

Summary Jurisdiction and Miscellaneous Amendments Bill 2013
Second Reading approved

2.1. Mr Teare to move:

That the Summary Jurisdiction and Miscellaneous Amendments Bill 2013 be read second time.

The Speaker: We turn now to Item 2 on our Order Paper, Bill for Second Reading, the Summary Jurisdiction and Miscellaneous Amendments Bill, and I call on the mover, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I am pleased to put before the House today the Summary Jurisdiction and Miscellaneous Amendments Bill 2013, which is promoted by the Treasury under the terms of its memorandum of understanding with the General Registry.

The Bill is short, consisting of 13 clauses.

The main legislative changes are in respect of the Summary Jurisdiction Act 1989, but the Bill also includes minor amendments to other legislation, as I will detail later.

Background: the Isle of Man Government is committed to promoting the Island as an open, transparent and well regulated jurisdiction and to enhancing the Island's standing in the international community.

Central to that is a robust criminal justice system which has the teeth to enforce criminal financial penalties which have been ordered to be paid against offenders. This enforcement action needs to be efficient and flexible in order to maximise the collection rates and minimise the need for repeated court appearances to enforce payment or, as a last resort, to deprive the offender of their liberty for non-payment, when immediate custody was not deemed necessary by the sentencing court.

It is perceived that Attachment Orders have the potential to be a very useful mechanism in the recovery of criminal financial penalties. However, it also has to be noted that, in England, a National Audit Office report pointed out that, because deductions from benefits are generally only quite small, it can take a very long time to clear. The figures outstanding under a Deduction from Benefits Order may distort the statistics relating to outstanding fines, etc.

In respect of the current practice of imprisonment in default of payment, both in England and the Isle of Man the statutory provisions are quite complex. There is a guiding principle that it is generally to be the final step, only to be used where every other option has been shown to be unsuccessful.

There are implications under articles 6 to 8 of the European Commission on Human Rights relating to decisions to order imprisonment in default. This Bill provides another layer of enforcement options before imprisonment, but this remains as an option of last resort, when deemed appropriate by a court.

Mr Speaker, if I may, I would like to provide a summary of the background which has led to this Bill being presented to the House today.

Several studies have been undertaken, most recently by the Fines Working Group, following a report from the Public Accounts Committee into the level of outstanding fines. This Bill is intended to enact their recommendations for enhancing and streamlining the system.

In 2009, the Standing Committee on Public Accounts published a report on fines collection. Their investigation arose from information on outstanding fines supplied in response to a parliamentary Question in March 2003. The Committee considered this issue was appropriate for further investigation because it is important for the credibility of the criminal justice system that fines should be taken seriously and properly enforced. In addition, they felt that improving the performance of the overall system would increase the Island's income.

The remit of the investigation was to look at all aspects of the collection of financial penalties and make recommendations with a view to improving collection rates, improving the efficiency of collection procedures and also reducing write-offs.

The Committee's Report included recommendations for the Fines Working Group to consider whether changes to legislation were required to simplify the attachment of earnings procedure and provide for applications for Deductions from Benefits Orders, as well as providing for a register of outstanding court debts which would potentially affect the defaulter's credit rating.

Mr Speaker, this Bill provides these powers and the opportunity has been taken to make amendments to other aspects of court processes and judicial appointments.

Mr Speaker, Hon. Members have received advanced copies of the Bill as well as the explanatory notes that provide a paragraph-by-paragraph account of the effect of all clauses in the Bill.

Detailed information: Mr Speaker, part 1 – that is clauses 1, 2 and 3 of the Bill – provides for its short title, commencement by means of an Appointed Day Order to be made by the Treasury and its expiry, once all of its provisions have come into operation.

Part 2 consists of clauses 4 to 9 and makes amendments to the Summary Jurisdiction Act 1989.

Clause 4 introduces the amendments.

Clauses 5 and 6 are the so-called 'plea before venue' clauses and provide that a defendant can indicate how he or she intends to plead in relation to either way or schedule 2 offences, before the mode of trial is decided. The summary court can then decide whether they have sufficient sentencing powers, in which case it can be dealt with by them, or if they feel their sentencing power is not sufficient, they can commit the case to General Gaol for sentence.

