

Cash in Postal Packets Bill 2012 **Second Reading approved**

2. Mr Braidwood to move:

That the Cash in Postal Packets Bill 2012 be now read a second time.

The President: Item 2, Cash in Postal Packets Bill, I call on Mr Braidwood to take the Second Reading.

Mr Braidwood: Thank you, Madam President.

Before I commence the Second Reading, I would like to expand on some of the answers I gave to the questions which were raised at the First Reading.

I did try to answer some particularly on what is a postal packet and I think I said then it could be from a letter upwards. In actual fact, the definition of a postal packet comes from section 58 of the Post Office Act 1993 and means a letter, postcard, newspaper, printed packet, parcel or insured packet and every packet or article transmissible by post, and includes a telegram, which I think should be amended, because there is no such thing now as a telegram, Madam President.

That was from Mr Callister, who also mentioned about cheques and in actual fact, because British and Irish banks have in place the necessary anti-money laundering controls, a dispensation for cheques drawn on British or Irish Banks has been in place since cash declarations were first required in 2008 and this will also be applied in respect of cheques sent by post. The relevant notice and form relating to cash declarations has been amended to include a specific mention of the concession. So that was another query, which was raised by the Hon. Member of Council.

He also mentioned about gold discs or the coins and this would not be currently caught by the definition of 'cash'. However, Treasury will be monitoring the situation regarding these and other alternatives to forms of cash and including them in the Bill. If gold – and I think I mentioned Jersey last week, Madam President – was being sent from Jersey, for example, it would be an import for Customs purposes and could be subject to control in the same way as other goods and require declaration for import VAT purposes.

I think it was also mentioned about how packets would be identified on the reasonable grounds to suspect if cash was coming through the post. It was also the Hon. Member of Council, Mr Butt, who said, normally, it would be information which would be coming through and that would be the only way that a packet would be opened.

There was also mentioned by Mr Butt and Mr Turner, specifically Mr Turner on FedEx and other carrier services. Section 76B of the Customs and Excise Management Act 1986 already provides that a customs officer could require someone bringing goods into the Island or sending goods from the Island to disclose if the goods included cash above the prescribed amount of €10,000.

I think the last one was from Mr Wild: do postal packets include courier services? No they do not.

So I think I have tried to answer all the queries which were raised at the First Reading, Madam President.

So if I now go on to the Second Reading of the Cash and Postal Packets Bill: this Bill is intended to amend the law relating to cash sent in the mail to or from the Island, bringing such consignments within the scope of existing legislation concerned with: (1) the requirement to declare cash, which is both a prescribed amount, currently €10,000 and which is brought into, or taken out of the Island; and (2) the seizure of cash above a minimum amount, currently the £1,000, that a customs officer or constable reasonably suspects to be recoverable property within the meaning in the Proceeds of Crime Act 2008, which is intended for use in unlawful conduct. To achieve the above the Bill will amend part 5A of the Customs and Excise Management Act 1986, importation and exportation of cash; section 49 of the Post Office Act 1993, inviolability of mails, and also chapter 3 of part 1 of the Proceeds of Crime Act 2008, recovery of cash in summary proceedings. The Bill also amends section 15 of the Post Office Act 1993, application of Customs Acts to add definitions for the purpose of that section.

The Bill consists of 19 clauses. Clause 1 deals with the short title of the resulting Act. Clauses 2 and 3 deal with the resulting Act's commencement and its expiry.

Clauses 4 to 9 amend part VA of the 1986 Act, which is the Customs and Excise Management Act 1986 to provide provisions relating to the extension of the cash declaration regime to cash contained in postal packets.

Clauses 10 to 12 amend the 1993 Act, which is the Post Office Act 1993. A definition of statutory provisions is inserted into section 15 of the Act and as a consequence, a definition of community instrument is also inserted. Section 49 is amended to remove inviolability from cash sent by post, so as to facilitate any action necessary under part VA of the 1986 Act, chapter 3 of part 1 of the 2008 Act.

