

6.1 Criminal Justice, Police Powers and Other Amendments Bill 2013

The Speaker: We turn now to Item 6, Bill for consideration of clauses, and we are dealing with the Criminal Justice, Police Powers and Other Amendments Bill. I understand from the mover that he wishes clauses to be moved and debated in groups and, at my discretion, taken individually or in groups.

I call, therefore, on the mover, the Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Thank you for your indulgence, Mr Speaker.

Part 1 of the Bill is introductory and I would like to take a vote on clauses 1, 2 and 3 together, with your discretion.

Clause 1 gives the short title of the Bill as the Criminal Justice, Police Powers and Other Amendments Bill 2013.

Clause 2 provides that the Bill will be brought into operation by an Appointed Day Order.

Clause 3 provides that the Act expires, in effect, once the last provision contained within it is brought into operation.

Mr Speaker, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 1, clause 2 and clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 4.

Mr Watterson: Mr Speaker, part 2 of the Bill consists of clauses 4 to 11, which all relate to bail through amendments to the Bail Act 1952. I would like to propose these clauses and have them taken together.

At present there is provision to enable the taking of money from a person released on bail to ensure they return to a court at the time, date and place stated. The purpose of these amendments is so that money can be taken as security to ensure a person who was released on bail complies with all the terms of their bail.

Clause 4 therefore introduces the amendment set out in clauses 5 to 11, which if you are content for me to...? Thank you.

Clauses 5 and 6 delete the same words from both sections 2 and 3 of the Bail Act 1952. These sections currently provide for a person to be released on bail by recognisance – that means bail with the proviso that the person surrenders to a court at the time, date and place stated. These deletions pave the way for the main changes in clauses 7 to 11.

Clause 7 substitutes the current provision in section 3A and provides a new term for conditions of bail – these are called recognisance conditions. This new power to impose conditions restates those previously in place and additionally inserts the power to impose conditions to ensure the person makes him or herself available for appearances for hearings at any time during the proceedings and to ensure the person does not leave the Island. In addition, these recognisance conditions may now be imposed or varied at any time during proceedings.

Clause 8 repeals section 4 of the Bail Act. This section is repealed because it is covered by the previous clause.

Clause 9 deletes the words ‘with or without sureties’ because bail is now about entering into a conditional obligation called recognisance, which is subject to conditions, including the taking of surety.

Clause 10 is repealed because the subject of bail on arrest is dealt with in clause 11 through substitution of section 15 of the Bail Act.

Finally, clause 11 substitutes section 15 and inserts four new sections that are pivotal to the changes to bail. They provide for forfeiture, in whole or in part, of bail money where any or all of the recognisance conditions are breached.

Substituted section 15 restates the power to arrest a person who breaches any condition of their bail and sets out how and when they are to be brought before a court for breaching bail.

New section 15A sets out a court's options in the event that someone is brought before it for breaching any of the conditions of bail. Previously, forfeiture might be ordered only if a person had failed to surrender to custody. In this new provision, a court must order forfeiture unless it can find reasons not to do so. If a court does find reasons not to order forfeiture for breach of bail, it must give those reasons. The court may do a number of things in relation to the person, including readmitting them to bail on the same conditions, changing those conditions or remanding the person to custody.

New section 15B gives more detail about the procedure for forfeiture of bail money and provides the court with the option of finding that the person had a reasonable excuse for breaching a condition of bail.

New section 15C defines 'bail by recognisance', 'bail condition' and 'recognisance condition'.

Mr Speaker, I beg to move that part 2 of the Bill, comprising clauses 4 to 11 inclusive, do stand part of the Bill.

The Speaker: Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I am quite happy to second, while I am on my feet, for clauses 4 to 11.

May I just ask the Minister: once the Department has got to that stage of the drafting of the documentation on the changes of the recognisance conditions, including the surety conditions, would he circulate those changed forms for the interest of Members?

The Speaker: Mover to reply.

Mr Watterson: Thank you, Mr Speaker.

With regard to that, Mr Speaker, yes, I am happy to accommodate the Hon. Member for this and I am grateful to him and Mr Hall, throughout the summer, for working with me on this Bill and some of the amendments that are coming up later on. But I am certainly happy to share the appropriate paperwork with him as it comes forward, sir.

The Speaker: If Members are content, I will put the vote on the whole of part 2, clauses 4 to 11. Are Members content?

Members: Agreed.

The Speaker: In that case, I put the motion that part 2, clauses 4 to 11, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, sir.

Mr Watterson: Mr Speaker, this clause repeals section 5 of the Criminal Law Act 1981, which previously provided for the arrest of persons granted bail, as that matter is now covered by new section 15 inserted into the Bail Act.

Mr Speaker, I beg to move that clause 12 do stand part of the Bill.

Mr Karran: I beg to second.

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

Clause 13.

Mr Watterson: Mr Speaker, clause 13 amends the wording of section 83(1) in the Summary Jurisdiction Act 1989 in relation to warrants endorsed for bail by a JP in consequence of the substitution of previous references to sureties.

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

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

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

Clause 14: if the House is content, it is intended that that be moved along with clauses 21, 23, 24 and 25, which are related and dependent upon it. Is the House content to debate clause 14 at that time?

Members: Agreed.

The Speaker: Thank you.

In that case, clause 15, Mr Watterson.

Mr Watterson: Mr Speaker, clause 15 substitutes section 32(1) of the Criminal Jurisdiction Act 1993 in respect of bail pending determination of appeal. In effect, it simply expands the existing provision to permit the appeal division to admit an appellant to bail by recognisance in accordance with the substituted section 3A of the Bail Act 1952.

Mr Speaker, I beg to move that clause 15 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Watterson: Mr Speaker, part 7 of the Bill consists of clauses 16 to 19, which amends the Police Act 1993. Clause 16 introduces clauses 17 to 19 and I beg to move that it stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Watterson: Mr Speaker, clause 17 substitutes the existing powers to make regulations as to the government, discipline, administration and conditions of service of the Police Force in section 8 and inserts additional provision to make regulations in new sections 8A to 8F that are clearer in legal terms specific and enable the Department to make regulations dealing with various policing matters in the 21st century.

New section 8G tidies up the statute book by clarifying what regulations remain extant and sets them out in the new schedule 1A to the Police Act 1993.

The provision also clarifies the legal position in relation to current or past Police regulations and confirms the validity of them and/or the actions taken in accordance with them.

Mr Speaker, I beg to move that clause 17 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 17 do stand part of the Bill. Those in favour... No. We have an amendment. We have an amendment, I beg your pardon, in the name of Mr Quirk to clause 17.

Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Mr Speaker, the new clause is extremely short and I seek leave of the House to move that the new clause be accepted in principle and that it do stand part of the Bill.

The principle of the purpose of the new clause is to correct the reference in section 10 of the Police Act 1993. As a result of clause 17 being accepted and standing part of the Bill, the reference to section 10 of the Act should be now 'section 8B'. If this clause is accepted and stands part of the Bill, then all subsequent clauses are numbered and then renumbered accordingly.

Mr Speaker, I invite the House to accept the insertion of the new clause after clause 17 to the Bill and furthermore move that the new clause do stand part of the Bill. I beg to move.

Mr Watterson: A point of order, Mr Speaker.
This is actually a new clause subsequent to –

The Speaker: Yes.

Mr Watterson: Maybe we could take it as a group, Mr Speaker.

The Speaker: Yes. What I intend to do is revert to the motion on clause 17, as moved by Mr Watterson. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Then a new clause has been moved in principle by Mr Quirk. Do we have a seconder?

Mr Henderson: I beg to second, sir.

The Speaker: I put the motion that the new clause 18 do in principle form part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Quirk, do you wish to move separately that the new clause stand part of the Bill?

