

Summary Jurisdiction and Miscellaneous Amendments Bill 2013
Clauses considered

3.1. Mr Teare to move.

The Speaker: We now turn to Item 3, clauses stage of the Summary Jurisdiction and Miscellaneous Amendments Bill.

I call on the mover of that Bill, Mr Teare, Hon. Member for Ayre, to move the clauses.

Mr Teare: Thank you, Mr Speaker.

Part 1 of the Summary Jurisdiction and Miscellaneous Amendments Bill 2013 – that is to say, clauses 1 to 3 – is introductory. Clauses 1 to 3 provide for the Bill's short title and commencement. Except for clauses 1 and 2, which will come into force when passed, commencement would require an Appointed Day Order to be made by the Treasury. Once all of its provisions have come into operation, it will then expire.

Mr Speaker, I beg to move that part 1 – that is clauses 1, 2 and 3 – do stand part of this Bill, sir.

The Speaker: Mr Watterson.

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

The Speaker: I put the question 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.

Clause 4.

Mr Teare: Thank you, Mr Speaker.

Part 2 of the Bill – that is to say, clauses 4 to 9 – amends the Summary Jurisdiction Act 1989.

Clause 4 introduces the amendments which are to be made by clauses 5 to 9 of the Bill to the Summary Jurisdiction Act 1989 – 'the Act'.

Mr Speaker, clauses 5 and 6 can be conveniently referred to as the 'pleas before venue' clauses and I would ask that they be considered together. I would then suggest that clauses 7 and 8 are taken separately, and that clauses 4 and 9 are taken together, before proceeding with the remainder of the clauses, sir.

Turning now to clauses 5 and 6, clause 5 inserts into the Act new sections 15A to 15C to allow a plea to be made in the summary court to be accepted in the Court of General Gaol without the need for a separate hearing. Section 15A applies in relation to adult defendants who appear in person; section 15B applies in relation to an adult who does not appear because of disorderly conduct before the court, but who is represented by an advocate; section 15C allows the summary court to adjourn proceedings commenced under 15A or 15B and to remand the accused if they are present until the proceedings are resumed.

Clause 6 amends section 17 of the Act to allow the court of summary jurisdiction to accept an indication that a person will plead guilty at the Court of General Gaol Delivery and for the Court of General Gaol to proceed direct to sentencing on that basis.

The clause also provides that a case heard in the summary court, or where the summary court has accepted jurisdiction, may be committed to the Court of General Gaol for sentence.

Mr Speaker, I beg to move that clauses 5 and 6 stand part of this Bill, sir.

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

The Speaker: Just for clarity, can I ask you to confirm that you have moved clauses 4 and 9, which you wish to be taken together?

Mr Teare: No, I am taking clauses 4 and 9 later on in this Bill, sir –

The Speaker: So at this stage it is clauses 5 and 6.

Mr Teare: Clauses 5 and 6, sir. I apologise for any confusion... That is it.

The Speaker: I put the question that clauses 5 and 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Teare.

Mr Teare: Thank you, sir.

Clause 7 relates to attachment of earnings orders and deductions from benefits. It substitutes two clauses for existing sections 93 and 94, and inserts a further seven sections, 94A to 94G.

Section 93 restates the powers of the Chief Registrar where a periodical payments order has been made by any court and payment is required to be made to the Chief Registrar, to proceed with a claim for recovery of arrears on behalf of a person to whom payment is due, where that person so requests, and provides that any costs incurred will fall on that person.

Section 94 restates the power of a court of summary jurisdiction to grant execution orders and clarifies under which legislative frameworks such execution orders may be enforced.

Section 94A allows a court of summary jurisdiction to make an attachment of earnings order or an application for benefit deductions, whether or not an execution order has been granted. This would occur when the person liable to pay a fine or similar sum consents to this being made, or where the person does not consent but the court thinks that it is in the interests of justice to make such an order. This provision will also allow the court to include in any such order or application any amount outstanding in respect of any sum previously adjudged to be paid by conviction or order of any court in the Island on or after commencement of section 94A.

The court will also have power to postpone the taking effect of such an order or application and in such case the Chief Registrar will be empowered to direct that it will take effect in the event that the paying party misses a payment.

