

## 1. Criminal Justice, Police Powers and Other Amendments Bill – Third Reading approved

Mr Coleman to move:

*That the Criminal Justice, Police Powers and Other Amendments Bill be read a third time and do pass.*

**The President:** Hon. Members, we move straight into the Third Reading of the Criminal Justice, Police Powers and Other Amendments Bill. I call on Mr Coleman.

**Mr Coleman:** Thank you Madam President.

I have distributed quite a detailed briefing on the issues of the jurisdiction of Manx policemen, and the absolute minefield which exists in international law with reference to this. If one regards the *Teddy* case in New Zealand, I think it gives us great reason for including this in Manx legislation, where Mr Teddy was on a trawler in front of a mining vessel going backwards and forwards in front of it, and New Zealand constables got on his vessel to prevent him from doing this and arrested him. That went to the district court and it was found that they had no jurisdiction. It then went to the high court where it was found they had jurisdiction, it is now in the appeal court. But the point is, if it had... and in New Zealand they are currently putting legislation in such as we are proposing to put in, to make sure that it does not become issues of precedence within the courts. It is in the Manx legislation so we would not have the problem which there was with Teddy.

The other issues that came up were the issue of how it was going to be paid for, and I will cover those now if I may in the general speech.

I am grateful to Mr Downie for seconding the Bill, to Mr Braidwood for his amendments to the Bill in this Chamber, and to Hon. Members for their support particularly through the clauses debate last week.

I will address some further matters mentioned by Hon. Members last week in a moment, but I thought first it would be useful to briefly remind you what the Bill is all about.

The purpose of the Bill is to update powers and procedures as they relate to, or impinge on the work of the Police and enable the Police to operate efficiently and effectively in the 21st century. Some of these powers, such as search warrants and additional powers of seizure reflect the changing nature of crime, including the impact of crime across borders, and developments in legal understanding or human rights obligations. Others are about ensuring appropriate regulations can be made to govern the procedures, conduct or manage the efficiency of police officers.

In relation to bail there have been a number of developments brought about by the need to remove unnecessary procedures, but also to address the problem of breaches of bail by extending forfeiture provisions, the aim here being not only to reduce the number of arrests required for breach of bail but to encourage greater compliance with legal procedures.

I recognise and respect the concerns some Members expressed in relation to clauses 29 and 30 which were about bail from the scene of arrest. As with the exercise of the power of arrest, and the power to release persons on police bail with conditions, there will be a code of practice that makes reference to the use of these provisions.

A few amendments to the Bill were made at the clauses stage last week. Mr Braidwood introduced two amendments to return the wording in clause 28 'Power of Arrest' relating to the requirement to provide an address to the police for service of a summons to that currently used, that is, an address must be satisfactory for service.

Mr Braidwood's other amendment added two new clauses, with one of them removing the requirement for an accused person, on remand, to give his or her consent to having a preliminary hearing by means of a live link between the Prison and the Court.

The other new clause provides for the expiry of the Custody (Amendment) Act 2013, which recently received Royal Assent, once it has been promulgated.

Hon. Members raised a few questions, or issues, last week, which I undertook to respond to today. Some I have done so through the briefing note.

In relation to clause 17, Mr Butt asked what the significance of the date, 14th September 2007, was in new section 8G(3) and (4) of the Police Act. This reflects the date subsection (4) was added to the old section 8 which conferred some discretionary powers on the Department in relation to regulations about pay and conditions of service.

In relation to clauses 36, 40 and 41, Mr Butt asked about the reduction in rank from 'chief inspector' to 'inspector'. This change is in line with similar changes made to the UK's Police and Criminal Evidence Act and is found in section 6 of the Drugs Act 2005 of Parliament. Presumably the rationale for the change in the UK was similar to that here, namely that there is not always a person of the rank of chief inspector or more senior at the police station, and therefore any delay could prejudice a person's health, rights or the investigation.

A question was raised about professional ethics or restrictions on the undertaking of intimate searches by healthcare professionals. The information I have obtained shows there is guidance available to healthcare professionals from the Faculty of Forensic and Legal Medicine and more detailed guidance issued jointly by the BMA and the Faculty in relation to this matter. The guidance assists with ensuring the healthcare professional is aware of all of the legal and ethical/professional requirements or issues to consider before or when undertaking this kind of work.

In relation to clause 43 a question was asked as to whether a photograph may be taken by any means and transmitted. The power to take photographs includes stills or moving images by any means and such may be disclosed to anyone for the purposes of preventing, detecting or otherwise investigating crime or for the use in prosecution.