Mr Quirk: I do, sir.

The Speaker: Formally?

Mr Quirk: Yes, sir. I beg to move:

Page 25, after line 20, insert —

18 Amendment of section 10

In section 10 for 'section 11' substitute 'section 8B'.

Renumber subsequent clauses and cross references accordingly.

Mr Henderson: I second it, sir.

The Speaker: I put the motion that new clause 18 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 18 as printed on your Green Bill and I call on the mover, Mr Watterson.

Mr Watterson: Mr Speaker, clause 18 repeals section 11 of the Police Act because the making of regulations for police cadets is now covered by new section 8B.

I beg to move that clause 18 as printed in the Green Bill do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 18 as printed in the Bill do stand. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Watterson: Point of order, Mr Speaker.

There is a new clause to be inserted at this point.

Mr Quirk: New clause 18.

Mr Watterson: Amendment 2 on the Order Paper, sir.

The Speaker: One moment, Hon. Member. Sorry, did somebody call a point of order?

We have a new clause on page 8, which is numbered 20 – that is the new clause.

Mr Quirk.

Mr Quirk: Clause 18, sir.

Mr Speaker, as the new clause is also extremely short, I seek the leave of the House to move that the new clause be accepted in principle and that it stands part of the Bill.

The principle of the new clause is to substitute the reference to section 21 of the Police Act 1993. As a result of clause 17 being accepted and standing part of the Bill, the reference in the section to 21, interpretation of the Act, to 'police regulations' should now be at section 8 to 8E, rather than section 8(1). If this clause is accepted and stands part of the Bill, all subsequent clauses will be renumbered accordingly.

Mr Speaker, I invite the House to accept the insertion of the new clause into the Bill and furthermore move that the new clause do stand part of the Bill.

I beg to move:

Page 25, after line 22 (after existing clause 18), insert —

20 Amendment of section 21

In the definition of 'police regulations' in section 21 (interpretation) for 'section 8(1)' substitute 'sections 8 to 8E'.

Renumber subsequent clauses and cross references accordingly.

The Speaker: Is there a seconder?
Mr Henderson.

Mr Henderson: I beg to second.

The Speaker: The new clause having been moved in principle, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mr Quirk to move the new clause 20, that it do stand part of the Bill.

Mr Quirk: I do, sir.

The Speaker: Mr Henderson.

Mr Henderson: I second, sir.

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

We revert back to the Green Bill, page 25, at clause 19. Mr Watterson.

Mr Watterson: Mr Speaker, clause 19 as printed inserts a new schedule 1A into the Police Act, which sets out the regulations to be regarded as continuing in operation as if made under sections 8 to 8D once those... and sections 8F and 8G are brought into operation.

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

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

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

We now take clause 14 as we –

Mr Watterson: Mr Speaker, could I take clause 20 first?

The Speaker: Clause 20.

Mr Watterson: Mr Speaker, part 8 of the Bill comprises clauses 20 to 49, which amend the Police Powers and Procedures Act 1998.

Clause 20 introduces the amendments set out in clauses 21 to 49 and I beg to move that clause 20 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 20 stand as part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We now take clause 14 –

Mr Watterson: Twenty-one –

The Speaker: – and take clauses 21, 23, 24 and 25.
I call on the mover, Mr Watterson.

Mr Watterson: Mr Speaker, clause 14 amends section 22 of the Criminal Justice Act 1990 in relation to search warrants. Subsection (3) sets out the definitions of a specific premises warrant and all premises warrant, and sets out that a judge must be satisfied that certain conditions are met.
Are you content for me to move to this block, sir?

The Speaker: I am content for you to move as a block.

Mr Watterson: Clauses 21, 23, 24 and 25 amend sections 11, 18, 19 and schedule 1 respectively of the Police Powers and Procedures Act 1998 to expand provision for a constable to apply for a judicial person to consider issuing a search warrant.

Clause 14 makes similar provision in respect of section 22 of the Criminal Justice Act 1991. Currently, a warrant may on application be issued for a single entry to a set of premises within the maximum period of one month. The amendments to these clauses enable a warrant to be issued, valid for up to three months, authorising entry to one or more sets of premises either specified or belonging or connected to the person or body under investigation. The scope of the warrant may be expanded further to enable entry to be specified singly or for any number of entries within a specified period. Subsequent entries to the same or additional premises permitted by the terms of the warrant must be authorised in writing by an officer of at least the rank of inspector.

Whilst it is the case that overall crime in the Island, as evidenced by the Annual Reports of the Chief Constable, has declined, it is also the case that the nature of crime has changed. For sure, there is the usual type of crime where a warrant for a single entry to a single set of premises is all that is required; however, the nature of some types of crimes has become more organised and sophisticated – for example, concerning drugs or financial dealings. These may quite often involve other jurisdictions as well and require a swift and co-ordinated investigation. In these kinds of scenarios it is considered necessary to have powers for the judiciary to expand the capacity of search warrants to enable investigators to be swiftly and effectively executed without the person or persons under investigation having an opportunity to move or destroy evidence. Warrants for searches are not, I understand, given lightly and the enhanced capacity of these warrants will be subject to the level of scrutiny deemed appropriate by the judicial person to whom the application is made.

In reference to Mr Houghton's comments at Second Reading, I would like to assure Hon. Members that these forms of warrants are not only scrutinised significantly by the judiciary, but, due to their complexity, are usually dealt with by a senior judicial person – that, to you and me, Mr Speaker, is a Deemster. We have been unable to write this into the body of the Bill as it would unduly restrict the ability to obtain a warrant if only an extremely limited number of people are able to approve it.

Mr Speaker, I beg to move that clauses 14, 21, 23, 24 and 25 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I second and reserve my remarks.

The Speaker: I put the motion that clause 14, 21, 23, 24 and 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 22, Mr Watterson.

Mr Watterson: Mr Speaker, clause 22 inserts new section 11A into the Act and enables the constable applying for a warrant to ask the judge or JP to authorise persons with specific scientific or other technical expertise to accompany the constable. This provision is in addition to the current provision enabling other persons to accompany a constable and enables the constable to have persons with particular expertise who are capable of assisting in the more detailed or technical aspects of a search.

Mr Speaker, I beg to move that clause 22 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks, Mr Speaker.

The Speaker: I put the question that clause 22 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

Mr Watterson: Mr Speaker, clause 26 inserts new sections 26A to 26P and clause 27 inserts new schedules 1A and 1B into the Police Powers and Procedures Act. These provisions give legal clarity to those conducting complex investigations which require material to be extracted during a search under warrant of premises.

The powers sought and introduced by this clause also have application with the expansion of the capacity of search warrants debated under clauses 20 to 25 in relation to the Island's obligations as a responsible jurisdiction to assist other countries and territories in the investigation and apprehension of international crime. What they enable, for example, is the seizure of material that contains evidence sought, but where irrelevant material is inseparable from the relevant. This is important when the relevant material is on a computer or is of a book and the relevant material cannot readily be extracted during the time available for the search on the premises. The provisions enable the material to be removed from the search site to another location for examination or interrogation.

Part 1 of schedule 1A outlines the powers and legislation to which new section 26A applies.

Part 2 outlines the powers and legislation to which section 26B applies.

Part 3 relates to the powers under which section 26F applies.

Schedule 1B applies some enactments and makes some minor and consequential amendments.

Mr Speaker, I beg to move that clauses 26 and 27 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second.

Mr Singer: Mr Speaker.

The Speaker: Hon. Members, one moment.

Do Members wish to speak on clauses 26 and 27? In which case, I shall adjourn, as I indicated earlier, at 12.45 p.m. and we shall resume at 2.30 p.m.