If the court makes an attachment of earnings order, it is not prevented from making an application for benefits deduction on another occasion against the same person and in respect of the same sum, if the circumstances so permit. The court also, under section 94A(9) has power to vary, suspend or revoke an order or application or substitute an alternative sentence or method of enforcement. These powers may be exercised by a single justice or magistrate, unless this entails issuing a warrant committing the person to custody. By section 94A(10) that power is not exercisable by a single justice.

Section 94B sets out the duties of an employer under an attachment of earnings order. It requires an employer to make the deduction and to account for it to the Chief Registrar. The employer can keep a sum, to be specified in rules of court, towards the cost of clerical and administrative expenses. The employer must also immediately inform the Chief Registrar if the employee to whom the order relates ceases to be employed by the employer.

Section 94C provides the power for the court of summary jurisdiction to require the person liable to pay the sum in question, or their employer, to provide details of the employer and the earnings of that person. The powers of the court under this section may be exercised by the Chief Registrar.

Section 94D creates offences in connection with 94B and/or 94C. Such offences are triable summarily and the maximum penalty is £5,000.

Section 94E details the procedure to be followed in making an application for deductions from benefit and providing the Department of Social Care with power to make regulations concerning the benefits from which sums can be deducted, the circumstances and manner and time at which such deductions may be made, and as to the prioritisation of deductions where these are being made at source. It creates offences around the provision of the prescribed information and the offences are triable summarily with maximum penalty of £5,000.

By virtue of 94E(10), regulations made by the Department of Social Care will require Tynwald approval before they come into effect.

Section 94F allows the Chief Registrar to apply for specified information from the Treasury or the Department of Social Care in order to permit consideration of whether it is practical or appropriate for the court to make an attachment of earnings order or an application for deduction from benefits under 94A. The Chief Registrar may also apply for a court order directing the Police or other bodies to provide details as to a person's whereabouts or address. It creates offences in relation to the unauthorised disclosure of information so obtained, and certain statutory defences. The offences are triable summarily and the maximum penalty is £5,000.

Section 94F(9) also expressly provides that nothing in section 94F authorises the making of a disclosure that contravenes the Data Protection Act 2002.

Section 94G gives the power to make rules of court in relation to attachment of earnings orders and applications for benefit deductions and the variation of attachment of earnings orders and applications for benefit deductions orders. Such rules may also make provision as regards the prioritisation of deductions in the case of attachment of earnings orders, where other deductions are being made at source, and specifying the administrative costs that an employer may deduct.

Mr Speaker, I beg to move that clause 7 stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: Any Member wish to speak? In that case, I put the question 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 Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 8 inserts new section 101A into the Act and provides for a publicly accessible Fines etc Register to be set up and maintained. 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.

This Register may be maintained by a body corporate such as the Registry's trust, which operates similar registers for other jurisdictions.

Mr Speaker, I beg to move that clause 8 stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Just to enquire from the Treasury Minister regarding the Register: I am not quite sure whether I asked this once before, whether it would be easier to do it electronically, and therefore it would be easier to administrate, if it was done electronically, than having a manual system and then people walking in to Registry to find out these things.

The Speaker: Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

Just clarity on section 101A(4) where it says that any surplus is to be paid to the General Revenue of the Island. I am assuming that it is expected that there is going to be a surplus, but what would happen in the case where it actually made a loss because of lack of fines or cost of administration?

The Speaker: Mr Teare to reply.

Mr Teare: If I could take the question from the Hon. Member for Onchan, Mr Quirk, first. Yes, the intention is that this will be available electronically, as is the case through the Registries Trust in the UK and also through credit reference agencies, who would have access to this file as well.

The Hon. Member for Douglas South, Mrs Beecroft, asked about any surplus funds. Yes, there is no change, really, with what happens at the moment. The fines collected do go into the General Revenue of the Isle of Man. The rules of court will prescribe the fees and charges which can be levied for an employer who deducts the instalments in respect of an attachment of earnings order and this will have to be proportionate to the amounts collected.