Madam President, a number of questions were asked about the new clause 46 relating to the jurisdiction of officers of the Isle of Man Constabulary in relation to incidents on board Manx registered vessels outside Manx territorial waters. I think that the briefing note that I have distributed previously has adequately provided the rationale for putting that clause into this Bill.

What we really are entitled to say is that although we are a small jurisdiction we are in this respect stealing a march on other jurisdictions.

Lastly, Madam President, in relation to clause 50 and the return of missing children in the green copy of the Bill, Mr Butt felt this was a sensible and a helpful measure which, as I explained last week, is about ensuring that the Police have the comfort of knowing the service they provide to the public in sometimes difficult circumstances is supported by appropriate legislation.

Mr Turner asked if officers are trained to understand how to handle the sensitive issue of the locating and returning children who are reported missing. The first thing to bear in mind is that locating and returning missing persons appears to have become something of a regular feature of the work of the Constabulary. The Chief Constable's most recent Annual Report, for example, reveals there were nearly 600 missing person reports or incidents in 2012-13 – true not all of whom will have been children, but you get the idea.

Mr Braidwood helpfully mentioned that he was aware a police inspector had spoken about the training officers received, particularly in relation to issues surrounding disability, and this seemed very helpful. A provision in this clause reflects the Department's response to the consultation exercise. Substituted section 49A(1)(b) expressly confirms existing legal provision in that where a constable has concerns as to the welfare of a child then, as before, the child may be taken into police protection. I am also aware of a draft Protocol for Operational Guidance for Responding to Children & Young People missing from Home and Care.

In short, the Police have considerable experience of the practicalities and sensitivities of searching for missing children and taking the appropriate action upon locating such children.

Madam President, I think I have addressed all the matters that should be covered. I thank Hon. Members, once again, for their support and beg to move that the Bill be read for a third time and, in accordance with Standing Orders, be conveyed to the House of Keys to consider Council's amendments.

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

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I do support the Bill in its main principles, but I would just like to say that I did have doubts about the need for the street bail that was proposed – or is proposed and is part of the Bill – and I do hope the Constabulary will take notice of the comments made in this Council, and those that actually express some opinions about the need for it, and that it is not abused in use as a matter of course. I think it should be used only in exceptional circumstances, and hope that the Constabulary take note of that.

In general, I would also like to comment that in the UK in the last couple of decades because of terrorism, lots of extra powers have been given to the Police and I think in some cases they have gone beyond what they really need because of the terrorism threat. And it is our job, I think, in these Chambers – in the other place and in here – to make sure that when we do give the Police powers we carefully examine what they are, and make sure they do not go beyond what is necessary.

The Police have managed very well over many decades to police the Isle of Man properly without these extra powers, and I think they could continue to do so and we should not just blindly follow the UK Parliament. As the mover just mentioned, (**Mr Coleman:** Absolutely.) we are following the UK Parliament in some issues.

We are the guardians who are looking after the guardians, in effect, so I think it is our job to closely scrutinise these Bills and if we have any further Bills from the Department, I think they do need close scrutiny.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I absolutely concur with the views of Mr Butt and I hope that the Department will continue to scrutinise the workings of this and not just take on face value what the Constabulary tell them, particularly with regard to the street bail situation as outlined by my colleague, Mr Butt.

I still have reservations over the involvement of police officers on Manx vessels anywhere in the world.

I understand the mover says that we are stealing the march on other jurisdictions, but I am still not sure exactly how welcome Manx officers rocking up at a foreign port would be, because it is normal that of course in many international matters there would be close working with the United Kingdom.

I would imagine that if there is a Manx-registered vessel tied up in somewhere like... in some of these marinas around the Mediterranean or commercial ports around the world, if there was a murder on board or drugs, it would be at a level far higher than the Isle of Man authorities. And I just wonder quite how that would work.

I think this provision has all the hallmarks of becoming a huge money pit, even if there was one individual case I could see, depending on the severity of it and some of the things that go on around some of these ports in the world, some of these cases could run into millions. And I am

just wondering are they prepared for this, is there a fund for it and how is it going to be funded when we start taking on the world?

I also wonder, is this a precedent really if we are looking at Manx-registered vessels: are we going to be venturing into Manx-registered vehicles that are in other countries; or even applying, are we try to apply the entire Manx law on anything that is registered as a Manx vessel, wherever it is in the world.

So I think we have to be very careful when we are looking at provisions to enable our officers. I fully agree with forces working cross borders together, but I do not think going off on our own in some of these issues is particularly helpful.