The House stands adjourned.

The House adjourned at 12.45 and resumed its sitting at 2.30 p.m.

**Criminal Justice, Police Powers and Other Amendments Bill 2013 –
Consideration of clauses continued**

The Speaker: Please be seated, Hon. Members.

Hon. Members, before the adjournment we were up to clause 26 of the Criminal Justice, Police Powers and Other Amendments Bill.

Clause 26 had been moved –

Mr Watterson: And, of course, clause 27 had been moved.

The Speaker: – and seconded, and Mr Singer was the first to indicate he wished to speak.

Mr Watterson: Point of order, Mr Speaker.
Clauses 26 *and* 27 have been moved.

The Speaker: And clause 27, yes.

Mr Singer: Thank you, Mr Speaker.

I just wanted to ask the Minister, in regard to the matter of seized property, it says here quite clearly that property that is seized has to be returned. The problems I have come across in the past, more than once, are when property has been seized and then either it has not been able to be returned, because it has been lost or it has been damaged – and I understand that there is no one place where seized property is kept; it can be anywhere... I wonder if that has been rectified, because it does seem to be unfair if the Police seize property and then it cannot be returned when the person is perfectly entitled... to be returned in the condition that they took it, because sometimes they take things to bits and then they just hand back the bits, as I understand it. Perhaps the Minister could respond to that.

The Speaker: Mr Hall.

Mr Hall: Yes, thank you, Mr Speaker.

I would just like to comment, and I have done previously, respecting clause 27(5)(b), which is to do with an address issue. The Minister and I have had many conversations around this particular clause, that I am just a little bit uncomfortable with, and I have already put my concerns on the record at another time in this place.

Essentially, the nuts and bolts of it – in my view, anyway – is that clause 27(5)(b) appears to no longer contain the provisions of an address being satisfactory for service of the summons, as it stands at the moment in the Police Powers and Procedures Act 1998. It is very clear and there is a definition of what ‘satisfactory’ could include, but – and under the present law this address would not have to be that of the accused; it could belong to a third party – it seems, the way that the Bill is reading, that there is the risk that that actually will no longer apply and that could lead to an arrest becoming more likely. That is really the concern that I have, because I think when you do compare the two clauses side by side, one is in the Police Powers and Procedures Act 1998 and is very clear – there is not really much doubt there... but the Bill does come across as being somewhat grey and I am a bit uncomfortable with it, as the Minister well knows.

So I would just be interested to hear his comments with regard to that and whether there is any scope to have a look at this as the Bill moves forward into the Upper House.

Thank you.

The Speaker: The mover to reply.

Mr Watterson: Thank you, Mr Speaker.

Two points there. Firstly, with regard to Mr Singer's point about lost or damaged property, in terms of what the Bill seeks to achieve, I would perhaps just like to say that these powers are freestanding powers and they can only be exercised where a person already has the existing power of seizure.

With regard to the specific matter of lost or damaged property, this is already covered under Police Code B, so there is a Police code that underpins the law about how this should be dealt with. If the Hon. Member has any specific concerns about individual cases, then obviously I would be more than happy to take those through the Police Complaints Process to ensure that these are effectively dealt with, because the idea of this is not to hand back bits of things or have property lost or damaged. So, hopefully there is some assurance there that there is an apparatus below the legislation regarding seized property.

With regard to Mr Hall's comments regarding the service of address, these are something that we have discussed in the past. The legislative drafter has put words into this Bill which the Department was quite happy were clear. However, there are different words in a previous Bill that we have discussed that may be clearer, and it is perhaps a judgement call as to whether it is necessary; but in order to have just one set of words doing the same thing, I am happy to give the Hon. Member the commitment that we will revisit that in Legislative Council with a Department-sponsored amendment so that I can give him that assurance here today, Mr Speaker.

With that, I beg to move that clause 26 and clause 27 stand part of the Bill.

The Speaker: Hon. Members I put first the that clause 26 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Watterson.

Mr Watterson: Mr Speaker, clause 28 substitutes sections 27 and 28 of the Police Powers and Procedures Act 1998.

In place of the concept of an arrestable offence, the new section 27 replaces a list of conditions with a necessity test. Essentially, all offences are arrestable offences, but an arrest will only be justified if the constable believes it is necessary for any of the reasons set out in subsection (5).

Mr Speaker, this is an important human rights provision because it provides that the constable must have reasonable grounds to believe one of the list of reasons is satisfied *and* that it is actually necessary to make an arrest. The purpose, and indeed the practical effect, will be not to extend the powers of arrest of a constable, which apply to all offences in any event, but to control them by ensuring the constable uses a test of necessity before arresting. This is, in effect, a safeguard rather than a new power. Following consultation, the substituted section would be governed by a new Police code of practice to give this safeguard the appropriate backing as a disciplinary offence, if breached by a police officer.

Substituted subsection 28(3)(b) restricts the common law power of citizen's arrest to those occasions when it is not reasonably practicable for a constable to make the arrest.

Mr Speaker, I beg to move that clause 28 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 28 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29.

Mr Watterson: Mr Speaker, clauses 29 and 30 provide for bail to be granted at a place other than a police station. For that reason, with your consent, I would like to move these clauses together.

Clause 29 restates the general provision in section 33 of the Police Powers and Procedures Act 1998 relating to arrest at a place other than a police station and prepares the ground for clause 30, which empowers the granting of bail at a place other than a police station.

Clause 30 inserts new sections 33A to 33D in the Police Powers and Procedures Act 1998.

New section 33A enables a police officer to grant bail at the scene of arrest. Where a constable makes the arrest, an officer of the rank of sergeant or more senior must authorise the release on bail from the street. The only requirement is that the person shall attend a police station at a later date or time.

The new section 33B requires the Police to give such a person a notice in writing, specifying the offence and grounds for which they have been arrested and the date, time and police station they are required to attend.

New section 33C is supplemental.

New section 33D deals with those instances where a person is bailed from a place to attend a police station at a time and date stated, yet fails to do so. They may be arrested without warrant and must then be taken to a police station.

Mr Speaker, I beg to move that clauses 29 and 30 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clauses 29 and 30 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 31.

Mr Watterson: Mr Speaker, clause 31 means that the current duty of a custody officer set out in section 40 – to inform the person responsible for the welfare of a young person that the young person has been arrested – must now be applied to a person under the age of 18 rather than 17, as now. This is necessitated by the United Nations Convention on the Rights of the Child.

Mr Speaker, I beg to move that clause 31 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: The motion is that clause 31 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Watterson: Mr Speaker, clause 32 inserts a new section 49A in the Police Powers and Procedures Act 1998 entitled 'Remand of suspected drug offenders to detention'. The new section will enable a court of summary jurisdiction, if it considers it appropriate to do so, to remand the person charged with an offence of possession of a controlled drug or a drug trafficking offence to the custody of a constable for a period not exceeding 192 hours. This provision will enable any further evidence the Police have reason to believe is on or in the prisoner to pass through the body. For the purposes of this provision, a police station will be designated as an institution under the Custody Act 1995 and the prisoner will be treated as a remand prisoner.

Mr Speaker, I beg to move that clause 32 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: The motion is that clause 32 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 33.

Mr Watterson: Mr Speaker, clause 33 substitutes section 50 and inserts new sections 50A to 50E into the Police Powers and Procedures Act 1998, which empowers the Police to impose conditions on bail after arrest. Such conditions may include surrendering to custody; not committing an offence whilst out on bail; not leaving the Island; not interfering with witnesses; and making themselves available to enable enquiries or a report be made to assist the Police or the court in dealing with the person.

The imposition of conditions to bail by a custody officer of at least the rank of sergeant may be appealed initially to an officer of at least the rank of inspector.

