

Bribery Bill 2012
Second Reading approved

2. Mr Crowe to move:

That the Bribery Bill 2012 be read a second time.

The President: We turn now to the Bribery Bill, and I call on Mr Crowe to take the Second Reading.

Mr Crowe: Thank you, Madam President.

The First Reading of this Bill took place on 12th February 2013, and I am grateful to Hon. Members for their support.

In moving the Second Reading of the Bill, I think it is important to emphasise the international dimension to this Bill as much as the fact that it is very largely based on the UK's Bribery Act 2010.

The Island actively monitors its legislation to ensure that it complies with developing international standards. This is important not just for its standing in the world, but also for business. Businesses in other countries will be more willing to trade with the Island if it meets international standards. A good reputation is good for the Island's self-image, particularly as it seeks increasingly to be responsible for its external relationships, rather than simply relying on the good offices of the UK government.

The Department was interested in receiving a response to the consultation on the Bill from the OECD, who commended the Island for considering this legislation.

Some matters were raised during the First Reading debate. Mr Callister asked for clearer guidance as to the difference between this Bill and the current Corruption Act 2008. As mentioned during the First Reading debate, I would like to make it clear the principle differences are that this Bill sets out specific offences of bribery; introduces a specific offence in relation to a commercial organisation failing to prevent bribery by any of its employees or any other person who works on their behalf, but there is a defence if adequate procedures are in place; and thirdly, but not least, this Bill is closely modelled on the UK Bribery Act 2010, which is regarded as setting best practice in anti-bribery legislation.

In answer to a question from Mr Turner, I can confirm there have been no prosecutions under the Corruption Act 2008.

Madam President, I beg to move that the Second Reading of the Bribery Bill 2012 be approved.

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

The President: The motion is, Hon. Members, that the Bribery Bill 2012 be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Bribery Bill 2012
Clauses considered

The President: We will take the clauses. Clauses 1 and 2.

Mr Crowe: Thank you, Madam President.

I would like to take and vote on clauses 1 and 2 together.

Clause 1 gives the short title of the Act as the Bribery Act 2013.

Clause 2 provides that the Bill will be brought into operation by Appointed Day Order. It is anticipated that the Bill will be brought into operation within six months of the announcement of Royal Assent to Tynwald.

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

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

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

Clause 3.

Mr Crowe: Madam President, clause 3 provides general interpretation of the terms in the Bill, and I beg

to move that clause 3 do stand part of the Bill.

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

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

Clause 4.

Mr Crowe: Madam President, this clause and the subsequent two clauses define in greater detail key words or terms.

Clause 4 defines the meaning of the term ‘relevant function or activity’ for the purposes of offences under this legislation. The term includes function of a public nature, business activity, activity in connection with employment, and any activity performed by or on behalf of a body of persons. The person performing the function or activity is expected to do so in good faith or impartially. It is immaterial whether the function or activity is performed on or off the Island.

Madam President, I beg to move that clause 4 do stand part of the Bill.

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

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

Clause 5.

Mr Crowe: Madam President, clause 5 defines the meaning of the words ‘improper performance’. Essentially, this is where the function or activity – for example, the process of granting a contract – is not undertaken in good faith or impartially, or is not granted at all, despite the correct procedures being followed by the applicant.

Madam President, I beg to move that clause 5 do stand part of the Bill.

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

The President: The motion is that clause 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 Crowe: Madam President, clause 6 defines the word ‘expectation’. This is the test of what a reasonable person in the Island would expect in relation to the performance of a function or activity. We would not expect to have to pay a bribe in order to get a contract, obtain a job, get a passport, or have the service denied to us because we have not paid a bribe. Unless a particular additional action is set out in the written law of another country or territory, the fact that a bribe is part of the custom and practice of such place is irrelevant.

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

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

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 Crowe: Madam President, clause 7 sets out the offence of bribing another person. It does not matter if the person bribed or offered the bribe is the same person as the person who is to perform, or who has performed, the function or activity. Nor does it matter if the advantage offered or promised is made or given directly or via a third party.