If committed to General Gaol, the person would then enter a formal guilty plea at General Gaol which would proceed direct to sentencing. Since the person had indicated previously that they would be pleading guilty, the prosecution and defence would not have to make the usual pre-trial preparations.

It is possible, but unlikely, that after indicating in the summary court that they would be pleading guilty at General Gaol, the person might change their mind and plead not guilty, in which case the current procedure would still apply and the case would have to be adjourned for the preparation of a full trial bundle.

Clearly, the possibility of a reduced sentence for an early guilty plea would be in jeopardy were this to happen.

The aim of this clause is to, wherever possible, reduce unnecessary appearances in court and the need for the prosecution to prepare and the defence to review detailed statements of case and trial bundles.

Mr Speaker, the potential savings in time and Legal Aid costs are obvious.

Clause 7 replaces existing powers to make and enforce Attachment of Earnings Orders at the time the original sentence is imposed, rather than having a further court hearing in default of payment. It also introduces new powers for application of benefit deductions to be made at the time of sentence. Courts will be able to vary, suspend or revoke such an order or application, or substitute an alternative sentence or method of enforcement.

Existing legislation relating to attachment of earnings is complex and incurs further costs as it requires further application to be made to the court. The current provisions are set out in several disparate sources of legislation.

There are difficulties in fitting the disparate pieces together, also in reconciling some of the differences in terminology used across the various pieces of legislation.

Under the current Isle of Man legislation, a criminal court is not empowered to impose an Attachment of Earnings Order at the time of sentencing. Thus a return to court or further application is inevitable – this impacts on court time and increases the costs of the Legal Aid Fund. It would be more efficient, and encourage effective use of court resources, if the court could make the Attachment of Earnings or Deduction from Benefits Order when it imposes the sentence.

The clause also provides the Department of Social Care with power to make regulations concerning the benefits from which sums can be deducted, the circumstances, manner and time at which such deductions may be made and as to the prioritisation of deductions, where these are being made at source. These regulations will need the approval of Tynwald.

The recommendation of the Fines Working Group is that primary legislation is required to enable a criminal court to order payment of fines and other criminal financial penalties by attachment of earnings or by deduction from defined 'social security benefits' including, but not limited to, Income Support.

Clause 8 provides for a fines etc register, which will be open to public inspection. It is intended that this will comprise those who have defaulted on payment. The content of the register will be governed by Rules of Court.

Charges for accessing the register may be fixed by the Treasury and the proceeds of such charges are to be applied in paying the expenses incurred in maintaining the register. The register may be maintained by a body corporate, as is the case in other jurisdictions.

The aim of this clause is to allow details of fines defaulters to be published and make this information available to credit reference agencies, thus encouraging people to meet their financial obligations.

Clause 9 inserts new definitions required in relation to provisions inserted by this Bill.

Part 3 makes miscellaneous amendments.

Clause 10 removes the requirement for the specific post of Judge of Appeal to be an English barrister and Queen's Counsel. This will enable candidates to be recruited from a wider pool than the High Court Act presently allows, including Manx advocates.

The clause also amends the High Court Act 1991 so that where the legislation refers to 'the Deemsters', this expression will now mean the First Deemster only, when the Second Deemster is unavailable or the office of Second Deemster is vacant.

Clause 11 moves the fines provisions of section 27(1) of the Criminal Law Act 1981 into the Criminal Jurisdiction Act 1993, where they sit more readily.

Clause 12 amends the Licensing Act 1995 to extend the list of offences in respect of which the court may ban offenders from licensed premises or from purchasing alcohol. It will do this by including a power to

make a ban for all 'offences against the person' in the Criminal Code, as well as any offences in which consumption of alcohol was a significant factor, and enable the court to order a further ban if a Banning Order is breached.

Mrs Cannell: Sorry, Mr Speaker. A point of order, sir.

I thought we were considering the principle of the legislation, rather than the detail of the individual clauses.

The Speaker: We are indeed. It is up to the mover how he cares to put his case, but I am sure he will be conscious of that point.

Mr Teare: I apologise to the Hon. Member if this is of an oppressive use of her time, sir.