Once a person is brought before the court for his or her first appearance, the court may vary the conditions, impose more onerous conditions or remand the person in custody.

If the court releases the person on bail, then the police bail automatically becomes the court bail from then on. This is intended to free up court time so as not to take routine bail matters to court.

If a person is unhappy with the decision of the custody officer and the more senior officer who would hear the appeal, the person would still be able to go to court, as at present. As such, these provisions can only serve to speed up the process, not delay it, with the advantages for courts, Police and the person being bailed.

Mr Speaker, I beg to move that clause 33 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: Mr Hall.

Mr Hall: Thank you, Mr Speaker.

I beg to move three amendments standing in my name. The three amendments standing relate to the same matter, and with your consent I would like to move them altogether but have them voted on separately.

The purpose of these three very minor amendments is to simply clarify the rank of police officer to whom a person may appeal a decision about conditional bail made by a custody officer.

The first amendment, in line 25 on page 57, simply clarifies that it is referring to a constable:

Page 57, line 25 after 'custody officer' insert 'of the rank of constable'.

This is because, whilst the normal rank of a custody officer is a sergeant, it is possible for a custody officer in the Isle of Man to be a constable; and in those instances the decision about conditions of bail must be signed off by an officer of at least the rank of sergeant.

Following on from that amendment, the second amendment, at lines 29 to 30 on the same page, substitutes the words 'senior officer' for 'an officer of a higher rank than the custody officer':

Page 57, lines 29 to 30, for 'an officer of higher rank than the custody officer' substitute 'a senior officer'.

The third amendment, after line 6 on page 58, defines a senior officer as an officer of a higher rank than both the actual custody officer and, where an officer of the rank of constable was authorised to act as a custody officer, then also higher than the officer who has authorised the constable to perform the functions of a custody officer:

Page 58, after line 6 insert —

(5) In this section, 'senior officer' means an officer of higher rank than the custody officer and the officer who gave written authorisation under section 50A(6).

Essentially, the effect of all three amendments is to ensure that the rank of appeal officer is at least an inspector and, where for any reason an inspector or even a more senior officer performs the functions of a custody officer, then the person to whom an appeal may be made about the imposition of a, or any, condition of bail will be an officer of a superior rank to them.

Mr Speaker, I think these changes make things a bit clearer in respect of appeals and I move that the three amendments to clause 33 standing in my name be approved.

The Speaker: Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I am very happy to second the Hon. Member, Mr Hall's amendments in this case. This, as I know the Minister is quite well aware, was one of the contentious issues that Mr Hall put at our conference during the summer on this matter, which cleared up a number of points but this was still left outstanding.

I do hope the Minister and the Department will see sense in supporting this. I think it will be very good and positive management process to have a more senior officer in order to carry this function out and I do feel that the Minister will support it along those lines. It adds no additional expense. Those senior officers are on duty 24 hours a day and I think it provides a better form of scrutiny, so I am very happy to support the Hon. Member with that.

Whilst we are talking about this clause proper, another item, of course, that was discussed at the Second Reading stage, then followed up by our conference with the Department in the summer, was that of the abuse of police station bail; and the Minister very kindly agreed at that conference to take the matter away, review the issue and come back with some separate proposals for that.

I just raise this issue this afternoon, Mr Speaker. The purpose... why I have not brought an amendment as far as that is because of course it was left in the trust and integrity of the Minister to go away, review this issue and come back with a substantive way forward in order to cut down this abuse whenever it happens in a police station.

I would just invite the Minister to confirm what I have been saying – his understanding of what I have been saying – and whether he has got any further update in order to resolve this matter in the future.

Thank you very much indeed.

The Speaker: Mr Hall, do you wish the right of reply to your amendment?

Mr Hall: Just to thank everybody for the... it appears to have got the support of the House and I would just like to... Obviously, I beg to move all of the three amendments standing in my name and that they are approved, and for the record just to thank the Minister, throughout the course of this Bill, for the excellent communication he has shown, certainly to me, and also the manner he has dealt with the correspondence and other issues. He has dealt with it in a very efficient way and very satisfactorily as well.

A Member: Hear, hear.

The Speaker: Mr Watterson to reply.

Mr Watterson: Well, Mr Speaker, I am flattered by the Hon. Member's remarks and I do thank both Mr Hall and Mr Houghton for them.

I do encourage Hon. Members to accept the amendment that is in the name of Mr Hall.

I would confirm, with regard to the matter raised by Mr Houghton about police bail, that I have referred that to the Criminal Justice Project Board. I am afraid I do not have an update at this time. They were tasked with coming back with a report to me by December on that, so it is not surprising that I perhaps have not had anything at this time, but of course I will be in touch as and when.

With that, Mr Speaker, I beg to move that clause 33 stand part of the Bill.

The Speaker: Thank you.

Clause 33. First of all, the amendment in the name of Mr Hall: those in favour of the amendment, say aye; against, no. The ayes have it. The ayes have it.

Clause 33 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

Mr Watterson: Mr Speaker, clause 34 makes minor consequential amendments to section 52 and elsewhere, as a result of the amendments to the Bail Act 1952 and the revisions to police bail through the substitution of section 50.

Mr Speaker, I beg to move that clause 34 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

Mr Watterson: Mr Speaker, clause 35 concerns a child arrested for a serious offence where the child is aged 10 years or over but is under 14 years of age.

The current section 55 of the Police Powers and Procedures Act 1998 only allows proper investigation by the Police for the offence of homicide. This clause substitutes a new provision for section 55 so that where the Police arrest a child for an offence that leads, or is intended or likely to lead, to a person's death or physical injury, or where arson or sexual offences are alleged, the Police will be able to properly investigate the alleged offence in accordance with the Police Powers and Procedures Act 1998.

This brings it into line with section 76(14) of the Children and Young Persons Act 2001. There was originally an order-making power proposed, which would have allowed the Department to vary the list of offences by order. After consultation, the Department has removed this order-making power.

I beg to move that clause 35 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: Mr Singer.

Mr Singer: Could I just ask the Minister, the term used – ‘likely to cause an injury’ – is rather a wide term; it can be a serious matter or a matter that is not serious. Where do the Police make a judgement on that?

The Speaker: Mover to reply.

Mr Watterson: Yes, certainly, Mr Speaker.

The intention here is that it is only serious offences. This is not fighting in the street; this is... The words used are ‘death or physical injury’: it is intended to be geared more towards the serious crimes and that is why it is reflecting the words in the Children and Young Persons Act 2001, Mr Speaker.

I beg to move.

The Speaker: I put the motion that clause 35 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

Mr Watterson: Clause 36 makes two changes to section 58, which relates to intimate searches. It changes the rank of officer who may authorise an intimate search from chief inspector to inspector and redefines a juvenile as somebody who is under the age of 18, rather than 17, as now.

I beg to move that clause 36 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion: clause 36. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 37.

Mr Watterson: Clause 37 inserts a new section 58A into the Police Powers and Procedures Act 1998. Where an officer of at least the rank of inspector has reasonable grounds to believe a person who is in police detention may have swallowed or concealed a Class A drug on or in their person, he or she may authorise an X-ray or an ultrasound scan of the person.

If a person refuses to consent without good cause, then the court may draw such conclusions from the refusal as seems proper. The purpose of the scan or ultrasound is really twofold: on the one hand, if a person is in police custody then the Police have a duty of care to know of anything that may endanger the detained person’s health or their life; on the other hand, if a person is suspected of an offence, the Police are entitled to investigate that offence, and in the case of drugs on or in the person they should be able to identify what they are and therefore the exact type of offence alleged to have been committed.

I beg to move that clause 37 do form part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 37 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 38.