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

Mr Braidwood: I beg to second, Madam President, 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 Crowe: Madam President, clause 8 makes it an offence to request, agree to receive or to accept a financial or other advantage for the improper performance of an activity or function. It is also an offence to request, agree to, or merely allow another person to undertake the improper performance of the activity or function. The offence is committed irrespective of whether the person knows or believes he or she is performing the function improperly.

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

Mr Braidwood: I beg to second, Madam President, 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 Crowe: Madam President, clause 9 makes it an offence to bribe a foreign public official. The person must intend to retain business or gain advantage in the conduct of business. The foreign official may have been influenced either to exercise or to fail to exercise functions, or indeed to use his or her position to the company's advantage.

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

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

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

Clause 10.

Mr Crowe: Madam President, under clause 10, if a person who is associated with a commercial organisation commits a bribery offence for the benefit of that organisation, the organisation is also guilty of an offence. However, it is a defence for the organisation to show that it had adequate procedures in place designed to prevent those who work for the organisation, either as employees, contractors, agents or self-employed persons etc, from engaging in bribery to obtain, retain or further the business interests of the organisation.

Madam President, I beg to move that clause 10 do stand part of the Bill.

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

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

Clause 11.

Mr Crowe: Madam President, clause 11 defines the meaning of 'associated' person with regard to commercial organisations referred to in the previous clause. An associated person may be, for example, an employee, agent, contractor or subsidiary of the organisation.

Madam President, I beg to move that clause 11 do stand part of the Bill.

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

The President: The motion is that clause 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 Crowe: Madam President, clause 12 requires the Department to produce guidance that relevant commercial organisations, referred to in clause 10, can put in place to prevent bribery.

In the event that the Bill passes through the branches and Royal Assent is announced to Tynwald, the Department intends to prepare guidance material and consult with relevant representative parties. Once the material is ready, the Act will be brought in by Appointed Day Order and the guidance issued forthwith.

I beg to move clause 12 do stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

Could I just have confirmation from the mover that all of part 2, which is the bribery offences, is actually repetitions of what is already in legislation in previous Corruption Acts, and there is nothing actually new in these offences extra to what was normally there before? Could I have confirmation of that, please?

The President: Mr Lowey, did you wish to speak?

Mr Lowey: Yes. The only thing I was going to say is the Department, from time to time, publishes revisions of guidance under the section. Who, in the Department, is doing that now – this really follows on from Mr Butt – and is that going to be a continuation of the same, or is it a new function?

The President: The mover to reply.

Mr Crowe: Thank you, Madam President.

In Mr Butt's case, I think there is a new clause to this. I think I mentioned that in the Second Reading.

Mr Callister: Part 2 provides some new offences in respect of bribery under clause 7. Sorry, I am speaking out turn, but it is there, Madam President.

Mr Crowe: So there are new offences under this Act. The existing ones are under clauses 13, 14 and 15, which I will come to, which are 5, 6 and 7 in the old Corruption Act 2008. So they have brought those forward into this Act, but there are some new offences.

As to the guidance, I think this is very important that the Department of Home Affairs do this, because there has to be a defence. If you are trading round the world and you have agents or managers, or officers of your company who may be prone to accusations of bribery, they have to be guided as to what is reasonable and what is not reasonable, so I think this guidance will be published and it will be discussed with the Employers Federation, Chamber of Commerce and others who will have an interest, such as the Law Society. So I think it is vital that this is done before the Appointed Day Order comes into operation.

As to the continuing guidance that Mr Lowey talks about, I think it is the Home Affairs Department – and I have with me Mr Bateman, who is the legislation officer who will pick up any points that I do not cover, Mr Lowey.

So, with that, I trust I have answered the queries in clause 12, Madam President, and so move.

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

Part 3, clauses 13 to 15.

Mr Crowe: Thank you for allowing me to move these together, Madam President.

These three clauses are current sections 5, 6 and 7 in the Corruption Act 2008, which is to be repealed by this Bill.

Clause 13 requires public officials on the Island to report attempts made to bribe them, either to a constable or, if procedures have been established, to their employer.