It also enables the Department of Home Affairs to prescribe by order other offences for which a court can make a Banning Order. An example might be a non-drink related offence not included in the list of offences against the person, which took place on licensed premises. These regulations would be subject to approval by Tynwald in accordance with section 81 of the Licensing Act 1995.

This clause will remedy inconsistencies identified in the existing legislation, as well as providing, by the power to make regulations, a more flexible response to extending the list of offences for which Banning Orders can be made – should this be needed – without having to amend primary legislation.

Clause 13 repeals four other provisions: section 27 of the Criminal Law Act 1981 relating to fines, as by virtue of clause 11 of this Bill, these provisions will now be included in the Criminal Jurisdiction Act 1993 where it is more appropriate for these to reside; schedule 5, paragraph 22(3) of the Summary Jurisdiction Act 1989, which was a consequential amendment to section 27 of the 1981 Act; the Road Traffic Act 1985, schedule 6, as it relates to a court ordering the forfeiture of the mobile telephone which was being used whilst driving – the person reporting the offence does not have power to seize the phone at the roadside for wider legal and practical implications, and it is not possible to make such an order several months after the offence was committed; the Licensing Act 1995, section 75(5) to (7), which are the existing provisions in relation to banning certain offenders from licensed premises and which are replaced by the earlier clause in this Bill.

Mr Speaker, having outlined the broad purpose and contents of the Bill and explained its background, I hope that Hon. Members will now give it their full support.

I beg to move that the Summary Jurisdiction and Miscellaneous Amendments Bill 2013 be read a second time.

The Speaker: Hon. Member for Rushen.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: Hon. Member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I was quite happy to second that, if my hon. colleague had not, because there are a number of improved procedures that are set out in this Bill. There has been an awful lot of work that has gone along with it and through some of my time working up another Private Member's Bill, I have been working with the General Registry, who have themselves been responsible for putting all of this together.

May I ask the hon. mover if he could just confirm though, as there are one or two points that I just think it would be ideal if he would just reconfirm on *Hansard* if he would, in respect of committal proceedings? Committal proceeds, which usually are for very serious criminal offences, begin in the middle court, which is the High Bailiff's Court and then, of course, progress to the Court of General Gaol Delivery, which is and always has been regarded for quite some time as a process, really, that is rather needless because the full trial is held (**A Member:** Hear, hear.) at the Court of General Gaol Delivery.

So there used to be, Mr Speaker, in the past, fully heard committal proceedings in the High Bailiff's Court and that was moved to what they call 'a paper committal' quite some time ago – about 10 or 15 years ago – and now it appears, for all intents and purposes, that that whole function is being removed. So for serious indictable offences, they are heard from the outset in the Court of General Gaol Delivery, rather than being pre-empted in the High Bailiff's Court. Can the Minister just confirm that that actually is the case and that once the Bill is enacted that will be the end of committal proceedings, as such, for *serious* criminal offences in that Court? That is the first question.

In respect of these unpaid fines that he is discussing, in respect of the collection of those fines, the Hon. Minister will be aware that there is an Act that is awaiting an Appointed Day Order in order to move forward

with this, and in so being, will it be that these criminal fines can be added to that arrangement whereby licensed debt collectors can collect that as an open civil debt?

So the second question is will it be treated as a civil debt, because unpaid fines currently that are before the Court – these are not unpaid parking disk fines; these are fines that have been made by any criminal court at any level... that they are collected by the Isle of Man Constabulary by warrant of arrest *if* they are unpaid, whereas the change of arrangement here now, as the mover intends, is going to the coroners to collect. Will that be able to be extended also to licensed debt collectors when that actually moves forward? It is just a clear point of direction that I am looking for in that particular area.

And finally, Mr Speaker, in relation to his fines register, giving the *vires* to have the fines register – and that is where currently, behind the scenes, there is another Bill being worked up with the enormous help of the Treasury Minister on all of this – in that case, if and when that register, that all-encompassing register that I do intend to bring in a future Private Member's Bill as soon as possible... will this *vires* fall into the *vires* of that? If not, that can be arranged.