Mr Watterson: Clause 38 inserts a new provision in relation to the conduct of interviews.

Section 63 of the Police Powers and Procedures Act 1998 currently only provides for tape recording of interviews. This clause substitutes section 63 to provide for the audio and visual recording of interviews, with or without sound. This provision enables the use of modern technology for the recording of interviews, not just by tape-recording. There is no requirement to record interviews visually. Whether an audio record or visual record of an interview is made, or both, the Department must make a code of practice.

Subsection (2) restricts the visual recording of interviews to those permitted by order.

I beg to move that clause 38 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 38 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 39.

Mr Watterson: Clause 39 substitutes subsection (6) as section 64 to provide that fingerprints may be taken without appropriate consent if the person has been convicted of a recordable offence or given a caution in respect of a recordable offence.

I beg to move that clause 39 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

The amendment standing in my name further amends section 64 of the Police Powers and Procedures Act 1998 to enable the taking of fingerprints, where the officer has appropriate consent, to be done at a location other than a police station.

The amendment listed inserts a new subsection (2A), to permit fingerprints to be taken in a place other than a police station, which could be more convenient for the person being fingerprinted... the person has given their consent and the officer has at least the rank of inspector... must authorise the taking of fingerprints where they are to be taken outside the police station. If a person does not give their consent... that they would be required to give their fingerprints at a police station.

Mr Speaker, I beg to move the amendment standing in my name:

Page 62, after line 31, insert —

(2) After subsection (2) insert —

'(2A) The fingerprints of a person who is not in police detention may be taken at a place other than a police station —

(a) if a police officer of at least the rank of inspector authorises it to be taken; and

(b) if the appropriate consent is given.'

Renumber remaining subsections accordingly.

Mr Shimmin: I beg to second, Mr Speaker.

The Speaker: I put the amendment first. Those in favour of the amendment in the name of Mr Quirk, please say aye; against, no. The ayes have it. The ayes have it.

Minister, I did not give you the opportunity to reply.

Mr Watterson: I did not think it was needed, Mr Speaker. *(Laughter)*

The Speaker: Clause 39, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 40.

Mr Watterson: Mr Speaker, clauses 40 and 41 make similar provision, in that they provide that the rank of office authorising the taking of an intimate or non-intimate sample, as the case may be, at a place other than a police station should now be inspector or more senior, as opposed to chief inspector or more senior, as now. The clause then makes consequential amendments.

Mr Speaker, I beg to move that clauses 40 and 41 do stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clauses 40 and 41 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 42.

Mr Watterson: Clause 42 substitutes subsection (1) of section 67 and places the practice of comparing fingerprints and samples obtained from a person with those held on records held by other bodies, particularly those held off Island, on a more extensive statutory basis.

Mr Speaker, I beg to move that clause 42 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 42 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 43.

Mr Watterson: Clause 43 is amended to permit the taking of a person's photograph at a place other than a police station. I beg to move this clause do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 43 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 44.

Mr Watterson: Mr Speaker, as is the case with clause 31, the definition of 'child' or 'juvenile' in international and human rights terms is now a person aged under 18. Consequently, clause 44 changes the interpretation of 'juvenile', in Part V of the Police Powers and Procedures Act 1998, from a person aged 17 or under to a person aged under the age of 18. This has the effect of meaning that a person responsible for the welfare of a person aged under 18 must be present and consent to a search being carried out on that young person.

I beg to move that clause 44 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the question that clause 43 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 44.

Mr Karran: Clause 45.

Mr Watterson: Mr Speaker, I think we are on clause 45.

The Speaker: Clause 45.

Mr Watterson: Clauses 45 and 46 relate to the power to make codes of practice regulating police conduct and practice in the execution of their duties.

Clause 45 substitutes and slightly expands existing provisions so that, for example, codes may specifically be made about the exercise, by officers, of the power of arrest.

Clause 46 makes a minor insertion to the supplementary powers to make codes, set out in section 76, to enable any order bringing in a code or a revised code, to include transitional or saving provisions. Codes of practice are safeguards on the exercise of police powers and breach of them by an officer is ultimately a disciplinary offence.

I beg to move that clauses 45 and 46 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clauses 45 and 46 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to new clause 46A, in the name of Mr Quayle.

Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

May I declare, under Standing Order 4.8(5), I will be bringing this amendment in principle first and then secondly in a full hearing:

Clause 46A

Page 67, after line 27 insert —

Powers of constables on Manx ships

47 Insertion of new section 77B

After section 77A (Customs officers: powers of constables) insert —

'77B Powers of constables on Manx ships

(1) This section applies to an offence if conduct constituting the offence done on land in the Island would constitute that offence if done on a Manx ship.

(2) The powers, duties and obligations conferred on a constable by a statutory provision or by the common law may be exercised in relation to a Manx ship for the purpose of detecting and taking appropriate action in respect of an offence to which this section applies that has, or is reasonably suspected to have, been committed on any Manx ship.

(3) In this section, 'Manx ship' has the same meaning as in the Merchant Shipping Registration Act 1991.

(4) The powers, duties and obligations conferred by this section are in addition to, and not in derogation of, powers, duties and obligations conferred by another statutory provision.

Renumber subsequent clauses and cross references accordingly.

The purpose of this amendment is to extend the jurisdiction of Manx constables to Manx-registered vessels wherever they may be.

Currently, the jurisdiction of Manx constables is limited to the investigation of crimes that occur on vessels within the territorial seas of the Island or to Manx vessels which call into a port on the Island, following the suspected committing of a crime, no matter where in the world the ship was at the time of the incident. This leaves a gap in the powers of a Manx constable to investigate a crime that is committed on board a Manx-registered vessel, which never visits the Island.

To put this in context, there are currently over 550 internationally trading merchant vessels and commercial yachts on the Manx register, with only five of these vessels that call regularly to the Island. This leaves some 545 that never actually call here.

Mr Speaker, I can imagine a number of Hon. Members thinking, 'So what, we have had an international register for almost 30 years and have never had the need for these powers before; why do we need them now?' Hon. Members may be aware that there have been a number of high-profile cases in recent years where serious crimes have been committed on board vessels, including: a South African cadet allegedly raped and thrown overboard; murders; passenger and crew assaults. All these cases have required investigation. I hasten to add that none of these cases have occurred on Manx vessels.

There is no overarching international convention which deals with such incidents globally. In two of the cases mentioned, one of the incidents was in another state's territorial waters, and that state completed the investigation; the second was on the high seas where, fortunately, the first port of call after the reporting of the incident was in the country of registration. However, by this time the evidence was contaminated and there was no successful conclusion to the investigation.

Mr Speaker, imagine, if you will, a serious crime occurring on a Manx vessel on the high seas, and the vessel's first port of call being in another state. That state has no jurisdiction on board the vessel to investigate the crime nor, Hon. Members, do we. So who deals with it? Do we investigate without jurisdiction? Do we permit another state to investigate without jurisdiction? Do we ignore the issue and hope it goes away?

The international community would expect us, quite rightly, to deal with crimes on our ships ourselves. After all, we accept the benefits, both economically and reputationally of having a successful, well-regulated Ship Registry. Should we not also ensure that we fulfil our obligations when and if we need to?

Mr Speaker, Hon. Members, let me be clear about this, we are not talking about investigating all crimes committed on Manx vessels, but those serious crimes against persons or property, which need to be investigated and could cause serious reputational damage were we not to do so. After all, do we not have a duty to the victims and to the international community to do the right thing?

Mr Speaker, I should at this juncture make it abundantly clear that this amendment is not intended to be a panacea to fix the problems of investigation and eventual prosecution of offenders in Manx courts. It does not, for instance, fix the problems of extradition across country boundaries; that is something that will come before this House in the future, but it is the first step in a process to provide the right legal framework.

