

4. Terrorism and Other Crime (Financial Restrictions) Bill 2014 – Second Reading approved

Mr Coleman to move:

That the Terrorism and Other Crime (Financial Restrictions) Bill 2014 be read a second time.

The President: We turn to Item 4 on the Order Paper, the Terrorism and Other Crime (Financial Restrictions) Bill 2014.

I call on Mr Coleman for the Second Reading and clauses stage.

Mr Coleman: Thank you, Madam President.

I outlined in my First Reading speech last week the three main reasons why this Bill was being moved.

In terms of the wider picture, the international community expects every responsible jurisdiction to play its part in countering the threat to both global and personal security posed by terrorists and terrorism in general. Even terrorists need money to further their aims by means of propaganda, threats, weaponry and logistics required for the propagation and execution of violence. This is why legislation to counter the financing of terrorists and terrorism is necessary; and the legislation the Island has, which is re-enacted through this Bill, is important.

The Bill makes certain changes to the Anti-Terrorism and Crime Act 2003, which we will come to in clause 71 and schedule 3; and to the Proceeds of Crime Act 2008, which is how the Bill got the words 'and other crime' in its title and will be encountered in clause 72. All these changes are designed to ensure the Island's legislation combating terrorism and other crime is kept in step with developments.

Madam President, I beg to move the Second Reading of the Terrorism and Other Crime (Financial Restrictions) Bill. 2014.

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

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Terrorism and Other Crime (Financial Restrictions) Bill 2014 – Clauses considered

The President: We turn now to the clauses, but before we come to clauses we have an amendment tabled in the name of Mr Downie to change the long title of the Bill.

Mr Downie: Yes, Madam President. In respect of the tabled amendment in my name, numbered 1, I move:

Amendment to long title

Page 11, line 4 after 'bail' (which was inserted by the Keys at Clauses stage in that Branch) insert ', sexual offences and the enforcement of fines and other financial penalties;'

The purpose of this amendment is to permit two new clauses, 70AA and 70AB, to be inserted into the Bill, which addresses a minor issue to do with ensuring the enforcement of the collection of existing fines can use new procedures as well as fines imposed on or after today, and repeal

the last elements of the old sexual offences legislation which prohibited homosexual activity that had been omitted when the main provision had been repealed many years ago.

Madam President, I beg to move the amendment to the long title of the Bill standing in my name.

The President: Mr Braidwood.

Mr Braidwood: I beg to second, Madam President.

The President: The motion is that the amendment in the name of Mr Downie be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will take the long title as amended as the substantive motion. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We will move then to clauses, Mr Coleman, parts 1 to 5, as this is an amalgamation of existing legislation.

Mr Coleman: Madam President, I propose to move clauses 1 through 5 together as they are about the introductory provisions.

Clause 1 gives the title of the Act.

Clause 2 says the Act will come into operation by Appointed Day Order. Sections or parts of the Act may be brought into operation at the same time or on different days.

Clauses 3, 4 and 5 provide interpretation.

Clause 3 provides general interpretation for the terms used in the Act.

Clause 4 specifically defines 'financial services'.

Clause 5 defines a resident as a person who is ordinarily resident in the Island. The term 'ordinarily resident' is not further defined and so takes its dictionary meaning. Bodies incorporated or constituted or limited liability companies, partnerships or other unincorporated associations formed under the law of the Island are also resident.

Madam President, I beg to move that clauses 1 to 5 inclusive do stand part of the Bill.

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

The President: The motion is that clauses 1 to 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 2, clauses 6 to 12 and schedule 1.

Mr Coleman: Madam President, clauses 6 to 12 deal with the financial restriction known as a 'direction' and I propose to move them together.

These clauses contain provisions drawn from the Terrorism (Finance) Act 2009, which is to be repealed in its entirety, and deal with the power to make or issue a direction to a person or business.

Clause 6 empowers the Treasury to give a direction to a relevant person, subject to one or more of the following conditions being met.

The first condition is the Financial Action Task Force has advised that action should be taken.

The second condition is the Treasury reasonably believes there is a risk that financing of terrorism or money-laundering activities are being carried on.

The third condition is the Treasury reasonably believes proliferation in the country or anything that facilitates proliferation poses a significant risk to the national interests of the Island.