Clause 14 makes it an offence for a public official to fail to report bribery under clause 13.

Clause 15 makes it an offence to take action harmful to any person on the grounds the person has made a disclosure further to clause 13.

Madam President, I beg to move that clauses 13, 14 and 15 do stand part of the Bill.

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

The President: The Hon. Mr Callister.

Mr Callister: Thank you, Madam President.

Irrespective of the fact that this may well be in legislation now, what we are into here is something that is described, at times, as whistleblowing. Whistleblowing has had, I think, some pretty serious publicity in the past, in the UK, whereby people who have given information about wrongdoing have subsequently lost their jobs or subsequently been downgraded, or whatever. It is a very difficult area, and when you come to subsection (2) here, it refers to:

‘A person... who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that a person has committed, is committing or is about to commit an offence under this Act...’

That is incredibly wide and open to extraordinary interpretation, and I do not know how that would be dealt with if a person was later told, ‘You should have known this, and why didn’t you?’ or ‘You *did* know it,’ and so on. It is a complex area legally, as far as I can see.

Nevertheless, the point I wish to make is that, because of the way that whistleblowing has been dealt with in the past, in some cases, it will make people reluctant to do this kind of reporting, if they think they can leave it alone.

The President: I think the code of practice probably assists people in knowing how to proceed. Does any other Member wish to speak?

Mr Butt: Madam President, I think – the mover might know this – under the Employment Act, we did have a clause about whistleblowing, where people in employment can have employment protected if they did become a whistleblower. Mr Downie took that through some years ago. I think there was provision in the Employment Act to cover that.

The President: The Hon. Mr Wild.

Mr Wild: Thank you, Madam President.

I just make the observation that from the finance sector, this type of regulation is quite commonplace. I think in certain sectors of life people are already used to it, but I do agree with you entirely and I can think of a major clearing bank where somebody was whistleblowing and was bullied and harassed in the process. That went through the full course of investigation and the person who did the bullying and harassing left the organisation as unfit and improper.

Thank you.

Mr Braidwood: I think, Madam President, as well, under clause 13(4) and (5) – and Mr Butt has already touched on it – it says there with the Employment Act 2006, so there is protection.

The President: The mover to reply.

Mr Crowe: Thank you for your comments, Hon. Members.

I think, as Mr Callister rightly says, it is a very complex area. This is a complete transfer of the clauses in the Corruption Act 2008, so what we have is the existing regulation.

Whistleblowing is a very difficult area. People have to be protected. Mr Butt raised this question and Mr Braidwood answered it. It is recited as a protected disclosure under subclause (5), and it is referred to as the Employment Act 2006, so it is covered in that Act.

Although it is very complex, and there have not been any prosecutions under this Act,... but going forward, there has to be... in place to protect the businesses and to make people aware that it is a crime if they act in a way which is not reasonable or good and fair practice.

I also thank Mr Wild for his example in a banking situation.

I think it is a difficult area, a complex area, but all we can do is introduce these very high standards internationally to protect businesses and to protect the individuals working for those businesses.

With those comments, Madam President, I would so move.

The President: The motion is that clauses 13, 14 and 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I think we will take clauses 16 and 17 together.

Mr Crowe: Thank you, Madam President.

Clause 16 ensures that prosecution of offences under this Act can only be brought by, or with the consent of the Attorney General.

Clause 17 deals with penalties.

I beg to move that clauses 16 and 17 do stand part of the Bill.

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

The President: The motion 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 Crowe: Thank you, Madam President.

Clause 18 provides that if a Manx resident or business does anything off Island that would constitute an offence under this Act, then they are liable to be investigated and prosecuted as if the offence was committed on the Island.

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

Mr Braidwood: I beg to second, Madam President, 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.

Clause 19.

Mr Crowe: Thank you, Madam President.

Clause 19 provides a defence for persons exercising any functions of an intelligence service, or as part of active service within the armed forces.

I beg to move that clause 19 do stand part of the Bill.

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

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

Clause 20.

Mr Crowe: Thank you, Madam President.