Clauses 13 to 19 amend chapter 3 of part 1 of the 2008 Act to extend the provisions of that chapter for the seizure of cash above the minimum amount which it is believed is recoverable property or intended for use in unlawful conduct to cash sent in postal packets.

Madam President, I beg to move the Second Reading of the Cash in Postal Packets Bill 2012.

Mr Lowey: I beg to second and reserve my remarks.

The President: If no Member wishes to comment, I put the motion to you, that the Cash in Postal Packets Bill 2012 be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Cash in Postal Packets Bill 2012 Clauses considered

The President: We move on to the clauses. Perhaps we could take clauses 1, 2 and 3 together.

Mr Braidwood: Thank you, Madam President.

I will try my best, and as I am going through, if I allow the '1986 Act' to be the Customs and Excise Management Act 1986, the '1993 Act' means the Post Office Act 1993 and the '2008 Act' means the Proceeds of Crime Act 2008, if that is alright, Madam President?

Clause 1: this provides that the short title of the resulting Act is 'Cash in Postal Packets Act 2012'.

Clause 2 provides that the resulting Act will be brought into operation by Appointed Day Order. All of the provisions of the resulting Act may be brought into operation at the same time, or at different times, and subject to such transitional arrangements as are appropriate.

Clause 3 provides for the resulting Act to expire on the day after its promulgation or, if all of its provisions are not in operation on its promulgation, on the day after the last provision is brought into operation. At that stage, all of the amendments to the 1986 Act, the 1993 Act and the 2008 Act will have taken effect. It is clarified that the expiry does not affect the continuing operation of the amendment.

Madam President, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take clauses 4 and 5 together, please.

Mr Braidwood: Thank you, Madam President.

Clause 4 introduces clauses 5 to 8 which amend the 1986 Act.

The President: Clauses 5 to 9.

Mr Callister: It is clauses 5 to 9. Yes.

Mr Braidwood: Clauses 5 to 9. Sorry. I will amend my notes. It is extremely observant of you, Madam President, because I have read through it a number –

The President: It is written on the Bill. *(Laughter and interjections)*

Mr Braidwood: I have read through it a few times and I would not mind but I have actually said that in moving the Second Reading. This is when you get old, Madam President. Your memory is not as good as it should be!

The President: I agree. *(Laughter)*

Mr Braidwood: Clause 4 introduces clauses 5 to 9, which amend the 1986 Act. The amendments are made to Part VA of the 1986 Act. Part VA was inserted into the 1986 Act by Schedule 5 to the 2008 Act, and it introduced a definitive cash declaration regime which applies to cash with a value in excess of the prescribed amount, currently €10,000, which is brought into or taken out of the Island.

Clause 5 amends section 76A of the 1986 Act. Section 76A defines certain terms used in Part VA of the Act. The amendments provide for the definition of 'declaration' to include declarations from the sender or addressee of a postal packet containing cash above the prescribed amount, including where the packet has been detained and examined under proposed new section 76CB.

It also adds to the definition of 'export' and 'import' wording to include the transportation of cash to and from the Island in postal packets and it adds definitions of 'postal packet' and 'sender'.

Madam President, I beg to move that clauses 4 and 5 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you. Just for clarification, if the mover could help me, please?

The definition of the 'prescribed amount', which is €10,000 I understand, I presume that is in the Customs and Excise Management Act 1986? Can you confirm that?

Also, what is to stop somebody from actually sending through multiple units of €9,999 in separate packages to get around this provision? Is there anything that can cover that?

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, I had a similar question. We have seen what happens in other jurisdictions where they have a fulfilment business. If you wanted to have a fulfilment-type operation, where you sent money through the post, surely it is logical that you do this and not only do you do it on a one-off basis, you visit several post offices in the Isle of Man and push the money through that way. Is there a way of monitoring this?

Just to highlight, really, the comment that my colleague made.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

We have a Freeport in the Isle of Man where it is possible to import and export free of VAT, so presumably free of Customs inspections and whereas they would not be expected, probably, to transport any money, it is possible that they could do so.

