF OFFENCES

1. (1) It shall be the duty of the Attorney General -
 - (a) to take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of the police force (whether by a member of that force or by any other person);
 - (b) to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the Immigration Act 1971 (an Act of Parliament) as that Act has effect in the Island) acting in his capacity as such an officer;
 - (c) to take over the conduct of any criminal proceedings instituted by -
 - (i) any department or statutory board; or
 - (ii) any officer of any such department or board acting in his capacity as such an officer;
 - (d) to institute and have the conduct of criminal proceedings in any case where it appears to him that -
 - (i) the importance or difficulty of the case makes it appropriate that proceedings should be instituted by him; or
 - (ii) it is otherwise appropriate for proceedings to be instituted by him; and
 - (e) to take over the conduct of all proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p. 91] (forfeiture of obscene, etc articles).
- (2) In this paragraph, "specified proceedings" means proceedings which fall within any category for the time being specified

by order made by the Attorney General for the purposes of this paragraph.

(3) Orders under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the orders are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

(4) This paragraph is additional to, and without prejudice to, the existing status, duties and powers of the office of Attorney General.

2. (1) The Attorney General may at any time authorise an advocate to institute or take over the conduct of such criminal proceedings as the Attorney General may assign to him.

(2) Any advocate conducting proceedings assigned to him under this paragraph shall have all the powers of the Attorney General as to the institution and conduct of the proceedings but shall exercise those powers subject to any instructions given to him by the Attorney General.

(3) Any such instructions may be given so as to apply generally.

3. (1) Subject to sub-paragraph (2), nothing in this Schedule shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Attorney General's duty to take over the conduct of proceedings does not apply.

(2) Where criminal proceedings are instituted in circumstances in which the Attorney General is not under a duty to take over their conduct, he may nevertheless do so at any stage.

4. (1) The Attorney General may designate constables of the rank of sergeant or above for the purposes of this paragraph.

(2) Subject to such exceptions and conditions as may be specified in the designation, a constable so designated, whether he is the complainant or not, may prosecute any criminal proceedings in a court of summary jurisdiction in which a constable is the complainant.

(3) A person so designated shall exercise any such powers subject to instructions given to him by the Attorney General.

(4) Any such instructions may be given so as to apply generally.

(5) This paragraph has effect notwithstanding the provisions of any statutory provision other than this Schedule.

(6) Section 30(1) of the Summary Jurisdiction Act 1989 [c. 15] is repealed.

5. (1) The Attorney General may make regulations requiring the Chief Constable to give the Attorney General information with respect to every offence of a kind prescribed by the regulations which is alleged to have been committed in the Island and in respect of which it appears to him that there is a *prima facie* case for proceedings.

(2) The regulations may also require the Chief Constable to give to the Attorney General such information as the Attorney General may require with respect to such cases or classes of case as he may from time to time specify.

(3) Regulations under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

6. (1) For the purposes of this Schedule, proceedings in relation to an offence are instituted -

- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in respect of the offence is made to him;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in respect of the offence is made to him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge,

and where the application of this sub-paragraph would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.

(2) For the purposes of this Schedule, references to the conduct of any proceedings include references to the proceedings being discontinued and to the taking of any steps (including the bringing of appeals and making of representations in respect of applications for bail) which may be taken in relations to them.

(3) For the purposes of paragraph 2, proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p. 91] (forfeiture of obscene, etc. articles) shall be taken to be criminal proceedings.

(4) For the purposes of this Schedule, binding over proceedings under section 87 and 87A of the Summary Jurisdiction Act 1989 [c. 15] shall be taken to be criminal proceedings.

- Mr Crowe

Motion carried

Motion made -

That Clause 57 do stand part of the Bill - HM Attorney General

Motion carried

Council resumed

Motion made -

That this Bill be now read a third time and do pass

- HM Attorney General

Amendment moved -

In CLAUSE 18

Page 12, lines 1 and 2: for the words from "junior" to the end of the subsection substitute -

"junior or secondary school, a college or other educational establishment or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944 [XVI, p. 187], excluding any land occupied solely as a dwelling by a person employed at the school, college or establishment."

- Mr Kniveton

Amendment carried

Question put -

That this Bill do pass

Council divided

For the motion

Lord Bishop

Mr Lowey

Mr Waft

Mr Kniveton

Mrs Christian

Mr Crowe = 6

Mr Radcliffe = 1

Against the motion

Motion carried

The Council adjourned to Tuesday, 14th November 2000 at 10.30 am.

T A BAWDEN
Clerk of the Council