All these conditions relate to activity or proliferation in the country by the government of a country or by persons resident in the country in question. 'Proliferation' is defined in clause 3 as:

'the development or production of nuclear, radiological, biological or chemical weapons or systems for their delivery;'

Clause 7 sets out the power to give what is called an 'interim direction' to a relevant person if the Treasury has reasonable suspicion either that there is a risk that financing or terrorism or money-laundering activities are being carried on, or that proliferation or the facilitating of proliferation poses a significant risk to the national interests of the Island. The key difference is the lowering of the evidential level from reasonable belief to reasonable suspicion. Subsection (4) restricts the giving of an interim direction to once if the evidence is the same or substantially the same.

Clause 8 introduces schedule 1, which sets out the requirements that may be contained in the directions and the persons to whom they may be given. Schedule 1 broadly replicates the requirements that were in the schedule to the 2009 Act.

Clause 9 provides that the Treasury may give a direction to a particular person, any description of persons, or all persons acting in the course of a business in the regulated sector... which businesses set out in schedule 4 to the Proceeds of Crime Act 2008.

Subsection (2) enables a direction to contain different requirements in relation to different persons.

Subsection (3) enables the Treasury to amend the section by order.

Clause 10 provides that directions must be contained in an order made by Treasury.

Clause 11 requires the Treasury, in the case of directions to a particular person, to give notice of a specific direction to the person concerned.

Subsection (3) states that an interim direction is valid for 30 days and a final direction is valid for a year. The period is effective in each case from the day in which the direction is given.

Subsection (4) empowers the Treasury to vary or revoke the direction at any time.

Subsection (5) requires the Treasury to notify the person of the variation or revocation.

Clause 12 requires the Treasury to publicise the making of the order containing directions. The Treasury must also publicise the fact that an order has expired.

Subsection (1) applies the section to directions under clause 10.

Subsection (3) provides that a revocation order, or one varying the order to make it less onerous, must be laid before Tynwald as soon as practical after it has been made.

Subsection (4) states that an order, if not previously revoked, expires one year after the day on which it was made, but this does not limit the power of the Treasury to make a further order.

Madam President, I beg to move that clauses 6 to 12 inclusive and schedule 1 do stand part of the Bill.

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 just have a general query, and I cannot see it anywhere else in the Bill. If somebody objects to the direction of this being issued and wants to challenge it, what mechanism do they have to challenge a direction – if that information is possible to be revealed?

Mr Coleman: This does come up later on in the Bill, yes.

Mr Butt: Thank you.

The President: The motion is that clauses 6 to 12 inclusive and schedule 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 13 to 17 and schedule 2, Mr Coleman.

Mr Coleman: Madam President, clauses 13 to 17 inclusive concern the general freezing of funds through freezing orders, and I intend to move them together.

Clause 13 is extracted from existing section 50 of the Anti-Terrorism and Crime Act 2003. The difference is that in this Bill the definition of 'funds' is set out in clause 3. Further requirements that may be set out in a freezing order are set out in schedule 2 to this Bill.

Clause 14 is extracted from section 51 of the 2003 Act and provides for the making of final freezing orders. The only difference is that, instead of referring to country or territory, it refers only to country. This is because in clause 3 of the Bill 'country' includes territory.

Clause 15 is extracted from section 51A of the 2003 Act and provides for the making of interim freezing orders.

Clause 16 provides that an interim freezing order may be given for 30 days and a final freezing order may be given for one year from the date on which the respective orders were made. This is the same as in sections 51A and 50 of the 2003 Act and the earlier clauses of this Bill relating to directions. Subsection (3) requires the Treasury to keep a freezing order under review.

Clause 17 empowers the Treasury to make a freezing order and specifies that it must be laid before Tynwald; and if at that sitting or the next following sitting Tynwald resolves that the order must cease to have effect, it will cease to have effect using the negative Tynwald procedure.

Madam President, I beg to move that clauses 13 to 17 inclusive and schedule 2 do stand part of the Bill.

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

The President: The motion is that clauses 13 to 17 inclusive and schedule 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 18 to 23.

Mr Coleman: Madam President, I propose to move clauses 18 to 23 together as they relate to the freezing of terrorist assets and are currently found in the Order in Council applying the UK Terrorist Asset-Freezing etc. Act 2010.

Clause 18 sets out the conditions under which the Treasury may make a final designation.

Subsection (1) specifies that Treasury may make a designation if they reasonably believe a person is or has been involved in terrorist activity; is owned or controlled, whether directly or indirectly, by the first person; or that the person is acting on behalf of or at the direction of the first person. Additionally, the Treasury must consider it necessary, for the purposes of public protection from terrorism, to place financial restrictions on the person. Involvement in terrorist activity is defined in subsection (2).