I just wonder what the position is with the Freeport. It may be that no one is importing or exporting anything from the Freeport at the moment. I have not been for years, but it is there and it can be used. I just wonder if there is any area there that needs looking at, Madam President.

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I think just on the procedure for this, presumably if you are posting a packet or letter containing a lot of cash, you would go to the sub post office or the post office with the envelope and fill in a suitable form and a declaration, as you do with registered mail. So is the form that will be produced, will it detail this, that you are declaring a sum of cash in excess of the €9,999?? Will it, as others have mentioned, cover multiple postings? How will it actually work in practice?

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

I thank Hon. Members for their questions and queries.

Regarding the Hon. Member of Council, Mr Butt, and numerous packages under €10,000, such as €9,999, I think, as we have already said, that anybody who is transmitting money like this *normally* would do it by electronic transfer, bank transfer, and it is only if they are sending this type of cash, normally even through registered mail, I think the maximum that can be sent is £2,500, and I think this would apply for multiple postings.

If somebody is, as Mr Crowe said, going around to different post offices, all registered packets go into the main sorting office and that would come under what they call a 'postman higher grade' and he would see if there were numerous packages there of cash coming through, I think that would raise his suspicion that way. But I think on this one of sending under €10,000, that would not be going through that system. This would be just as a packet going through and I would not have thought there would be any record or even sending it registered. Somebody is just basically using it for, you could say, *unlawful* gain, and untraceable, as the Hon. Member, Mr Butt has said. Normally it would only be on information if it is suspicious and then, of course, the packet would be stopped and examined, because we could not stop every packet that goes through. It has to be on information.

So on that I can try to come back, but I have tried to answer to the best of my ability, the reason people are sending this. Again, why would they send that? There must be some reason why they would be sending these

amounts of cash which are not recorded. It would be very suspicious and again, it would only lead to when the Customs or Police examine a packet that it would on information received.

Madam President, I will come back at the Third Reading with more details.

On Mr Callister's query on the Freeport, which is a little bit outside of this Cash in Postal Packets Bill –

Mr Callister: Yes, but they could do it.

Mr Braidwood: – goods which come in, one of the reasons is that on the... which I think even encompassed Ronaldsway Aircraft Company at the time with the Freeport. I think that was extended around there, although it was not in the Freeport itself. Goods coming in, I think those are still examined by Customs. They might not be with the VAT, it might not apply, but they still have to come under Customs for examination because we would not want the Isle of Man used as a gateway to circumvent such as the UK or whatever with unlawful goods. So of course that would always be... the same as the couriers and people who are FedEx which bring things into the Isle of Man, again it would be the Customs who still look at that. Again, that would only be on information if something there was examined.

But I will try to come back, Madam President, on the Freeport. I am not an expert on the Freeport –

Mr Callister: I do not think anyone is! *(Laughter)*

Mr Braidwood: – but I will try to come back.
I beg to move clauses 4 and 5.

The President: The motion is that clauses 4 and 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Braidwood: Thank you, Madam President.

This clause amends section 76B of the 1986 Act.

Subsection (1) replaces subsection (1) of section 76B. The existing wording provides customs officers with a discretionary power to require a person importing or exporting goods to disclose if the goods involved consisted of, or included, cash in excess of the prescribed amount, and to answer any questions put to him or her by that officer in respect of that cash.

The wording imposes a requirement on the person importing or exporting goods to disclose to a customs officer if the consignment consists of, or includes, cash in excess of the prescribed amount; and also to answer any questions put to him or her by a customs officer about the cash.

Accordingly, the heading for section 76B is changed to become 'persons exporting or importing goods'.

Madam President, I beg to move that clause 6 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

This goes back to my previous point on the previous two sections. Again, this would mean then that if the package was less than £10,000, the prescribed amount, the customs officer would have no power to ask those questions. So when the mover comes back for the Third Reading I would like some clarification as to what they could do in those circumstances if the money was less than the prescribed amount.

The President: The Hon. Member, Mr Downie.

