

Bribery Bill 2012
First Reading approved

2. Mr Crowe to move:

That the Regulation of Care Bill 2012 be read a first time.

The President: We move on, then to the Bribery Bill. I call on the Hon. Member, Mr Crowe, to take the First Reading.

Mr Crowe: Thank you, Madam President.

In moving the First Reading of the Bribery Bill, I would like to outline its context and background. The Island has positioned itself as a co-operative jurisdiction and an international business centre that is responsive to the values and developing standards of the international community. This is important not only from the point of view of the Island's image, but also because it is good business to be associated with a reputable jurisdiction – increasingly so in the current financial climate. In seeking to keep our legislation in line with international standards, it is recognised we need to be careful to take into account what is required to ensure Island businesses can fairly compete for business on and off the Island.

Bribery, which can also be called corruption, is a major issue in some jurisdictions. This has implications for fair trade and commerce worldwide, as it can give an unfair advantage to businesses that are prepared to engage in it. This is why the international community, through organisations such as the United Nations and the Organisation for Economic Co-Operation And Development (OECD) encourages all countries to enact legislation making it a serious criminal offence to engage in such activities.

The Island enacted the Corruption Act in 2008, which was the same year the IMF visited the Island to assess its compliance with the Financial Action Task Force's anti-money-laundering recommendations and related international standards. Since then, the goalposts have moved. The United Kingdom enacted its own Bribery Act in 2010. The UK's Act is seen as setting best practice in anti-bribery legislation, and bribery and corruption matters now have a very high international profile, including in the revised and strengthened Financial Action Task Force recommendations.

A strategic group consisting of relevant senior officers from Government and the regulators which considers the Island's compliance with the FATF recommendations concluded that it would be beneficial to the Island to align its legislation more closely with that of its significant trading partner and neighbour – that is, the United Kingdom and the Council of Ministers accepted this advice.

Madam President, consideration is then given as to whether to amend the Corruption Act to include the few significant differences in legislation or to repeal the Act entirely and replace it with legislation that match the provisions of the UK's primary Act.

Two factors influenced the decision to go for the latter option. Firstly, the amount of work in terms of drafting consultation and parliamentary time involved in amending the existing Corruption Act would have been very similar to replacing it with a new Act. Secondly, it was felt that having legislation as similar to the UK's as possible would present less of a burden to business as companies having any business relations with the UK would already be aware of and so should be complying with the requirements of UK Bribery Act when doing business off Island.

The principal difference between the Bill and our existing legislation is the introduction of an offence under which a relevant commercial organisation may be prosecuted for failing to prevent bribery if a person associated with that organisation commits a bribery offence anywhere in the world for the benefit of that organisation. However, a commercial organisation will have a defence if it has adequate procedures in place to prevent such conduct taking place. The Bill provides for guidance to be prepared and issued by the Department, setting out what might constitute adequate procedures.

The other differences between this Bill and the Corruption Act 2008 are mainly due to the use of the more modern drafting style.

Following a six-week consultation period, the Department considered the 16 responses it received. The OECD itself responded to the consultation, and it welcomed the Island's initiative in bringing forward this legislation. The Department had regard to its views and those of other respondents to the consultation process and so the Bill differs from the UK's Bribery Act in some respects, because it retains three provisions from the Corruption Act 2008, which Bill it repeals and replaces, relating to the duty on public officials to report bribery and it sets the time limit for bribery prosecutions at up to 21 years from the date of the alleged offence.

It also sets the maximum summary court financial penalty for certain bribery offences at £10,000, in line with the statutory maximum in Scotland, rather than the maximum summary fine of £5,000 in England and Wales.

Madam President, I have set out the background context and reasons for introducing this Bill, together with

similarities and differences with equivalent UK legislation. I now beg to move that the First Reading of the Bribery Bill be approved.

Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

It does not seem five minutes ago since we were putting through the Corruption Act 2008. I just wonder if there have been any prosecutions or actions or anything under the 2008 Act. I would just be interested to know.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I speak in support of the Bill. About three years ago, I was privileged with one or two other Members of Tynwald to go along to a presentation at the Law Society we were having here and that was based on the introduction of the Bribery Act into the UK, the Bribery Bill. We knew then that it was going to come to the Isle of Man and it was a good opportunity to see how this legislation has developed, how it has been introduced here and in fact lots of major companies in the UK who are confronted by aspects which are laid out in the Bribery Bill now have dedicated officers, so it is custom and practice to monitor this, to make reports. If they think there is something untoward going on, there is a proper procedure and everything else in place.

As my hon. colleague, Mr Crowe said, it is part of running a financial services industry now. This is part of the norm and this is what is expected and it is very easy to sit here and read into a lot of things in here, which are not... It does cover a lot of various issues, the legislation, but at the end of the day, we are not dealing with the norm in business; we are dealing with countries who perhaps bribery or corruption might be second nature to them. I think, to be responsible in the financial services industry, you have got to make sure that you have all aspects covered and your business is not going to fall prey to some of these unsavoury acts which do take place from time to time, and which we are all honour-bound to try and stamp out.

So, I wish the Member well with it and I will be supporting it.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Following on from the Hon. Member, Mr Downie, again, this is just another piece of the jigsaw, Madam President, again, to show us in the top drawer of financial centres. As the mover has already said, the OECD welcome the Island's initiative in bringing this forward. We hear, through the press, the unfair advantage that some companies have achieved by bribery. I think then, introducing this legislation just closes that door which might be used.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I have no objection to supporting the Bill, though I would say that the OECD want to be looking to players like Spain and Italy and other areas in Europe, before they worry too much about the Isle of Man.

I just wonder how, if the Member could just describe, this Bill really differs much from the Corruption Act 2008, which I have not looked at. Bribery on smaller scales, of course, needs a third person to be involved – in other words, a whistleblower or whatever you would like to call them – but I wonder if it extends to things like cash for questions in Parliament, or even providing a huge amount of finance for a political party and then finding yourself in a seat in the Lords. But we will no doubt see as we go through.

The President: The mover to reply.

Mr Crowe: Thank you, Madam President.

I thank Mr Braidwood for seconding this and his comments about his support of keeping the Island in the top drawer of financial services.

Mr Turner: I thank him for his query. I am not aware of any prosecutions under the 2008 Corruption Act, but I will check that. I have Mr Cubbon with me from Home Affairs and I will respond to that at the clauses stage.

I thank Mr Downie, in support of the Bill. As we all know, certain countries in the world, bribery and corruption is – (**Mr Braidwood:** Rife.) yes, endemic, it is a problem. I think what we are doing here is to make sure that Isle of Man companies do not get involved in a net or a web of deceit and into this bribery and corruption practice, where businesses have to persuade others to pay commissions or receive commissions. It

does cover employees and agents of Isle of Man companies.

I think I spelt out the differences in the... the main difference between the Corruption Act 2008 and this Act: we have kept two or three items. I will expand on that at the Second Reading, but broadly, it is much the same. It does cover bribery and corruption where... I am not sure we can go into payments to the Lords or payments for questions!

Anything I have omitted or have not responded to, I will pick up at the Second Reading or in the clauses stage, but with that, Madam President, I would so move the First Reading.

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

The Council will now adjourn until 19th February in Tynwald Court and, thereafter, to 26th February in this Chamber.