Under clause 20, if a body corporate commits an offence under this legislation, other than an offence under clause 10, and the offence was committed with the consent or connivance, or is attributable to the neglect of an officer of the body corporate, then the officer, as well as the body corporate, is liable to the penalty provided for the offence.

Madam President, I beg to move that clause 20 do form part of the Bill.

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

The President: The motion is that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Crowe: Madam President, clause 21 provides for an offence under clause 10 to apply to a partnership.

I beg to move that clause 21 do stand part of the Bill.

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

The President: The motion is that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

Mr Crowe: Madam President, clause 22 requires proceedings for an offence under this legislation to be instituted within 21 years of the alleged commission of the offence.

I beg to move that this clause do stand part of the Bill.

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

The President: The Hon. Member, Mr Lowey.

Mr Lowey: Twenty-one years seems an awful long time to have a sword of Damocles hanging over your head. Is this the existing timeframe, or is it a new one – and why the length of time for... I know sometimes it takes a while for these things to come out of the woodwork, but 21 years does seem a particularly long time.

The President: The Hon. Mr Callister.

Mr Callister: Thank you, Madam President.

I was going to ask exactly the same question, and I wonder if someone of, shall we say 85, were to be carrying out a bribe... if they could drag it out to 21 years? They would get away with it anyway! But if it is in the existing Act, I think I would support it, I suppose, to continue, but I agree it seems an extraordinarily long time to have to deal with a case.

The President: The Hon. Mr Wild.

Mr Wild: Thank you, Madam President.

Just to make the observation, though, that if you look at war crimes, they can go back to the Second World War, and that is an incredibly long period of time, and if you look at the abuse cases that we have just seen recently in the media, they go back an awful long time. So you could argue that, if there was genuinely bribery, or whatever, why shouldn't that period of time apply?

Mr Lowey: But criminal tort is six years, if I think rightly, or seven years, and tax... there is nothing better than a tax man. I think he can only go back six years. It just jumps out of the page as rather a long time.

Mr Wild: Worthy of debate.

The President: Mr Callister.

Mr Callister: If that is the case with tax and other areas, then if the bribery took place within those areas, where do we stand?

The President: Mr Butt.

Mr Butt: For serious criminal offences, there is no limitation whatsoever. (**Mr Lowey:** Is there not?) This is a serious criminal offence, in effect, so in a way this is a reduction of what normally would be there. Had it been a rape or a murder, or a theft, there is no limitation in time for proceedings, so this is a compromise, I would suggest.

The President: The mover to reply.

Mr Crowe: Thank you, Madam President.

It is interesting this clause should arouse interest and debate – which I am very happy to respond to – because it was one of the issues in the Bill that I focused on when I was asked to take the Bill through. In fact, reading it over again last night, just to check the facts and the clauses, it occurred to me again this 21 years seemed to be a long time. So I e-mailed Mr Bateman at about 10 o'clock last night.

Mr Lowey: Great minds think alike!

Mr Crowe: The response from Mr Bateman, which I will read out, is:

'Clause 22 has been inserted into the Bill in response to a suggestion from the OECD as a result of the consultation process. The OECD submitted that, under article 6 of the Anti-Bribery Convention, there must be an adequate time for the investigation and prosecution of this type of offence.

Twenty-one years was chosen because it accords with the provision in section 10B(2) of the Limitation Act 1984 relating to the recovery of property in pursuance of an external order. This may seem like a long time, but it is understood it can take a long time to obtain evidence if that evidence is required from another or certain other jurisdictions.

In fact, an OECD panel has recommended that there may be an argument for the limitation period being removed entirely in some cases. The Island has not followed this route, but the limitation period of 21 years is considered to strike an appropriate balance.'

I thank Mr Lowey for raising this, and Mr Callister also for raising this. I thank Mr Wild for talking about lengthier crimes, like war crimes and abuse cases, and I thank Mr Butt, who hit the nail on the head that there is no limitation on time on certain criminal cases. So I think the 21 years, although it sounds a lot, has hit a fair balance.