I would also like to point out to Hon. Members that in almost 30 years of the Island's international ship register's existence, the incidences of reported serious crime on board our ships has been negligible. Mr Speaker, whilst I believe the potential risk in terms of an increase in resource requirement is minimal the risk in terms of reputation, if we do not put the right legal framework in place, is substantial.

Mr Speaker, I beg to move in principle, under Standing Order 4.8(5), that this new clause stands as part of the Bill.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second, Mr Speaker.

The Speaker: Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I think I have to, on behalf of this Hon. House... I am rather surprised and most concerned about this move.

I thank the hon. mover for his full explanation that he has given in this matter.

Does this mean that the Isle of Man Constabulary is going to go to any part of the world and investigate a serious incident on that Manx-registered ship? That is how I read the thing and if I am not... please stop me in my tracks now because, if nothing else, that will break the Isle of Man Constabulary.

You have two or three incidents like this all over the place and there is a big investigation with our people being flown round the world... you know what that will do to budgets. The Isle of Man Constabulary's budget is under massive pressure as it is, with police stations about to close all over the place and then somebody cries help somewhere out in Trinidad or something and you have got a team of police officers going down there under Manx statute to investigate, arrest a perpetrator and then bring them back to the Isle of Man to prosecute them. I am sorry; I honestly think that this is something that needs much further investigation – much greater and further investigation.

My lack of knowledge, that I say to this House... but is knowledge that I think is sufficient enough to know that wherever, in whatever country... in that jurisdiction you commit a crime, therefore you are dealt with there. So, if it is not some Third World, back world country somewhere in the world, where somebody commits a crime, where that ship is *en route* to, they should deal with the crime; it is in their jurisdiction; it is not for us to go dealing in these areas.

I do appreciate the Member stating that there have not really been many serious incidents that have happened on Manx vessels or Manx-registered vessels throughout the world. But that is not the principle. The principle here is it can happen and we are going way beyond our boundaries to deal with this. Whether it is thought the appropriate thing elsewhere, I think that this whole issue is legislating into total unreality of what would be expected of our Constabulary to undertake.

The Hon. Member touched on extradition issues earlier. We can understand somebody being extradited for a crime that they have committed on Manx soil... and being extradited... of what he is saying, and that has no relevance to what he is moving today.

I really am at a loss on this one, but for actually saying people on Manx-registered ships – and we have got an awful lot of them – where there may be a serious crime being committed... for an investigation squad to go out and investigate, to any corner of the world, and then that person or that suspect be brought back and tried before the Manx court, I think is absolutely ludicrous. I think it is beyond the bounds of our realms; it is almost as daft as to say that, were somebody to go and commit a crime on some foreign soil and come back and say, 'well, I have got some sort of...' what was that word they used to say when they were...?

Mr Anderson: Loss of memory.

Mr Quirk: Immunity.

Mr Houghton: Yes, 'I have got some sort of immunity... Manx immunity' or some nonsense like that. It really is as daft as that. I cannot support this, Mr Speaker.

I would ask Members of the House... This here, even though we are saying there are not that many crimes committed on ships, it breaches a principle and could break us. Of all the things and the daft things that we are coming up with, to make this law just to be able to do it... and I doubt whether when we get down to Trinidad or Tobago or wherever, some part of the world, to go and arrest somebody... we would get laughed at and our officers would get arrested themselves for what they are trying to do down there.

This is daft. It is against resource implications and may I finally say, Mr Speaker, of all the years that there has not been an issue, to bring some felon back to the Isle of Man to be tried, because a

serious offence was committed on a Manx-registered ship; we have gone this long, why do we have to change things now? And why oh why do we really need to do this? The hon. mover... I am sure he is moving this on behalf of the Department; it is not his nutty idea to bring this; I do not know whose nutty idea it is, (*Laughter*) but it is nuts. Hon. Members, we would be a laughing stock to even try to start investigating something of a serious matter down in the other end of the... or any corner of the earth that we know...

So, I would ask the mover to certainly consider – he has got a good financial head on him, he must know, or perhaps he does not realise – the amount of expense it costs to investigate a serious crime here on Manx soil, never mind flying a load of detectives down the other side of the world, bringing someone back, trying them and all the rest of it, for an incident that has happened with a ship that has got a Manx flag on it; that is meaningless.

Mr Speaker and Hon. Members, how the situation works now is if you are on a... (**A Member:** Cruise liner.) cruise liner heading to Johannesburg and you are close within the waters of Johannesburg in South Africa and an offence is committed, you have got a Manx flag on the back etc, never mind about anything else, the person or suspect is restrained and the nearest port, where that offence has been committed, is the port who is the receiving end of the crime, and if that is a Third World country, well so be it; we cannot be responsible for that – we cannot be responsible for that. That is the issue I would ask you to look at.

If an offence is committed now on a ship... leaves the Isle of Man heading to Heysham – Heysham is the receiving port – the Lancashire Constabulary will deal with that suspect. Likewise, one boat coming out of Heysham and heading to the Isle of Man; an offence is committed – the receiving port being the Isle of Man – the Isle of Man Constabulary deals with that. That has been tried and tested and I do not see anything that is wrong with it, because you are literally in the jurisdiction where the boat ties up at and you are in their hands and for us to take over, 'FBI... [*inaudible*]' (*Laughter and interjections*)

Mr Watterson: For the sake of *Hansard*, could you just... (*Laughter*)

The Speaker: You may wish to consider drawing your remarks to a close.

Several Members: Hear, hear.

Mr Houghton: Mr Speaker, so do I, because the more I think about it the more laughable it is. I thank you. (*Laughter*)

The Speaker: Mr Karran.

Mr Karran: Eaghtyrane, I take the opposing view on the fact that the situation is that, for the last 30 years, we have been trying to build up an international shipping register... one of the biggest battles when I first came in this House was the fact of it not being seen as a flag of convenience. I think the problem you have got is: if it is in international sea, it is actually part of the jurisdiction as far as the flag where the ship is registered, as far as I am aware –

Mr Quayle: Hear, hear. You are right.

Mr Karran: ... and the fact is that, whilst I totally agree with the Hon. Member about the costs and the liabilities – (*Interjection*) 'If you takes your money, you takes your chance.' The fact is if we register these boats and they have a Manx flag on them and are in international water, that is our responsibility; otherwise do we want to be classed as Panama or some West African republic, as far as the shipping industry is concerned?

So, I am afraid that, whilst I think that everyone in this Hon. House can empathise with the Hon. Member as far as the costs are concerned, couldn't you just imagine...? We have enough Ministers shooting us in the foot, as far as the future is concerned with this Island, without us doing it as well... where you had somebody murdering somebody else on a Manx flag and saying, 'Oh, sorry we can't... It's nothing to do with us.' The publicity would be horrendous for the Isle of Man, as far as that is concerned.

I think that what we have battled for, and to be fair, where the biggest criticism 30 years ago, on the Manx register was about being a flag of convenience, I think we have won that argument that it is not; we have managed to keep our labour laws to correct and international levels, as far as that is concerned. I think that, whilst we can sympathise with the Hon. Member, as far as what he says, I feel that you have got no choice but to have to support the fact that if they are a Manx flag vessel, then we have the responsibility and the liability. We cannot take the fees without taking the responsibility.

The Speaker: Mr Watterson.

Mr Watterson: Thank you, Mr Speaker.

This amendment is promoted by the Department of Economic Development Ship Registry and is supported by the Department of Home Affairs. The Hon. Member for North Douglas' concerns are justifiable, but I think explainable and I would like to try a little bit to explain that.