Mr Downie: Just for the sake of clarity then, clause 6, section 76B amended, if a person wanted to send cash in excess of €10,000, there is actually nothing to prevent them, provided they go through the proper channels and make the declaration and perhaps provide evidence that that money had been legally obtained. The reason I ask this is there are some transactions where people do require cash and because of the banking situation and so on, they might not want to take anything else.

I know some of the major auction houses around the world will not take cheques and so on from an individual, but if arrangements are made, they will take cash, and they are covered by another code of conduct which applies to them.

So in reading this, if a person has the money legitimately and they want to send it, they can still go and make the declaration and then it is up to the person who they are making the declaration to, to say that yes, they can send it in the normal way.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: Could I just say, I know this Bill is about cash in packages and post, but every time we travel – and I will give an example – to America, we all get a form to fill in on the plane: are you carrying – I think it is – \$10,000?

Mr Crowe: Yes, \$10,000.

Mr Lowey: I wonder if anyone ticks the box ‘yes’, and ‘Are you carrying goods worth more than x-thousand dollars?’ I wonder if you tick the box ‘yes’, what would happen? I think most people automatically... well in my case, I am on automatic mode. I tick no, no, no, and it has never been queried yet! (*Laughter*)

But the reality is, as the mover of the Bill has said in packages, we act on information, or again, most of this is for the avoidance of illegal transactions and what have you, but most of it is done on information. Even now in the post, most of the packages that go through, the millions of packages – especially at this time of the year, millions of packages are going through the post, and therefore most of the wrongdoing, there is a right... What do they say? There is a right time for burying good news. I would have thought that this time of the year was the right time, if you are going to send packages, send packages. (*Laughter*) I am not advertising, by the way, that you should do so, (*Laughter*) but it goes to show that a lot of this is predicated on information received and I use the point to illustrate how difficult it is. But most countries try to control the import and export of cash or larger sums of cash.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

If I could just come back on this. I presume this Bill is really basically an anti-money laundering device, and the main source of money laundering these days is drugs and people who sell drugs actually receive for the drugs, cash – physical pound notes, £10 notes, £20 notes – and the people who have that money have to find some way of using it. They cannot put it into bank accounts because it can be traceable, they cannot put it into an electronic transfer, they cannot issue cheques, so they have physical cash to deal with. So this legislation is presumably designed to stop people sending cash through the post to each other to spend as pocket money in effect.

So my comments really are about the €10,000 being quite a high amount. Should it be lower than it is because that would make it harder for people to do it?

My other query is, as in the previous two clauses, what is to stop people, who are desperately trying to avoid detection and trying to make the cash untraceable, from using this legislation by going below the €10,000 to avoid it being ever detected?

So I am just asking really, overall, do Customs and Excise have any other powers – apart from the information that it may be drugs money and on information of suspicion – to actually stop packages at all with any money in it at all?

So that is my point. Thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.
I think the €9,999 is a European standard.

Mr Braidwood: It is; €10,000 is the IMF –

Mr Crowe: So I think what we are doing is bringing to legislation a standard which operates across the whole European Union. So it is not (**Mr Lowey:** Specific.) specific to the Isle of Man.

So I think that was the whole point of the under €10,000, although it does not cover Mr Butt’s query as to whether it should be a lesser amount, but I think it is the European standard.

The President: It could be very difficult for businesses if they had to have an approval every time they sent a cheque for £1,000 though, wouldn’t it?

Mr Braidwood: I think... Sorry, Madam President, I will wait until –

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

I just make the observation, I think it is just a tightening of the legislation, in terms of bringing it in line across Europe. In my view, nobody in their right mind would put €10,000 in an envelope and post it, and the good thing with cheques or electronic transfers is the fact that there is an audit trail and it is all just helping in the fight against drugs and money laundering.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

Madam President, your quick query on a cheque, a £1,000 cheque, as I said right at the beginning, if it was going through the Irish or UK banking system, then that would be fine and there would be no problem there.

As Mr Wild mentioned, you would be mad, unless it was illegal type of cash, as Mr Butt has alluded to, which is from drug money that you would send that amount of cash through. It would be electronic transfer or whatever, so there is an audit trail.