Speaking on the *vires* of that, who will actually be the recordal of that register? Will it be the General Registry? He has already made it quite clear that credit reference agencies will have an input into that as a bad debt, as is; but, indeed, the *vires* of that register, will it actually sit with the General Registry or will it sit with the Isle of Man Constabulary, or be attached through the Registry to the Courts Division? I think that clarification on those points would be most helpful.

Thank you, sir.

The Speaker: I call on Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

There are just a couple of points I would be grateful if the hon. mover would clarify for me. The first one is about when somebody pleads guilty and then changes... sorry, pleads innocent and then changes their plea to guilty and then the evidence bundle is collected. Is there a danger that action will not be taken early enough to collect the evidence, because somebody has...

Sorry, I have got it the wrong way round, actually. (*Interjection by Mr Teare*) If they plead guilty, yes – if they plead guilty, is there a danger that evidence will not be collected at the appropriate time, so it will not be available when they later change their plea?

The other bit is really a very broad principle of it. If people are getting a reduced sentence for making an early guilty plea, if they know in advance that this is going to happen, is there a danger that we could end up like the American system, where genuinely innocent people actually plead guilty as they dare not take the risk, if their case is a little bit fragile? They just dare not take the risk of pleading innocence and risking the higher level of sentence – because it is a problem in America, and I would hate to see us getting to a point where innocent people were pleading guilty, just because it was better for the sentencing. (*Interjection by Mr Watterson*)

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

I welcome the Bill that is coming forward today. Just a couple of minor things.

If I could just ask the Minister, when he says in clause 8 regarding the use of the register, is that a manual register – and of course, my colleague from North Douglas is saying the same thing: where will that be kept, who will keep that up? Will this be available electronically? I know the Minister is indicating there is to be a fee for this, but even electronically, we are in the age where instead of going to a particular building to look at something, you can buy an online subscription. Is that the intention?

Also, I welcome the initiative that has been done in clause 10 to use local advocates as well.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

My enquiry about this Bill is very short, actually. It is mentioned that there will be increased costs for the Department of Social Care. Does the Minister have an idea of what sort of increased costs we are looking at there, bearing in mind the economic climate and the tight budgetary positions of all Departments?

Further, I was disappointed to read in the explanatory memorandum the word 'manpower' used *again*, which has not been featured in a Bill before this House for quite some time; normally, it is 'human resource', not 'manpower'. That is all I have to say on the Bill.

The Speaker: Mr Watterson.

Mr Watterson: Thank you, Mr Speaker.

I rise to support the Bill. I seconded it, which comes as no surprise, and just thank the Treasury Minister for moving this, obviously, on behalf of General Registry. This stands as one of the planks of the criminal justice strategy and represents the first element of the General Registry in delivering on that strategy.

The issues of pleading guilty early... and I have to say, I know where the Hon. Member for South Douglas is coming from with her concerns; however, I do not think it is as likely in the Manx system as it might be in the American system, where I think if people feel that they have a case they would... Firstly, the culture here is that you would go and defend yourself because of the burden of proof being beyond reasonable doubt; but also one would, if I was being cynical, argue that they would be well advised by their lawyers – who would be paid every step of the way by the Isle of Man Government – that they would go to court, rather than not go to court.

I would certainly say that there would be no danger of not collecting sufficient evidence just because of an early guilty plea. The Police should not be handing over a file to the Attorney General's Chambers for prosecution unless all of the evidence is there, and I would certainly hope that that would be the case.

In terms of the Social Care implications, my understanding is that the main impact on Social Care is because of the administration involved if they are deducting amounts from benefit, and that is the administrative aspect that would come in with the Department of Social Care.

Hopefully, that has been some help to the mover and it will save him some time in summing up, but just to ask Members to support the Bill as part of the wider criminal justice provision.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, obviously I will be supporting the Bill. I think it was very good the way we got so much detail by the mover, as far the Bill was concerned, and I think that is something to be applauded.

Obviously the issue that my colleague raises about the plea bargaining, the worry is how we ring-fence the fact that we do not go down the road of the US as far as this is concerned. We equally have a problem as far as people giving up, as far as their representation.

