

Criminal Justice, Police Powers and Other Amendments Bill 2013
Second Reading approved

4.1. Mr Watterson to move:

That the Criminal Justice, Police Powers and Other Amendments Bill 2013 be read a second time.

The Speaker: Bill for Second Reading: Criminal Justice, Police Powers and Other Amendments Bill 2013. I call on the mover Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Mr Speaker, in moving the Second Reading of the Criminal Justice, Police Powers and Other Amendments Bill 2013, I do not intend to go into much detail about the individual provision because these will be covered during the clauses stage. Instead, I intend to explain in broad summary form what the Bill does, along with why and how this Bill is different from the previous Bill that included these matters.

Mr Speaker, in principle, this Bill has two key objectives: firstly, to secure the efficiency, effectiveness and good conduct of officers in the Isle of Man Constabulary, in the exercise of their duties in the 21st century; secondly, to empower the Constabulary to effectively investigate serious organised crime, both locally and where that crime crosses our borders.

The second objective is important for our international reputation as, if we are unable, for legal reasons, to assist other jurisdictions effectively to investigate crime that crosses jurisdictions, we may be accused of being a secretive or unco-operative jurisdiction.

I hope you will forgive the brief history lesson relating to this Bill, but it is important when debating the principles within it, to understand the process whereby this Bill got before the House today.

The previous Bill, which I and many here opposed, was moved by my predecessor Mr Earnshaw. There are two principal concerns. The previous Bill covered a lot of areas, cutting across 25 Acts, making tracking the provisions very difficult. That is why this Bill deals with fewer concepts and deals with eight Acts. The second concern was that the new powers to be given to the Police were not proportionate to the responsibilities. A lot of work has been done to ensure that powers given to the Police are both necessary and proportionate.

In preparing this Bill, we have cut out the following provisions regarding amendments to the Criminal Code 1872, obscene publications, forgery, offensive weapons, road traffic, consumer protection, custody, the moving on of groups of 10 or more persons suspected of causing harassment, and fireworks.

We have also cut the following provisions as they raise significant issues of public policy, which need greater and separate consideration, such as test purchases by under-aged persons, sexual offences, licensing and public order. This Bill is therefore smaller, more focused and relates directly to Police operational powers.

After red-penning those matters just mentioned, I decided that we needed a fresh consultation on the provisions. This was undertaken over a period of 10 weeks, not six. The Police Consultative Forum held four local meetings around the Island and fed back to the Department. I personally gave a presentation to the Positive Action Group and have personally responded in writing to each letter or email submitted in response to the consultation, and considered every issue raised.

The main elements of this Bill deal with bail, search warrants, search and sift powers, powers of arrest, the treatment of persons under the age of 18 and the powers to make regulations governing police activity. Other matters covered by the Bill include powers relating to drug offenders, the audio and visual recording of interviews, and the taking of photographs, samples and fingerprints.

In response to consultation, we have either significantly amended provisions, introduced safeguards or fully reconsidered the following areas: bail, search warrants, serious offences committed by children, and the return of missing children.

It was previously proposed to make breach of a conditional bail a criminal offence. Having listened to consultees, the proposal has been removed from the Bill, and the power to order forfeiture of bail money has been extended from the current securing surrender to custody, to additionally securing adherence to any condition of bail.

Search warrants have to be applied for to a judicial authority and where the warrant authorises multiple entry the subsequent entries must be in accordance with the terms of the warrant and additionally authorised by a person of at least the rank of Inspector.

In relation to serious offences committed by children, I decided that instead of determining offences for which children will be required to assist the Police by order, the legislation should be set out in the Bill and follow the existing law as set out in the Children and Young Person's Act 2001.

In relation to missing children, the term 'arrest' has been removed and the Police are now simply in power to lawfully return a child, who has been reported missing, to the adult responsible for their welfare. Also reflecting public concerns, the provision makes it clear that if there is any concern about a child's welfare, the existing power to take a child under Police protection may be exercised.

It may be asked why a Bill that is concerned with Police powers and the efficiency, effectiveness and... of the Police, deals with issues relating to bail and children. This is because a considerable amount of Police time is consumed in dealing with bail and locating and returning children reported missing.

In relation to bail, it has been the case that up to one in 12 arrests made by the Police have been in relation to those who have breached one or more of their conditions of bail. The time taken in handling cases of breach of bail conditions is disproportionate and a waste of Police time and resources. The changes in this Bill relating to the forfeiture of bail money are designed to reduce the number of breaches of bail and hence the number of arrests. The other provisions relating to bail are concerned with efficiencies and will be expanded upon when the relevant clauses are moved.