Mr Crowe also mentioned this standard amount and, in the First Reading, I said it all came from the IMF inspection, where they said this should be tightened up. So it would be the proper standard which is recognised through the world.

I do thank Mr Lowey and I hope *Hansard* does not send this off to the American authorities, that he is bringing additional cash into the United States. I will check. It is mainly where the Customs and it is even a constable, if they have suspicion that money is being sent, even over £1,000, they are allowed to stop that packet and examine that packet; but I will come back at the Third Reading in regard to him if it is €1 less than the prescribed amount of €10,000 because the onus is on the individual now. It is not on the Customs and Excise people to say, 'Is that over €10,000?' The onus is on the importer or the exporter to say, 'Yes, this is cash which I am receiving/sending which is over €10,000.' But I will come back to that query from Mr Butt on the €10,000.

I beg to move, Madam President.

The President: The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Braidwood: Thank you, Madam President.

This clause inserts three new sections into Part VA of the 1986 Act.

New section 76CA provide the main substance of the Bill in relation to the declaration requirements for cash contained in postal packets.

New section 76CA sets out – I think there might be a slight mistake there, Madam President. I will check on that. Oh, sorry, no.

New section 76CA also sets out that postal packets sent to or from the Island that contain cash above the prescribed amount must be the subject of a declaration to a customs officer.

Where a postal packet is sent from the Island, the sender must make the declaration. In the case of postal packets sent to the Island, the addressee must make a declaration. The Treasury must by order prescribe the form and manner in which the required declarations are to be made.

New section 76CB deals with situations where a customs officer reasonably suspects that a postal packet contains cash with a value in excess of the prescribed amount. In such circumstances, the officer may request that the Isle of Man Post Office detain and open the packet and may examine its contents.

New section 76CC provides that an order under section 76CA(4) or 76CB(7) prescribing the form and manner in which declarations are to be made may make detailed provision in respect of any matter that the Treasury considers is necessary or expedient to give further effect to those sections.

Madam President, I beg to move that clause 7 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Braidwood: Thank you, Madam President.

Clause 8 amends section 76H of the 1986 Act, that is 'notice of seizure of cash'.

Section 76H provides that a customs officer who seizes cash under 76G, seizure of cash, must give written notice to the person who, immediately before the seizure of the cash had possession of the cash, or was, in the opinion of the officer, in possession of the cash.

This clause inserts a new subsection (2A) into section 76H to provide that, in the case of cash contained in a postal packet, the required notice of seizure must be given to the sender and the addressee.

I beg to move, Madam President, that clause 8 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Braidwood: Thank you, Madam President.

This clause inserts a new section 76I following section 76H. The new section provides that a person is not excused from complying with a requirement to make a disclosure or declaration about cash entering or leaving the Island on the grounds that (a) to do so might incriminate the person, or the person's spouse or civil partner; or (b) the answer to the question concerned may be the subject of legal professional privilege or any other legal privilege.

However, a statement made in complying with the requirements of part VA will not be admissible in evidence against the person or spouse or civil partner in proceedings for any offence other than perjury.

The clause enables a person to freely declare, disclose or answer questions put by an officer about cash entering or leaving the Island without fear of self-incrimination, incriminating their spouse or partner, or breaching any legal privilege that they feel would otherwise restrict them.

Madam President, I beg to move that clause 9 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 10 and 11.

Mr Braidwood: Thank you, Mr President.

Clause 10 provides that the 1993 Act is amended in accordance with clauses 11 and 12.

Clause 11 amends section 15 of the 1993 Act.

Section 15 provides that, subject to the provisions of that section, statutory provisions for the time being in force relating to Customs and Excise apply to goods contained in postal packets brought into the Island or sent to a place outside the Island as they apply to goods otherwise imported, exported or removed into or out of the Island from or to any other place.