With that, I so move, Madam President.

The President: The motion is that clause 22 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We will take part 5 in its entirety: clauses 23 to 26 and schedules 1 and 2.

Mr Crowe: Thank you, Madam President, for allowing me to do that.

Taking clauses 23 to 26 together, as they are supplemental and final provisions of the Bill, clause 23 applies the Act to civil and public servants.

Clause 24 provides for transitional arrangements with regard to any actions or legal proceedings which may have been commenced under the Corruption Act 2008 prior to this legislation coming into operation.

Clause 25 provides for schedule 1 to make consequential amendments to legislation, and also allows for schedule 2 to repeal legislation such as the Corruption Act 2008, which is no longer required as a result of this Bill coming into effect.

Finally, Madam President, clause 26 provides for clause 25(1) and (2) and schedules 1 and 2 to expire once the last of these provisions have been brought into operation.

Madam President, I beg to move that clauses 23 to 26 inclusive and the schedules form part of the Bill.

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

The President: The Hon. Mr Butt.

Mr Butt: Thank you, Madam President.

You have just referred to schedule 2. I may be about to inherit Mr Lowey's seat. I would like to inherit his propensity to reminisce as well. Schedule 2 actually takes away clause 323 of the Criminal Code 1872, and when I first became involved with the law, 50 years ago now, the Criminal Code was almost the bible for criminal offences, and in there were all the old original offences, including this one.

Reading the Criminal Code now, it is a lovely piece of English language and actually gives you a real flavour of what life was like in those days. It is always a shame to see that Code being gradually hacked away at and reduced, and there is not much left now of it. I would recommend anybody to have a read of the Criminal Code some time and you will understand what I am saying. It is a shame to see it actually being reduced, but things do move on.

Thank you, Madam President.

Mr Lowey: 1872, a good year.

The President: The mover to reply.

Mr Crowe: Thank you, Madam President.

I must be starting to read my fellow Members. *(Laughter)* I anticipated Mr Butt asking this very question, as I wrote Mr Bateman in my e-mail last night:

'In schedule 2, please let me have details of section 323 of the Criminal Code 1872, as it is the sort of question that may be raised.'

Mr Butt: I don't believe you!

Mr Lowey: Great minds!

Mr Crowe: So I thank Mr Butt for his reminiscing down police lanes, or whatever it is. I do not think he was alive in 1872, but during his career he worked through this Code as his bible of policing.

Just reading it out from the Code, for interest:

'Whosoever shall bribe, or attempt to bribe, or in any way attempt to influence corruptly by promises, entertainment, or the like, any magistrate, arbitrator, referee, registrar, or person connected with the administration of justice, or a jury, or any of the jurors, to do anything contrary to the duties of his or their office, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to imprisonment for a term not exceeding two years and to a fine; and any magistrate, registrar, arbitrator, referee, or person concerned in the administration of justice, or any juror, or any gaoler, coroner, sumner...'

— 'sumner' is not a word I have come across —

'... constable, or other officer, who shall directly or indirectly accept, or offer to accept any bribe, reward, present, or gratuity, to do anything contrary to the duty of his office, or for the forbearance of doing his duty, or for doing his duty, except in the ordinary and accustomed fee and charge, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to imprisonment for a term not exceeding two years and to a fine.'

It is interesting that 1872... I do not know... I cannot work quickly back in my mental arithmetic as to how long ago was that, but bribery and corruption were still prevalent.

Mr Braidwood: A hundred and forty-one years.

Mr Crowe: How many years?

The Lord Bishop: A summer is in Chaucer.

Mr Butt: And isn't the English good? The English is lovely.

Mr Crowe: So it is interesting that, whilst so many things change, we are revisiting something that was... I am not saying prevalent in 1872, but was made into the law to prevent anything like this happening. So I thank Mr Butt for his reminiscing.

With that, I so move the clauses and the schedules, Madam President.

Mr Braidwood: It would be interesting to see what the 'entertainment' was.

The President: The motion is that clauses 23, 24, 25 and 26, along with schedules 1 and 2, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.