In relation to children, a considerable amount of Police time is also taken up locating and returning children reported missing. What the Police seek here is the legal authority to return a child once that child has been located.

Mr Speaker, the purpose of this legislation is to take forward measures which improve the conduct, efficiency and effectiveness of the work undertaken by the Police. In preparing the Bill, we have restricted its scope to the most serious and pressing needs, and as a result of taking on board the views of the previous House, the Committee on the Bill and the concerns I myself have about this Bill, I feel that the product you see today is now fit for purpose in balancing powers with responsibilities. In addition, this Bill serves to bring forward measures, which seek to maintain and develop the Island's reputation as a responsible, well-regulated and fully open and co-operative jurisdiction in international arena, a jurisdiction that is open for business.

Mr Speaker, I beg to move that the Second Reading of the Criminal Justice, Police Powers and other Amendments Bill 2013 be approved.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

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

Mr Houghton: Thank you, Mr Speaker.

Mr Speaker, just a few points that I see are fair and reasonable that are in this particular Bill. First, those issues that the Minister has mentioned in relation to children – changing the issues of bail and the competency towards that – and restricting the scope of the last Bill is all very much welcomed.

There is a lot of good information and changes, and welcome changes in the Bill, but I do have some concerns in some other areas that I would just like to put on *Hansard*, although I have made these clear to the Minister at the presentation that he gave last week.

For instance, and I was actually hoping for the Minister to make clear in the issue of his arrangement for bail, taking cognisance of what was said at the presentation, I would have thought the Minister would have put a little bit more detail in his opening speech, in order to reassure Members in relation to the issue of arresting people on the street and then bailing them on the street because that point was not made clear at the presentation.

So if I make it clear, what I am saying is there is this street bailing that the Bill brings forward, but the way the Bill is written, and I have been through it again, I cannot understand – and I am not stupid – but I cannot understand for a moment where and why and what is the point of bailing someone on the street is, and it is not clear whether that person who has been bailed, has actually been arrested in the first place. This is very, very serious, Mr Speaker, and if I may just point out how the procedure currently works in respect of bail.

For somebody to be bailed, first they have to be arrested, taken to Police Headquarters and processed, and there is a number of issues to do with processing. At Police Headquarters, they have to establish the identity of that person, they have to take DNA swabs and tests etc. There are a number of issues that they have to go through there. Then, dealing with whatever the issue is, if they are satisfied that that person can leave the police station, they then bail him and it is known as police station bail.

Police station bail cannot really have any conditions attached to it; only court bail has conditions attached to it. So they have got to be satisfied that that person can be released from Police custody and re-attend the police station at a later time. There are other means for people who they do not need to hold in custody but they can release, those are sureties and recognisance for bail. So that is the position as far as that is concerned.

There are, just for clarity, two other issues to do with bail where the Police can charge you, then bail you to a court, and then when you are at court, the court can release you on bail and you see this an awful lot, where the court releases a defendant on bail and puts conditions on that defendant, and if the defendant does not stick with the conditions then they are placed in custody, that is the usual routine. So, bail follows an arrest.

What I am not clear about in this Bill is, are you looking at a new form of bail – of bailing someone who you are not going to arrest? That is a very, very important question that has not been answered in my mind at this particular point in time.

Bail is a fundamental way of controlling people who are brought to the Police Station as prisoners and when they return back to answer their bail at that Police Station they are then automatically back under arrest and that is how it goes.

Further to that, I have concerns, I have had long-held concerns that I have consulted with senior officers at the Isle of Man Constabulary, in relation to the abuse, in my opinion, on many occasions on police station bail.

What happens is Joe Soap gets arrested for something, whatever it is, is taken to the station, processed, police station bailed and issued a piece of paper to return in two weeks' time or whatever. It is not as vague as that – it is 'you will return to the police station at 4pm on 21st July. If you fail to show up we will come out to you and you will be arrested'... okay, which is fair and reasonable. So Joe Soap turns up on 21st July, only to be release bailed again. 'We are making more enquiries', when it is well known that there are no enquiries being made, nobody has got around to doing anything. That is my big concern about Police work, as far as people are bailed...

So they are re-Station bailed for another two to three weeks, a month. They come back a month later. They are bailed again. And again and again and again. The best one I have known of someone who was police station bailed – quite a serious offence, but still police station bailed –

was for somewhere in the region of 14-15 months, which was wholly inappropriate, because if it was a very serious offence you would be in custody. So it could not have been as serious as one where you would automatically hold somebody in custody rather than give them bail, on a police station bail.