Contrary to what the Hon. Member has said about it being the *duty* of the receiving port to take on these cases, my understanding is that there is currently no clear jurisdiction about incidents that happen on the high seas. In some cases, it has been taken... the receiving port has, as a gesture more of goodwill and good reputation, wanted to take these cases and make sure that they are properly investigated. Where you end up with the situation that the Hon. Member outlines, where you end up in a country that may have different standards to ours in terms of policing, what may well happen is an 'after you' policy, in terms of jurisdiction. So they will not be keen to take it on themselves, but will say, 'No, we would rather somebody else did this' and that 'somebody', in that instance, should be the Isle of Man Constabulary; because, as the Hon. Member for Onchan, Mr Karran has said, it is our reputation that is on the line, far more so than theirs. So this is about our responsibilities.

One thing I would say – and I think the Hon. Member for North Douglas did hit the nail on the head with regard to my primary concerns on this – is that if we have got to send a couple of police officers halfway round the world to investigate a crime, where is the money for that coming from? That is absolutely right and that has been part of those discussions with the Ship Registry in developing both the amendment and also what it will be leading to as the developments for a memorandum of understanding about how the Ship Registry will pay for the officers to effectively investigate the crime, in the same way that they investigate accidents on board ship as well and have to pick up the tab for that; it is part of having a Ship Registry and managing that effectively to the highest international standards.

The other issue that was raised, about once these people have been landed on this community that the Hon. Member describes, that they will then be hauled back to the Isle of Man, again is not necessarily the case. It may be the case that there is an extradition request to bring back to be tried in another jurisdiction, or it may well be that those Manx police officers, having conducted the investigation, could hand it over to the local authorities for prosecution which, depending on the reputability and otherwise of the jurisdiction, that may or may not be an appropriate way of doing it. There are separate issues there about reliability, extradition and other matters, but the important thing, in the first instance, is to make sure that the Isle of Man has appropriately discharged its duties in effectively investigating the crime, which may otherwise go uninvestigated because there is no clear jurisdiction in international law about whose problem this is.

As I understand it, the world is moving in the same direction with this: that it is the flag state that will ultimately take control. So we are just putting it into our legislation. However, it is not in the

International Maritime Organisation Convention; it is not in international treaties so it has to be picked up by domestic states legislation.

I hope that at least gives the Hon. Member some reassurance, if you like, that the issues that he has raised have been looked at, have been explored and are, in some respect, in terms of the funding, still ongoing; but of course the Act, section by section, will be subject to Royal Assent. We would not envisage bringing this section into force by Royal Assent until that memorandum of understanding was in place with the Ship Registry, as to the mechanism for (**A Member:** Recovery.) recovery of costs and how that would be funded in the event that such an incident were to occur.

I hope that answers some questions, Mr Speaker.

The Speaker: Mr Singer.

Mr Singer: Thank you, Mr Speaker.

I have listened to the arguments on both sides. I, personally, am not sure of the practicality of the whole thing here. A ship on the high seas... what is the view of the actual Police themselves? Do they want to see their men sent away for... it could be months they could be away and they are short staffed here?

I do not think the Minister would have promoted this if it had not come from the Department of Economic Development. He would not have promoted it for that very reason. (**A Member:** One Government.) The fact is that I think there are practicalities there of enforcing it and if you cannot properly enforce it, then it is not a good law, and I am very doubtful at this stage that it can be properly enforced even if he wanted to.

Mr Houghton: It's absolute nonsense.

The Speaker: Mr Hall.

Mr Hall: Thank you, Mr Speaker.

I too would share the concerns of the Hon. Member for North Douglas, Mr Houghton.

One other issue – which I would be most interested to know whether this has been looked at – is that if a crime... the power of constables. So if an incident or something has happened on a ship and it is somewhere in the world then you are going to have to then give powers to the master of the ship, just as you would give powers to the captain of an aircraft, to actually detain that person; because that is very clear under the Tokyo Convention and also the Civil Aviation Act 2012 – in it, it specifically says that the commander will have that right.

I am not sure whether this has been looked at... whether we are going to have to be able to give the commander or the master of the ship that authority to actually detain that person, because there is going to be nobody on the ship in the first place. Has that been looked at? I would be quite interested to know. That is just something else to throw in.

The Speaker: Mr Quayle to reply.

Mr Henderson: Hear, hear.

Mr Quayle: Thank you, Mr Speaker, and I thank the Members for their interesting comments and the interest that they have taken in this clause, which is quite rightly very interesting and very important.

If I can start with Mr Karran first of all, Mr Karran hit the nail on the head. Quite correctly he stated that if it flies a Manx flag, Manx law applies and we have to take action. It is as simple as that.

I will read out... this has been assessed from a resource point of view because Mr Houghton is very correct in stating that we do not want to commit potentially hundreds of thousands of pounds

of taxpayers' money to go all over the world for investigations. Additional resource risk is thought to be minimal. If a crime that needed to be investigated occurred under the current legal framework, the Island would have to carry out that investigation anyway. So it is something we have already got to do, so we are not adding any extra cost. All this clause is doing is giving Manx constables the power to do what they have got to do in the first place, because at the moment we are obliged to investigate it but we technically do not have the power for our Manx constables to go out and do this. So we would come under significant scrutiny, from both the UK and internationally, if we did not have the powers in place for our own constables to go out and investigate it.

The intention is to work with the Department of Home Affairs on a plan to identify the resources required to investigate in such cases. It should be noted that the Department has taken a policy decision not to register passenger ships, as mitigation to the potential risks as stated by Mr Houghton. Currently, with some 550 vessels on the register, we are looking at approximately 11,550 seafarers at any one time. If we were to add two or three large cruise liners to the register, we could double the potential numbers and increase the risk considerably, mainly because of the involvement of passengers. So we have looked at the fact that it is low liability; we have not, in 30 years, had to send any officers to investigate this, but legally it is our duty, under international law, to investigate it. No one else can investigate it because it is flying the Manx flag. So this clause is purely giving powers to Manx constables to go and investigate it.

I can understand the concerns of Mr Singer and Mr Houghton because they are well thought out; you do not want to commit extra taxpayers' money, but it is something we have got to do anyway and we are just enabling this to be done properly.

I beg to move in principle.

The Speaker: Hon. Members, I put the question that clause 46A form part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 46A to be moved in detail.

Mr Quayle: Thank you very much, Mr Speaker. I beg to move.

The Speaker: Mr Shimmin.

Mr Shimmin: I beg to second, Mr Speaker.

The Speaker: Mr Houghton.

Mr Houghton: Mr Speaker, I am not going to repeat what I have already said – (*Interjections*)

Mr Speaker: Thank you.

Mr Singer: Repeat it, John.

Mr Houghton: – but I am just going to say this once again. (*Laughter*) I am going to say this point once again, this is legislation. (*Interjection*) This is a clause going in a Bill that will be passed... will be for use on this jurisdiction, on the Isle of Man. It gives no powers for any police officer to do anything outside these waters; it might say it does but it does not because Manx legislation only applies to Manx jurisdiction; that is all.

So, in Buenos Aires when you have got the Manx 'Interpol' down there trying to arrest somebody and all that, *they* will get arrested, not the suspects. 'Oh, well we'll show you the Bill, clause 46A of the Criminal Justice, Police Powers and Other Amendments Bill 2013 on the Isle of Man.' 'Where's the Isle of Man? Where on earth is the Isle of Man?' – down in Buenos Aires. 'Where on earth is it?' This is a total nonsense.

This has been ill thought through. Like I have already said, it could break us. But it has no jurisdiction; I do not care who you are, it has no jurisdiction. Whatever you do down in Buenos Aires is to do with them. If you are out in the middle of the sea somewhere, whatever happens that has already happened thus far; but Isle of Man authorities have no authority whatsoever...