I am a bit concerned when we say we are 'leading the way': I think sometimes it is good to lead the way, but in other things such as this, I think we need to be fully aware of what we are getting ourselves into and if we are going to start boarding vessels in other countries and other ports for some of the these instances that the hon. mover says, then we have to expect there is going to be a huge cost associated with that and we have to ensure that we can afford it, whereas maybe before it was being dealt with by law enforcement agencies in those jurisdictions.

It may be seen as a good way out for them to offload the costs of these cases on to the Manx tax-payer, so we have to know exactly what we are doing.

I have already mentioned I hope that the Department will continue to scrutinise the use of the 'street bail' as it was referred to, and I think that if there is evidence that it is being abused, or people are maybe not understanding their full rights and are just accepting it because it is the easy way out, then I think the Department has a duty to revisit that case and if necessary come back with amending legislation.

If, however, it works then it will have done its job, but I am slightly concerned about that.

I did not think the mover had particularly answered my query over vulnerable children – the answer we got was that the Constabulary stated they had great experience in searching for missing people. My concern at the previous Reading was about identifying issues with children that many years ago may have been seen as bad behaviour, when in real terms the child or the young person may have medical conditions that to the untrained eye may seem like bad behaviour but there is a more serious problem. And I am sure we have all heard the anecdotal evidence of some of these children being put in police vans and not treated in the right way.

We hope those days have gone, but the question was are they able to identify it, not how experienced they are in searching and returning people home, because there is a difference.

The concerns, however, I have with the Bill are not going to mean that I am going to vote against it because there is a lot of provisions in this which are needed, and which I support, but those are the areas I would like to raise for the record at this Third Reading.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

I just want to thank my hon. colleague, Mr Coleman, for a detailed response and explanation of the issues raised in the last sitting and the amendments. However, I also agree with the objective comments made by my hon. colleague, Mr Butt, and one has to be careful and this type of legislation has to be carefully balanced.

I thought with Manx vessels the legislation simply gives the Registry the flexibility to visit a vessel, in case of need, and from recollection, I thought that from a cost perspective it can be reclaimed as part of the administration of the vessel.

**Mr Braidwood:** Borne by the Minister's office.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Just again to comment on the provisions for police to investigate crimes on incidents happening in foreign waters.

As we all know, the Isle of Man Ship Registry is a very important contributor to the income of Government, and 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.

It appears that in almost 30 years of the Island's International Ship Register's existence, the incidents of reported serious crime on board our ships has been negligible. Also I believe the potential risk in terms of an increase in resource requirement is probably minimal. The risk in terms of reputation if we do not put the right legal framework in place is substantial.

**The President:** The Hon. Member, Mr Braidwood.

**Mr Braidwood:** Thank you, Madam President.

I will be supporting the Third Reading of the Bill and I also thank my colleague, Mr Crowe, for going through why the Police have to have authority to go on board ships. We have not even got the authority at the present time to board a ship if it was in our own territorial waters, and I think if it is outside territorial waters of other countries, then it is essential that the Manx Police, as it is a registered vessel, have the authority to board the vessel.

However, one of the reasons I wanted to speak, Madam President, was a point which was raised by the Hon. Member for Council, Mr Turner, regarding when years ago, the bad behaviour of children as such and the Police putting them in the back of police vehicles.

I think it is well known now – particularly with autistic children – that the Police now have experience, they have training in this sort of situation. Mr Corkish and myself are Chairman and Vice-Chairman of the Tynwald Advisory Council for Disabilities, and we had an open meeting only a couple months ago with the Council of Voluntary Organisations and other interested parties. We did have an inspector at the meeting, who went through how the attitude of the Police has changed quite dramatically, and they understand now children who have behavioural problems through autism, and they do have the training of the officers so they can recognise the problems.

So I think the attitude of the Constabulary has changed for the better over the last few years.

Thank you, Madam President.

**The President:** The Hon. Member, Mr Downie.

**Mr Downie:** Thank you, Madam President.

Some interesting comments, really, at this sitting, at the Third Reading.

Just to elaborate a little further on the situation regarding Isle-of-Man-registered vessels. I think it has to be clearly understood that when a vessel is seen in international waters, the responsibility for that vessel rests with the master, and if there is a situation develops which he is not happy with, there is nothing to stop him putting into any port and requesting assistance from the local police. However, from time to time and admittedly it is very, very infrequent, there are some issues that develop on board ships which have to be properly investigated.

A sudden death at sea or a person falling maybe in mysterious circumstances, someone going missing altogether, possible suicide, these things really have to be investigated formally, and that is where I think it is quite proper and right that we have our own people carrying out any such investigation.