I know full well investigations in this particular case had not been made, the work had not been done because the officer is under pressure running from here to there and everywhere, and the file had not been completed, or consideration as to whether to release that particular person or move them on and charge them and have them put before the court.

What I am asking, also, is if the Minister would give due cognisance to the case of police station bail, that a limit be put on and that would need an amendment to this Bill, which I would be quite pleased to move but I want to work with the Minister, rather than against him and gain his support on this. As I say, I have at the presentation said to him that I will meet with him during the summer, before this goes to clauses stage, in order to hammer out one or two of these points.

These are points of serious principle but I feel, I strongly, strongly feel, in the public interest that there should be a limitation on the length of bail, so, for instance, as soon as you have been arrested the clock starts. You are either, within four months or six months, and I cannot decide at this particular point, and I want to further consult, but let's just assume the law says if this amendment is put into this Bill and then active later, that you had four months to police station bail a suspect or you released him, or charged him, within that period of time. Now I see that as only fair because if you have done a wrong, you should be dealt with and processed. If you have not – and I have to say that many people who are on police station bail have not committed an offence – they are entirely innocent, and later, many months later, they have been released from their bail when they have answered it. They have been released, or they have got a note posted through their letterbox to say 'you no longer have to answer this police station bail, you are released from that requirement'. If there is a time limit set on the period of police station bail, that will concentrate minds and I think that will be in accordance with natural justice. So that is my point on bail.

Mr Speaker, in respect of arrestable offences, and I have major concerns about this, the word 'arrestable' in this case, when we are talking about arrestable offences, is quite confusing because there are arrestable offences and there are offences where there is a power of arrest.

An arrestable offence is an offence – usually the serious offences, top-end serious offences – which would attract a minimum of five years' custody. Those offences are one where there is no time limit on the time required to arrest an individual – it could be 20 years later, as we know with many offences going before the courts these days. Those are very serious offences and those offences have not been interfered with in the Bill.

But can I say, the way that those arrestable offences are being treated as 'capturing', for want of a better word – an arrestable offence or one with the power of arrest – seems to be being downgraded by this Bill. I understand, though I am not quite sure... whether there is a view to this in the United Kingdom also. I see that as a retrograde step.

The word is a bit confusing because, like I say, there are the arrestable offences which are known as those serious ones, with a minimum of five years' custody, or there are offences where there is a power of arrest, which are not known as arrestable offences. So that is a confusion and perhaps a better word, or terminology, needs to be put in place.

But the Bill is appearing to downgrade what an arrestable offence is. I feel that is a retrograde step and I would ask the Minister to review it because it does not have any meaning to the offences themselves because the Bill does not interfere with the offences, just the status of what an offence is. So I just do not understand that and I do not understand why we are attacking that in that particular area.

Moving on, Mr Speaker, to... finally moving on, to those of search warrants. There is an awful lot of information in this Bill, lots of changes where we are dealing with search warrants, and I would welcome those

because of course in some cases they do have to be updated and modernised as to how a police officer must go with another professional type person to search a property etc. That needs to be enshrined in law.

I do have quite serious concerns as to the issuing of warrants for the more serious offences. Warrants, Mr Speaker, can be obtained for searching properties from the judiciary and of course the judiciary begins with magistrates, who are lay people. Fairly often a magistrate can be called upon to obtain a search warrant anytime – during 24 hours a day.

This is an addition under the Police Powers and Procedures Act where search warrants can be issued on usually the arrest of an individual straight away, to search a property to save somebody moving any goods or valuables, stolen items, etc on to another address. That operates under the Police Powers and Procedures in respect of the Police ability to issue search warrants. These search warrants are usually for offences where the Police require to go and search one or a number of premises, and not necessarily when they have actually got them in Police Headquarters under arrest.

Going back to the issue of search warrants, the Bill does not cover or it does not differentiate, if I may say, the difference between the magnitude of the judiciary obtaining those search warrants and it is a very, very serious matter.

So if, for instance, and I could tell you a number of stories of the judiciary but my knowledge in the past, and it has not altered, the situation has not altered, but the senior judiciary – and I mean the likes of the High Bailiff and above – they are obviously seasoned law men and they ask the Police, who come to them for search warrants, some very searching questions. And they have to be satisfied in their own mind that that warrant is worthy of being issued for the reasons that they have obtained from the police officer before they sign the actual warrant. Whereas a magistrate, I do not feel, should be put under that sort of pressure – it could be a late time of the evening or whatever – for the more serious offences.