We recently had a case where some poor soul has ended up in jail for nine months on the fact that he had spent £30,000 on lawyers' fees, and just in the end he said he could not afford to carry on. Maybe we will look at this Bill to see if there is anything that we can do in order to help rebalance that out for those... If you are very poor or you are very rich, you are covered as far as this issue is concerned, but it is that large amount of people in the middle who are not covered, and it has become an increasing problem that we need to be addressing as a parliamentary legislature, and hopefully with the Government taking the lead on this.

The other issue that I am concerned about is the issue of making up Deemsters from the local pool, and I find this somewhat concerning. I do hope that there are safeguards where people feel that a Deemster is conflicted, because we have fought a long, long battle over the last 13 years away from postcode justice, away from so many things that have improved out of all recognition, as far as this Island is concerned.

One of the concerns I have is the idea of the criteria, as far as the local Deemsters, and it is something that maybe we need to test when we are discussing it at clauses stage. It is the safeguard of conflicts of interest. This Island has great advantages, being a small jurisdiction, but it also has great disadvantages as far as that issue is concerned, and I just would like the mover's viewpoint about whether he feels that there are sufficient safeguards for individuals as far as having local Deemsters doing that job.

The Speaker: I call on the mover to reply, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

In response to the Hon. Member for Douglas North, Mr Houghton, I appreciate his support. He raised the issue of committals procedures. Where we have a serious information case, it will continue to be subject to a paper or a full committal procedure to General Gaol for trial, but not where a guilty plea is indicated in the summary court. So that should help to streamline matters.

He asked for the collection of unpaid fines, but the debt is not a civil debt, it is a criminal debt, and so it needs to be collected by the legal officers, because if they do not pay there is the alternative of a custodial sentence in quite a few cases. So I would suggest it would not be suitable for that to be collected by licensed debt collectors because we need legal officers, or those who carry a warrant, to collect the funds.

The fines register: who maintains it? My understanding is that it would be the General Registry, and if I am wrong I will come back on that.

Both Mr Karran and Mrs Beecroft raise the issue of the pressure on a person who has been arraigned on a charge to plead guilty as a way... even though they may be innocent of that charge. There are procedures in

place for people to be advised by their advocates and the advocate will be able to take them through the steps and also consider the merits of their defence or otherwise. I do not see this as moving down the road to an American system. In fact, at the moment, the courts make it abundantly clear that there are very substantial discounts for people who plead guilty at the earliest possible opportunity, and I think we have all seen reference to that in the local press.

Mr Quirk, Hon. Member for Onchan, asked whether the register would be updated annually. It will be a rolling register and so it will be continually live, containing live information. I am not sure whether it will be available electronically, but the regulation concerning the register, as I understand it, will have to come back for a separate agreement anyway.

Mrs Cannell, the Hon. Member for Douglas South, asked about the –

Mrs Cannell: East.

Mr Teare: East, I beg your pardon; my geography is not very good. I apologise to the Hon. Member.

The increased costs in Social Care... It will have an impact, but we do not anticipate it will be a major impact; but if we have a look at the overall effect on Government, if we can collect these fines more effectively and more efficiently, it will improve Government revenue. So overall, I expect that these measures will enhance Government's revenue.

She asked about 'manpower' as well. I do not see that this is going to have any... Sorry, 'manpower, as opposed to man and lady' – I cannot read my own notes. Sorry about that. (*Interjection*) Yes, I apologise for that. Certainly the former Hon. Member for Peel would have picked me up for it very, very quickly, I know.

Mrs Cannell: And thrashed you! (*Interjections*)

Mr Watterson: Only if he asked nicely.

The Minister: I also thank the Hon. Member, Mr Watterson, for his supportive comments and

some of the clarification he has been able to bring on the issues.

The one outstanding issue from the Hon. Member for Onchan, Mr Karran, was Deemsters from the local pool. We are very, very aware of potential conflicts of interest, and managing those potential conflicts of interest is foremost in our minds. Our existing systems are robust and I do not feel that they will be changed, because if this place and another place consent to this legislation then that is going to change anyway.

So with that, Mr Speaker, I beg to move the Second Reading of this Bill.

The Speaker: Hon. Members, I put the question that the Summary Jurisdiction and Miscellaneous Amendments Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.