There is also a power for the Treasury to make regulations which (a) specify the postal packets to which section 15 applies; (b) provide for modifications and exceptions in the application of the statutory provisions to such packets; (c) enable persons engaged in the business of the Isle of Man Post Office to perform for the purposes of the statutory provisions and otherwise all or any of the duties of the importer, exporter or person removing the goods; (d) carry into effect any arrangement with the government of another country or overseas administration with respect to overseas postal packets; and (e) secure the observance of the statutory provisions and, without limiting any liability of any person under those provisions, for punishing any contravention of the regulations.

Madam President, I beg to move that clauses 10 and 11 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 10 and 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Braidwood: Thank you, Madam President.

Subsection (1) of section 49 of the 1993 Act, 'inviolability of mails', provides that, subject to the provisions of that section, a packet in the post, anything contained in a packet in the post and a mail bag containing a

packet in the post have immunity from examination, seizure or detention under a statutory power, seizure under distress or in execution and retention by virtue of a lien.

Clause 12 amends subsection (3) of section 49 so as to provide that subsection (1) does not apply to (a) the powers conferred by part VA of the 1986 Act in relation to cash contained in postal packets; and (b) the powers contained in chapter 3 of part 1 of the 2008 Act in relation to cash contained in postal packets.

Madam President, I beg to move that clause 12 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Braidwood: Thank you, Madam President.

Clause 13 provides that the 2008 Act is amended in accordance with the following clauses 14 to 19. The main purpose of the amendments is to extend the regime for the civil recovery of cash to that sent in postal packets.

I beg to move, Madam President, that clause 13 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Braidwood: Thank you, Madam President.

This clause amends section 43 of the 2008 Act to insert (a) a new paragraph (f) in subsection (6), which ensures that searches permitted under that section apply equally to situations where the suspect cash is forged or counterfeit; and (b) a new subsection (7A), which provides that any forged or counterfeit cash is deemed to have the same face value as it would have had it been genuine.

This clause is not directly related to the amendments made to extend the civil recovery powers to cash sent in postal packets. However, it applies to material sent by mail as it would in any other circumstance.

Madam President, I beg to move that clause 14 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I wonder if the Hon. Member could perhaps advise us in subsection (7A) where we are inserting:

‘Where cash consists of a forged or counterfeit version of any instrument or notes and coins in any currency,’

What is an ‘instrument’? Would it be a plate for making money? Would it be fraudulent credit cards? Would it be things that criminals would use in connection with the shipment of notes or currency? It just seems strange that if ‘instrument’ is being used for a catch-all for people who want to get involved in criminal activities, I do not have a problem with that, but it would just be a bit clearer if we could perhaps be advised what ‘instrument’ meant.

Mr Crowe: Madam President, I think it is a Stock Exchange expression, ‘instrument’. I think it is probably a share certificate or a note, or a cheque or a –

Mr Downie: Fake premium bonds or –

Mr Crowe: Again, the mover will probably check with his sources, shall we say.

The President: Certainly a monetary instrument is defined as ‘cash’ in the Bill.
The Hon. Member, Mr Butt.

Mr Butt: Yes, and also it is referred to the original Forgery Act and the Coinage Offences Act says the same phraseology. It is obviously a lift from the Forgery Act as well.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

You were quite right. In actual fact, I have already listed... and it would, of course – any cash or monetary instrument is defined by postal orders as well: notes and coins in any currency, postal orders, bankers' drafts, bearer bonds, bearer shares, and any kind of monetary instrument which is found in the Island that is prescribed by an order made by the Department of Home Affairs. So in actual fact, the Department of Home Affairs can prescribe what a monetary instrument is.

I hope that answers the queries of the Hon. Member of Council, Mr Downie.

Mr Downie: It does, yes, thank you.

Mr Braidwood: I beg to move that clause 14 stand part of the Bill.

The President: The motion is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Braidwood: Thank you, Madam President.

This clause inserts a new section 43A into the 2008 Act. The new section is concerned with permitting searches of postal packets, subject to certain conditions, and how any such search is to be carried out.

Madam President, I beg to move that clause 15 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 16 and 17.

Mr Braidwood: Thank you, Madam President.