If that magistrate is contacted for less serious matters where they require a search warrant, then I have no problem at all. But the more serious ones, as against the less serious ones, I would like to see a differentiation in between the two of those. I am willing to speak to the Minister on that and an amendment just to deal with that.

Because everything now, Mr Speaker, as you know and as we all know, has to be fair, equitable and transparent, and for search warrants to search banking premises, insurance premises and finance sector areas and things like that, and I am sure are most usually done, because someone has used their discretion and said ‘now that is a serious matter, let’s get that from the High Bailiff or the Deemster... to issue that particular warrant’. But I would like to actually see it in transparency, actually in a point of law. And I do not think any Hon. Member in this House here would deny that particular point of view.

I feel, Mr Speaker, those are the main issues that I see with the Bill. I am going to give the Bill its Second Reading because I do have a very high regard for the integrity of the Minister who has worked jolly hard about these matters.

I am sure that we can come to some answers, because that is what politics is – the art of the impossible, as we know, Mr Speaker – and I am willing... because this is legislation, I am willing to give it my time during the summer period, to work with the Department to see if we can come up with an appropriate amendment in order to make this legislation better, a higher standard and higher in integrity. I am sure the Minister will support me on those.

I thank you, Mr Speaker.

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

Mr Hall: Thank you, Mr Speaker.

Just to add to the comments from the Hon. Member for North Douglas, Mr Houghton. As, Mr Houghton has said, I think there is a lot of good work gone into this but I would just like to add some comments on the Second Reading. I will give it my support.

When we are talking about arrest, we are talking about removing somebody’s complete freedom of movement, which is a serious matter. Looking through the explanatory memorandum, one of the issues I would like to just put on record here, and just to have some comment from the Minister, is that when we are talking about changing the law in anyway, usually it is for a very good reason that it is either defective in some way or it is not working. What I would like to know is, I have not seen the evidence that the law needs to be clarified or the current law is not working.

In the explanatory memorandum, in number 37, it talks about the powers of arrest, saying that the changes reflect the fact that there is no criminal offence for which somehow a person may think they cannot be arrested. But I am not sure whether this is really a valid reason if we look at the words ‘may think’ that could be rather speculative.

Where is the evidence that anyone does think that he or she cannot be arrested? So in any event, does the law have to be altered simply because somebody may have a misconception of it? I would be interested to know what Minister has to say about that. It seems to be somewhat a little bit fragile on that issue.

The other matter when we are talking about obviously the powers of arrest and what is being proposed, is the necessity test and the changes that surround that. One of the things that is in the Bill, we were talking about the provision of an address being satisfactory for service. Under the current law, there is a definition of what 'satisfactory' could include. It would not necessarily have to be the address of the accused. It could belong to a third party, a family member or otherwise. But my understanding is that will no longer apply and then that could then result in an arrest, removing somebody's total freedom of movement. It would make an arrest more likely, I would have thought. So, that could be potentially quite a serious implication and I would be interested to know what the Minister has to say about that.

Then in the Bill, another area which does concern me somewhat, in the new provisions, is that when we are talking about the, again, arrests without warrants, we are looking at... it seems somewhat vague, and it would be easy to establish in clause 27, because an arrest can be made without a warrant, to allow the prompt and effective investigation of the offence or of the conduct of the person in question.

Looking at that particular statement there in itself, I think there would be perhaps few circumstances where you could say that the wording would not satisfy the necessity test. Especially, when we are looking at the prompt and effective investigation that could really apply to more or less everything... and again, could be leading to, again, increasing the likelihood of an arrest. So that is another area I think that probably just needs to be looked at once again, and I am quite happy to – again, echoing what Mr Houghton said – work with the Minister on this over the coming months to iron out these issues.

I am pleased and I made representations to the Minister about the bail issue, which he has addressed and I do thank him for that. I have raised some additional points, which I have asked to be reviewed, with the review by senior officers of the bail conditions under what actually in terms of a custody officer... in the UK, it is specifically defined as being a police officer not below the rank of sergeant. Obviously, it does mention custody officer throughout the Bill. What actually is the definition in the law here of the custody officer? Is it the same as the UK, that it is a police officer not below the rank of a sergeant? Because it seems to be implied to me through some discussions I have had with the Department that a custody officer can also mean that of the rank of a constable, as well as a sergeant. That being the case makes one of the clauses read somewhat a bit odd, in my view. So it would be interesting to see what that clarification is.