What we are trying to do through this is to ensure that the law is properly enforced and that the sanctions are properly enforced as well, because without adequate sanctions, then there is no imperative for people to comply with the law.

So with that, Mr Speaker, I beg to move the clause.

The Speaker: I put the question that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clauses 4 and 9.

Mr Teare: Thank you, sir.

Turning to clause 4, clause 4 introduces the amendments which are to be made by clauses 5 to 9 of the Bill to the Summary Jurisdiction Act 1989.

Clause 9 amends section 114 of the Act – definitions – by inserting new definitions required in relation to other new provisions inserted into the Act by this Bill.

Mr Speaker, I beg to move that clauses 4 and 9 do stand part of the Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the motion that clauses 4 and 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 Teare, please.

Mr Teare: Clause 10 is part of part 3, Mr Speaker, which makes miscellaneous amendments.

Clause 10 amends the High Court Act 1991 by deleting the requirement contained in section 3A(5) for the Judge of Appeal to be an English barrister and Queen's Counsel. It should be noted that this clause only relates to the specific appointment of the Judge of Appeal and does not affect in any way the selection and appointment of additional Deemsters.

Clause 10 also inserts a new provision in section 58 – definitions and interpretation – so as to provide, in new subsection (1A), that where the High Court Act 1991 refers to 'the Deemsters', a particular statutory expression which means the First Deemster and the Second Deemster acting jointly – see section 3 of the Interpretation Act 1976 – this expression means the First Deemster only, where the Second Deemster is unavailable or the office of Second Deemster is vacant.

Mr Speaker, I beg to move that clause 10 do stand part of the Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the motion that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11, please.

Mr Teare: Thank you, Mr Speaker.

Clause 11 is a tidying-up exercise to move the fines provisions of section 27(1) of the Criminal Law Act 1981 into the Criminal Jurisdiction Act 1993, where it sits more readily. Accordingly, these provisions will now be contained in a new section 28A of the 1993 Act.

Mr Speaker, I beg to move that clause 11 stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

Subsection (2) of that, the very last line, says:

'...or must remit the whole term...'

I do not quite understand that. I am probably being a bit thick with the whole clause there, but I just do not understand how you can remit the whole term. Is it correct, that line?

The Speaker: Reply, sir.

Mr Teare: If you do not mind, sir, with your concurrence, I will come back to that at the Third Reading stage, if I may.

The Speaker: By all means. I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Teare: Thank you, Mr Speaker.

Clause 12 amends the Licensing Act 1995. It extends the list of offences under the Criminal Code 1872 in respect of which the court may ban offenders from licensed premises or from purchasing alcohol for a period of up to five years.

As so amended, the relevant provisions of section 33 of the Licensing Act 1995 will extend to all or any of

the offences against the person which are contained in sections 18 to 60 of the Criminal Code 1872.

It amends section 75 of the Licensing Act 1995, which confers power on a court to make a banning order for up to five years – i.e. banning a person from purchasing alcohol or entering on-licensed premises – upon conviction for certain offences of public drunkenness, so as to enable a further ban to be made upon a conviction under subsection (6) for breach of a banning order made under this section.

It provides for a banning order to be made by a court for any other offence in which the consumption of alcohol was either a significant factor leading to the offence, a constituent part of behaviour constituting the offence, or an aggravating feature of the offence.

It also enables the Department of Home Affairs to prescribe by order other offences for which a court can make a banning order.

Mr Speaker, I move that clause 12 do stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13, please.

Mr Teare: Thank you, Mr Speaker.

Clause 13 repeals three other provisions: section 27 of the Criminal Law Act 1981, relating to fines – 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; and the Road Traffic Act 1985, schedule 6, part 1, in the entry in the table relating to schedule 2, paragraph 1(5), in column 8, the words ‘Court must order forfeiture of the mobile telephone unless it finds special reasons not to do so’, since in practice there is no way of enforcing this several months after the offence was committed, given there is no power for the person reporting the offence to seize the actual phone in use at the time – for a number of legal and practical reasons, therefore, it is not possible in law for the court to make such an order.

Mr Speaker, I beg to move that clause 13 do stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the question that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until the next sitting, to take place at 10 o’clock on Tuesday, 14th May in this Chamber.