

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

2. Mr Braidwood to move:

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

The President: We move on then, to the Cash and Postal Packets Bill and I call on Mr Braidwood to take the Third Reading.

Mr Braidwood: Thank you, Madam President.

During the clauses stage of the Bill, a number of queries were raised by Hon. Members and I promised to come back at the Third Reading with further details on one or two points.

Firstly, questions were posed about how law enforcement dealt with situations where someone sought to avoid the controls by breaking down a consignment into two or more smaller amounts. Disaggregation, or smurfing, is a quite well-known phenomenon in money laundering. The basic position is that, where the Police or Customs and Excise have reasonable grounds to suspect that the separate amounts have a common origin or purpose and are in fact part of a larger haul, they may seize it as if a single amount. This arrangement is catered for in guidance issued to law enforcement and is supported in the UK by the case of *Commissioners of Customs and Excise v Duffy* in 2002, where such disaggregation was involved.

Questions were raised concerning the Freeport. Goods being sent to or from the Freeport remain subject to customs controls. Cash could not be warehoused in the Freeport and the movement of any cash or anything amounting to cash into or out of the country would be subject to the normal cash reporting requirements, even if going to or from a Freeport.

It may be useful to stress that there is no general bar on importing or exporting cash, no matter how unwise it might be. The declaration requirement is to deter those seeking to avoid normal anti-money-laundering controls imposed by banks and others and only cash derived from or intended for use in crime, terrorism or other unlawful conduct is likely to be subject to forfeiture.

Finally, the other question was about the code of practice governing searches for cash liable to forfeiture and if such a code would be subject to scrutiny by Tynwald. I can inform the Council that such a code is required under a new subsection (1A) being inserted into the Proceeds of Crime Act 2008 and will be made by the Department of Home Affairs after consultation with the Post Office and would be brought into operation by means of an Order which will require the approval of Tynwald.

I believe I have tried to answer those queries which were raised at the clauses stages of the Bill, Madam President, so I would like now to go into the Third Reading.

This Bill has as its main purpose the amendment of three existing Acts of Tynwald to provide that cash sent by post is subject to restrictions, similar to those involved where cash is brought into or taken out of the Island by other means. The three Acts that the Bill amends are the Customs and Excise Management Act 1986, the Post Office Act 1993 and the Proceeds of Crime Act 2008. In 2008, the Island underwent an inspection by a team from the International Monetary Fund. This team's remit included examination of the Island's anti-money-laundering controls. The subsequent Report identified posts and movements of cash as a potential weakness and recommended that the Island extend its cash declaration requirements to postal traffic.

As an extension of the Island's comprehensive anti-money-laundering requirements, the new controls are designed to help deal with movements of cash that avoid methods which may be subject to scrutiny. By changing the law in this area the Island is not only meeting a recommendation of the Financial Action Task Force, but is also closing a potential loophole in its anti-money-laundering framework.

Extending the provisions of the Proceeds of Crime Act 2008 to cash sent in the post means that, should illicit cash be detected, it can be seized by a police or customs officer. The power to seize cash suspected of being linked to unlawful conduct already exists, where a police or customs officer is lawfully present, or when such cash is detected entering or leaving the Island on a person, in vehicles, freight or by parcel courier services. The amendments made to the Post Office Act 1993 remove the general inviolability of protection for the mail only to the extent needed to deal with cash which should be declared, or may be liable to seizure. Similar exceptions are already provided for other forms of contraband, such as illegal drugs and bootleg tobacco products.

However, it should be made clear that none of the changes provide the Police or Customs and Excise with any additional powers in respect of correspondence or other items sent by the Royal Mail. The new provisions are concerned solely with undeclared or suspect cash. Any postal packet involved remains in the custody and control of the Post Office and law enforcement will have to have reasonable grounds to suspect that the packet contains cash that either requires a declaration, or is linked to unlawful activity and therefore liable to forfeiture, before the Post Office may be asked to detain and open a packet for examination. Even if detained and opened by the Post Office, the packet and its contents remain in the custody of the Post Office, which acts as agent for

the sender or addressee, and only if any cash is subsequently seized would it then be taken into the custody of the Police or Customs and Excise. Safeguards are included, such as if any cash is seized, law enforcement can only detain the cash for a short initial period of 48 hours, excluding weekends and public holidays, before having to seek permission from the High Bailiff for continued detention. The new procedures will be governed by both the Code of Practice made under section 45 of the Proceeds of Crime Act and a tripartite memorandum of understanding between the Post Office, Police and Customs and Excise and when and how packets may be detained and searched.

As I have already stated, Madam President, no new powers have been provided to law enforcement to interfere with correspondence or other items sent in the mail and even if any cash is detained or seized, the rest of the package and its contents will normally be allowed to proceed. Furthermore, should any cash be found by Customs and Excise which lacks only the necessary declaration, the sender or addressee will be given an opportunity to make that declaration before any further action is taken. The Treasury feels that the provisions are a reasonable and proportionate response to both the recommendations of the IMF inspectors and the perceived risk from the loophole in cash declaration and anti-money-laundering controls.

Finally, this Bill also amends section 15 of the Post Office Act for another purpose. It has been found that a minor amendment is required to allow the making of suitable and necessary subordinate legislation, which is needed to ensure that the Island's postal law can adapt in the light of changes to procedures of the Royal Mail in the United Kingdom and so comply with the requirements of the Customs and Excise Agreement. Section 15 allows the application to postal traffic of customs law in the same way as it applies to other goods imported, exported or removed into or from the Island. This section is amended so that a reference to statutory provisions in customs law applying to postal traffic includes reference to any relevant community instruments, that any such instruments can be regarded as customs law for the purpose of this section.

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

The President: The Hon. Mr Lowey.

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

The President: The Hon. Mr Crowe.

Mr Crowe: Whilst supporting this Bill, can the Hon. Member repeat what orders will go to Tynwald for the secondary legislation that will come before Tynwald? I think he mentioned there was a code of conduct and –

Mr Braidwood: It is a memorandum of understanding.

Mr Crowe: – some forms that the public will have to complete when they go to the Post Office. Is that the only order that will go to Tynwald?

The President: Member to reply.

Mr Braidwood: This, in actual fact, is a revised memorandum of understanding between the Post Office and the Police and this will be a code of practice under the Proceeds of Crime Act, which will be coming through to Tynwald, which will have to give acceptance to that order.

Mr Crowe: So we will see the secondary legislation?

Mr Braidwood: So you will see the secondary legislation.

Mr Crowe: Thank you.

The President: The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.