So there are just a few additional points. But I do look forward to working with the Minister over the coming months on this particular Bill.

Thank you, Mr Speaker.

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

Mr Watterson: Thank you very much, Mr Speaker, and thank you to both of the Members who have spoken on this and thank you also to them for their consideration in raising these matters with me in advance as well as here on the floor of the House today.

Obviously, it would make life easier for Ministers if Members engaged at an early stage of the consultation process, but I accept that the way that things work and that people's time tables do not always allow that to happen.

Taking the points in turn, Mr Houghton about bail and street bail, the purpose is to allow the Police to require a person to attend a police station on a future occasion. The thought behind this is that we may have capacity issues at Police Headquarters, we do not want to be keeping people in cells unnecessarily if we do not have the happy ability to question them straight away. So the idea is that they are required to come back on a future occasion. That is the thinking behind it. Mr Houghton has raised some technical points within that, that we will work with him on over the summer.

The abuse of police station bail, or the potential abuse of police station bail, in terms of the length of time that people are on police station bail, this was a new issue when the Hon. Member raised this with me a week or so ago. It is something that I have given an undertaking to look into, it was not the purpose of this Bill to deal with any issues there but now that the Hon. Member has identified them, if we have the time and the ability to solve that over the summer and look to see if there are any further safeguards required, again, I am happy to do that with him.

I would perhaps take a little issue with the Hon. Member that there seems to be this downgrading of arrestable offences. The change in terminology, there certainly is, but I do not see this as a downgrading and in fact the change to what happens at the coalface on the street is not going to be significant. The changes, as indeed were raised by Mr Hall, arise out of the fourth report on the Joint Committee on Human Rights, and I am happy to go through the logic that has led from that report through to the legislative change with the Hon. Members over the summer.

In terms of warrants and the seniority of the judge issuing a warrant, especially a multi-premises warrant, I am happy to look at this because the reason for multi-premises is for more complicated or serious offences. So the requirement of having either a Deemster, or the High Bailiff or Deputy High Bailiff, issuing a warrant of that

nature, I think is a valid point to make, as opposed to a lay magistrate and we will look at that again with the Hon. Members over the summer.

Mr Hall's points about the evidence of the law not working, that refers back to the necessity test and the points that I made around the fourth report on human rights. When this was first written, I cannot remember how far back this law goes in the UK, but it was a case of 'here is an arrestable offence and now I have the power to arrest you', but there was not really the requirement to justify that arrest rather than report for summons. This changes the wording to reflect the actual practice now that there has to be in order to safeguard a person's human rights – a compelling case to say why the person needs to be detained.

Mr Hall also raised the concerns because a person might not have a permanent address. They may, by virtue of that, feel that there is then a power to arrest. I do not think that would be sufficient cause in itself to say that 'yes, I have to arrest you just because you are living between two or three addresses'. I do not think that would be sufficient to pass the necessity test. But again I am happy to make sure that we have got our wording right on all of these points over the summer.

The prompt and effective investigation point that the Hon. Member made, this is the same wording that is in the Police Powers and Procedures Act 1998. It is just a straight translation of that so there no actual change there in the powers that are required.

Finally, in terms of the point that the Hon. Member for Onchan made about appeal of bail, the conditions of bail made at the Police Station, the wording around the use of a more senior officer, the intention is of course that if you go in and you are given Police bail conditions that you are not happy with, you can appeal to a more senior officer. When we talk about more senior officers, of course if the person booking you in is a Constable, then that would be a Sergeant. But the intention is that the appeal would be to a senior Police Officer so, again, I am happy to work with you to ensure that we have got the wording right, to make sure that it is an officer of the level of Inspector or above, and make sure we get that clarified.

I have to apologise that given that these were raised about a week or so ago at the presentation to Members... I have not had the opportunity because of other time commitments, to get into these and really dig down and provide detailed answers today. But I hope that with the commitments that I have provided to the Hon. Members to work with them over the coming weeks, to provide answers to their questions and remaining, as I have been throughout this Bill, open-minded to change if it is not right and it needs changing, that I will work with them to achieve that.

With that, Mr Speaker, I am thanking Hon. Members for their patience with the length of my response. I beg to move.

The Speaker: Hon. Members I put the motion that the Criminal Justice, Police Powers and Other Amendments Bill 2013 be read for the second time. Those in favour, please say aye; against, no.

The ayes have it. The ayes have it.