The issue that Mr Turner was concerned about where you had a yacht alongside in Cannes or Nice, or somewhere, and somebody was murdered or there was some other act committed, that responsibility for investigating with that... is the responsibility of the police in that area. Once that

vessel goes into their own particular territorial seas or is in a foreign port, it comes under their jurisdiction.

There are lots of international organisations in the UK, for instance, we have the Maritime Coastguard Association, and they look after all the ships that form part of what is called the Red Ensign Group. And not only are ships around the British Isles included in that Group, but also Gibraltar, Malta to some extent, parts of the Caribbean, the Falkland Islands, so there is a framework there that people already have a good understanding and can work under. But, I think as the mover said, if we are going to be responsible for the well-being of seafarers and to do the job properly, we have to have this mechanism in place.

Moving on, I just like to ask finally – apologies if I should have mentioned this last week – but I just wanted to know formally: if a person is arrested and granted street bail, are they actually given their rights, are they actually told what is happening to them, and will that be covered in some other regulation which will come in on the back of this Bill? Because a lot of this is brand new, people outside do not understand any more, and if a person does fall foul of the law and is arrested and bailed, I think it is important that they actually know what happens.

Recently, somebody showed me a card that they had been given while they were away, explaining that they had committed an offence, and it happened in Holland, and they were given a card on the back of it was in Dutch and the front of it was in English. And they could quite clearly see what they had done wrong, it was a type of a traffic offence. But it was a very good example of how to get good communication so that people were aware of what would happen and what responsibilities lay with them to deal with it at a further time.

Thank you.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Could I come in on that, Madam President, for the help of the mover perhaps, too?

If the person arrested in the street is arrested properly, they should be given their formal rights, etc at the time, and they will be.

My point about my objection to this street bail was that the way it is done at the present, they go to the police station where it is all recorded and noted down and written down properly – there is a formal record of it – which is much less likely in the street. But they should be given their proper rights, or the indication of their rights, and the caution when they are arrested when they are in the street.

**The President:** The mover to reply.

**Mr Coleman:** Thank you, Madam President.

I too share some concern about the use of new procedures within the Police environment, and I will also be looking at how these new powers are exercised, and I would expect to see details of that in the Chief Constable's Annual Report – to see certainly how many times it had been used and possibly at the end of the first year in his Annual Report he could describe the benefits of the latest clause that we hope to put through.

As far as Mr Turner is concerned, again, he says that maybe we are setting a precedent for doing vehicle licensing –

**Mr Turner:** As an example.

**Mr Coleman:** As an example, yes. But I think it has to be remembered that the United Nations Convention on the Law of the Sea states:

'Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.'

When you are working on an over-riding international convention like that, I think it behoves us to make certain that we have procedures and protocols in place to adhere with that and to make sure that that can be reflected in our own national legislation.

So I personally do not have a fear of other things moving that way, basically because I think we are adhering to an international convention.

With reference to vulnerable children, Mr Braidwood expressed the situation quite eloquently, that I think the world has turned and the consciousness of the Police and the training that they receive, and there are protocols in place where they have to contact the Department of Social Care at certain points. I think we have moved quite a long way.

There will always be times when human beings are involved where perhaps the best outcome was not achieved, but we have to try and strive for that and I have every confidence in the existing Constabulary to make certain that if they are given this power – which they have requested and it has been changed in the wording from ‘arrest’, which I think is totally inappropriate, to ‘return’ – and they do have powers to say if this child is a little bit wary of returning to his normal place of abode then they don’t actually have to take them there. They have to look into it quite seriously.

With reference to the funding, the second paragraph of the briefing paper explained exactly how Department of the DED were going to do it. They are going to establish a fund which will be based upon a percentage of the Registry fee to develop a fund, initially while that is being built up, then it may well be that will have to be defrayed, but they will be with new vessel registrations ring-fencing a part of each registration fee into this fund to make the payments.

Moving on, I think I have probably already answered Mr Wild’s comments in that we are going to essentially be providing... essentially the ship owners in paying their registration fee will in future be paying for the fund to enable Manx constables to travel if necessary and do the work of that part.

Mr Braidwood’s comments I think were very favourable and very helpful to my cause in this, and as Mr Butt has said with reference to street bail, street bail will be given after formal arrest so they will be told and given notice. They will be given their rights and they will be given a written notice of when they should appear and where they should go, and record will be made in the custody record as soon as possible after the officer referred to for permission to give street bail has given permission, and it will be made – a note will be made – actually in the custody record as soon as possible after that actually happens.

I hope Madam President, I have answered the questions that have arisen.

**The President:** Thank you, Hon. Member.

The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against no. The ayes have it. The ayes have it.