Clause 16 amends section 44(1) of the 2008 Act, 'searches: prior approval', which is concerned with the prior approval for any search of persons, premises or means of transport for cash under powers conferred by section 43.

The amendment made extends the provisions of section 44 to include the new section 43A, thereby meaning that a search of a postal packet under that section may only take place with the prior approval of the High Bailiff or a Justice of the Peace or, if that is not practical in the circumstances, a senior officer.

Clause 17 amends section 45 of the 2008 Act, 'searches: code of practice', to require the making of the code of practice by the Department of Home Affairs, following consultation with the Isle of Man Post Office to govern the use of the powers contained in section 43A to carry out searches of postal packets. The code must be brought into operation by order.

Existing search powers, exercisable under section 43 of the 2008 Act, and relating to searches of persons, premises and means of transport, are covered by an existing code of practice produced by the Department of Home Affairs.

Madam President, I beg to move that clauses 16 and 17 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

Just a query really: is the code of practice subject to any approval system by Tynwald? That is my question.

The President: Mover to reply.

Mr Braidwood: I think I said this was only with consultation between the Department of Home Affairs and the Isle of Man Post Office and the code must be brought into operation by order, so I presume that order or that regulation would come to Tynwald, Madam President. But I will clarify that for the next Reading.

Madam President, I beg to move.

The President: The motion before the Council is that clauses 16 and 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 18.

Mr Braidwood: Thank you, Madam President.

Clause 18 amends section 49 of the 2008 Act, 'release of detained cash'. This deals with the release of cash which is detained under section 47 of that Act, where an application has been made to the High Bailiff by the person from whom it was seized. The High Bailiff may direct that the cash be released, if the conditions in section 47 for the detention of the cash are no longer met. Clause 18 provides for an amendment to section 49 to deal with cash detained under section 47 after being found in the postal packet. In such circumstances, the sender or the person to whom the packet was addressed may apply to the High Bailiff for release of the cash.

Madam President, I beg to move that clause 18 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
And finally, clause 19.

Mr Braidwood: Thank you, Madam President.

Clause 19 amends the existing section 54 of the 2008 Act, 'compensation where no forfeiture order made'. This provides that if no forfeiture order is made in respect of cash detained under chapter 3 of part 1 of the Act, the person to whom the cash belongs or from whom it was seized may make an application to the High Bailiff for compensation.

Clause 19 amends section 54 so as to enable the sender or the addressee of a postal packet to apply to the High Bailiff for compensation where no forfeiture order is made in respect of cash found in a postal packet and which is detained under chapter 3 of part 1 of the 2008 Act.

Madam President, I beg to move that clause 19 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I think this is a worthy clause to be here, application to the High Bailiff for compensation if cash has been opened and detained in cases where it should not have happened and there will be cases. I am sure there will be. There is no indication here of any minimum or maximum amounts that would be set for compensation. Is that something that would be a matter for the High Bailiff or is set in legislation elsewhere or will be part of an order coming forward?

The President: The Hon. Member, Mr Downie.

Mr Downie: On a similar vein to Mr Callister, it would be useful to know what the limits of compensation would be likely to be; but also I would just like confirmation from the mover that any cash that was forfeit would go into the pool that is used under the proceeds of crime to provide revenue for things to prevent crime. We have the pool of money here in existence at the present time in the Island.

The President: Mover to reply.

Mr Braidwood: Thank you, Madam President.

I think this clause is where no forfeiture is made. Therefore, in actual fact, if there was a forfeiture made and it was under such as... where the money is unlawful, say from drug money, then that could go into the pool, as Mr Downie explained.

However, this is where no forfeiture order is made, and this compensation that we are looking at, the cash in actual fact – if it has been detained for a longer period, because you can only apply after 48 hours for that the cash to be brought back – should have been put in an interest-bearing account. The compensation which the High Bailiff can make is the amount of what the interest on that amount would have accrued, if it had gone into an interest-bearing account.

Mr Downie: €1,000 for two days...

Mr Braidwood: I beg to move that clause 19 stand part of the Bill.

The President: Hon. Members, the motion is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.