Can I just say, Mr Speaker, in the case of we are looking for a suspect for committing a murder or something, or God forbid whatever it is, down the bottom of England, okay, or even in America – let's just do it in America; let's spend some money and go across the Atlantic to America – the American police arrest that person on a good-will measure, and actually sometimes they are *ultra vires* doing it, but they do. They hand that guy over to you in handcuffs; you put him on the plane – [*Inaudible*] jurisdiction – and only when that person arrives in Ronaldsway here, does he get arrested by the Isle of Man Constabulary, who may have brought him over all the way from America – may have, these things do happen. Very often the Isle of Man Constabulary go and bring suspects but they are arrested by Greater Manchester Police or whatever, put on the plane, brought over here, arrested here, for that offence that they committed on the Isle of Man. Nothing that is going on down in the bottom of Mexico or wherever we are thinking about... this is just absolute nonsense. We will be laughed at.

I do not know where they get the idea from because it just will not work and, if this Bill becomes an Act with this clause, I look forward to laughing at the first idiotic thing that happens where we get the Manx Police, under Manx law, going to some foreign port somewhere to arrest someone under a Manx warrant of arrest or power of arrest. It will be laughed at. It will not work –

The Speaker: Hon. Member, may I just stop you there. The argument about the clause in principle (**Mr Houghton:** Yes.) has been placed.

Mr Houghton: Yes, I thank you.

The Speaker: What we are debating currently is the detail of the clauses. You are addressing the House very much on the principle of the Bill, in a similar manner as you did before. If you concluded, fine; but if you wish to address the detail of what is here, specifically the detail of the clause, you may do so. Otherwise I will call the next Hon. Member.

Mr Houghton: I thank you, Mr Speaker. I think I have said enough on this matter and I leave it to Hon. Members to decide the fate of this particular new clause, sir.

The Speaker: Hon. Member for Michael, did you wish to...? Yes.

Mr Cannan: Yes, thank you, Mr Speaker.

Perhaps, just in respect of some of these detailed clauses, it might be helpful if the hon. mover has available to him reference to how this applies under international law; and whether, under international law, such powers and obligations are legally enforceable by the ship's home port, effectively, or by the home jurisdiction for an offence that is committed in international waters? That might perhaps give me a little bit of clarification as to the relevance of this piece of legislation.

The Speaker: Hon. Member, Mr Singer.

Mr Singer: Thank you.

On a similar line, I was going to be a bit more specific, Mr Speaker, to ask the Minister whether he can tell us quite clearly whether the United Kingdom government, or the American government or any other government, has these powers to be able to go and arrest people with their flag in international waters or elsewhere?

The Speaker: Mr Karran.

Mr Karran: I think it goes back to the point... We understand about the cost but the bottom line is, if we have a Ship Registry, we have responsibilities; and if we have responsibilities, we have to honour those responsibilities. As far as I am concerned, when it comes to any issue about the cost, either it is a criminal offence or it is not a criminal offence; and the issue of cost should not come into the issue, as far as a criminal offence is concerned... if it is warrant to be as serious as something as far as murder or something else is concerned.

So, in my opinion, Eaghtyrane, I just think we are always being told we are on the international stage; we have to have these standards. I am sure that the Minister of Economic Development and his Department have done their research, as far as the liability is concerned. I would imagine, if it is in international waters, it is the flag flown over it, that is the jurisdiction of it.

If I remember rightly, when we saw hosts of legislation coming through this Hon. House 20-odd years, 25 years ago – *(Interjection by Mr Houghton)* So I think the point is that we have to support the Government on this issue, because I can see the absolute horror of getting something in the paper where somebody gets murdered, or whatever, on a Manx-flagged vessel and finding out that it does not matter, you can do what you like on a Manx vessel. It is not sustainable in my opinion.

So I think you have got to support them; you have got to support the Government on this issue.

The Speaker: Mr Quayle to reply.

Mr Quayle: Thank you, Mr Speaker.

I can appreciate the Hon. Members' concerns over this, but I really do think you are missing one vital point that you are getting confused over: if I go on holiday to France and I break the laws made in France, I get arrested by the French police; if I am on the boat in the middle of the, I do not know, the Arabian Sea or whatever, and I cause offence, I cause that offence on the Isle of Man. That is how the international laws on shipping work.

When you register a ship under the Manx flag and you commit an offence on that ship when you are at sea, you have broken the laws of the Isle of Man; and the Isle of Man is responsible for dealing with that problem and I think this is where maybe Members are getting confused. When you are on that ship and it is flying a Manx flag, it is the Isle of Man. You could almost compare it with diplomatic immunity for diplomats.

I can understand where Members are confused and quite rightly have concerns, but hopefully this has been explained to the best of the knowledge given to me. *(Interjection)*

The Speaker: Hon. Members, I put the question that clause 46A stand part of the Bill. Those in favour, say aye; against, no.

A division was called for and voting resulted as follows:

FOR
Mr Anderson
Mrs Beecroft
Mr Cannan
Mr Cregeen
Mr Cretney
Mr Crookall
Mr Gawne
Mr Karran
Mr Quayle
Mr Quirk
Mr Robertshaw
Mr Ronan
Mr Shimmin

AGAINST
Mr Hall
Mr Henderson
Mr Houghton
Mr Singer
Mr Thomas

Mr Skelly
Mr Teare
Mr Watterson
The Speaker

The Speaker: Hon. Members, 17 votes for, 5 against. The motion therefore carries.
We turn now to clause 47. Mr Watterson.

Mr Watterson: Normal business has been resumed, Mr Speaker. *(Laughter)*

Mr Speaker, clause 47 is consequential on the approval of clause 28, which substituted provision in respect of the power of arrest. What clause 47 does is to rephrase section 79 so that it refers to 'serious offences' rather than to 'serious arrestable offences'. This is purely a matter of terminology to ensure the differences in detention procedures that existed between arrestable offences and serious arrestable offences is maintained.

I beg to move that clause 47 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 47 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 48.

Mr Watterson: Clause 48 inserts further definitions into the general interpretation located within section 81 of the Police Powers and Procedures Act 1998.

These are required by virtue of amendments made in earlier clauses, hence the insertion of definitions for 'all premises warrant', 'serious offence' and 'specific premises warrant'. Definitions for 'registered medical practitioner' and 'registered nurse' are also inserted following the substitution of the concept of the power of arrest, and the definition of an 'arrestable offence' is removed in respect of children, with a child being a person under the age of 18. The definitions of 'child', 'young person' and 'juvenile' are also repealed.

I beg to move that clause 48 stand part of the Bill.

The Speaker: Mr Karran.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion: clause 48 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 49.

Mr Watterson: Clause 49 substitutes the word 'Judge' for 'Deemster' in the provisions mentioned and I beg to move that clause 49 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion: clause 49. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 50.

Mr Watterson: Mr Speaker, clause 50 inserts a new section 49A into the Children and Young Persons Act 2001 to provide specific legal authority to a constable to enable him or her to return a child reported missing to the person responsible for its welfare. The provision makes it clear that if

the constable has any reason to believe that the child should not be returned, but instead taken into a place of police protection, then the constable may exercise the existing power under section 45 of that Act.

Mr Speaker, I beg to move that clause 50 do stand part of the Bill.

Mr Karran: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 50 stands part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it. That concludes the clauses stage. Thank you very much to the mover.

Hon. Members, that concludes the business of the House today. Can I remind members of the Keys Management Standards Committee of a meeting to take place at the conclusion of this sitting.

The House will now stand adjourned until the next sitting, which will take place at 10 o'clock on 5th November in this Chamber.