In respect of clause 19, the power to make interim designations is similar to the power in clause 18, except that Treasury need only have a reasonable suspicion concerning a person's involvement in terrorist activity in order to make the interim designation.

Clause 20 requires the Treasury to notify the designated person and publicise the designation. If the Treasury believes the designated person is under the age of 18 or that the designation should not be disclosed by reason of national security, the prevention or detection of serious crime, or in the interests of justice, then it need not publicise the designation generally but only to such persons as it considers appropriate.

Clause 21 provides that a final designation expires one year after the day on which it was made, unless it is renewed. The requirements for renewal of a final designation are that the conditions in clause 18(1) continue to be met.

Subsection (5) indicates that, where a final designation expires, the Treasury must notify the designated person in writing and take reasonable steps to bring that fact to the attention of other persons who were informed of the designation.

Clause 22 states that an interim designation expires 30 days after the day on which it was made or on the making of a final designation in relation to the same person, whichever is earlier. When an interim designation expires, similar notice must be given as for the final designation. Where the interim designation expires on the making of a final designation, the steps in relation to notification and publicity in respect of the expiry of one and the commencement of the other type of order may be combined.

Clause 23 empowers the Treasury to vary or revoke a designation at any time. Written notice must be given to the designated person and reasonable steps must be taken to let persons informed of the designation know about the variation or revocation.

Madam President, I beg to move that clauses 18 to 23 inclusive do stand part of the Bill.

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

The President: The motion is that clauses 18 to 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Coleman: Madam President, clause 24 addresses the situation where a freezing order or a designation is made or a direction is effected by the United Kingdom Treasury based on security-sensitive material, and it is considered in the interests of the Island to be in step with the United Kingdom in these matters.

Subsection (1) relates to freezing orders or designations and provides that they will have effect in the Island as if made under provisions of this Act.

Subsection (2) provides that the fact that the United Kingdom has effected a direction is to be taken as sufficient for the Treasury to form the same reasonable suspicion or reasonable belief and consequently may likewise effect a direction.

Subsection (3) provides that if a direction made by the United Kingdom is set aside, ceases to have effect or is revoked, then any direction made by the Treasury in reliance on the action of the United Kingdom Treasury is treated likewise.

Subsections (4) and (5) empower the Treasury to amend this section by order, subject to the approval of Tynwald.

Madam President, I beg to move that clause 24 do stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Just a query on a section of clause 24. I would imagine the purpose of this is to future-proof the Bill so that any orders made by the UK government, the UK Treasury, would be implemented by the Isle of Man Treasury and the order would come to Tynwald by secondary legislation. Is that how it would work in practice, hon. mover?

Mr Coleman: Yes –

The President: Can we just see if anyone else wishes to speak before you reply.
The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I would just like to comment that all the decisions made in part 2 by the Treasury I note can be challenged. Clause 57 onwards of part 4 actually provides for all the challenges which I was asking about before, (**Mr Coleman:** On the appeals.) so I would like to clarify that.

Thank you, Madam President.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

The orders will come back to Tynwald for approval. Could I perhaps give you a little bit of background on this. This came about after extensive discussions with the UK. I have here:

'These notes are confidential on the grounds of national interest. For your information only'.

This is really going to be intelligence-led in most cases. I really cannot say much more about it because it is, in red, emblazoned on my notes here.

Mr Crowe: Madam President, can I just comment? I was not wanting private and confidential memos issued. I just wanted to know the procedure through Tynwald, that was all – that it follows Treasury in the Island... Treasury UK, Treasury Isle of Man. I think you have confirmed what I was asking, Hon. Member.

The President: The motion is, Hon. Members, that clause 24 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clauses 25 to 35.

Mr Coleman: Part 3 of the Bill deals with the enforcement provisions relating to financial restrictions measures, and I propose, Madam President, to move the provisions in three groups, which in the Bill before us are described as divisions.

The first group, division 1, consists of clauses 25 to 35 inclusive, which deal with the disclosure and enforcement of disclosure requirements common to all three types of financial restriction. These clauses do not contain anything not already in operation in either the 2003 Act, the 2009 Act or the Order in Council.

Clause 25 empowers the Treasury to require a financially restricted person to provide it with information about funds or economic resources owned, held or controlled by or on behalf of the financially restricted person. The obligation may be stated as requiring the person to keep the Treasury informed as circumstances change or at such intervals as it may require.

Clause 26 provides that a notice requiring information under clause 25 may include a requirement to produce certain documents or documents of a specified description. Where documents are produced, the Treasury is empowered to take copies or extracts and require a person to give an explanation in relation to the document.

Clause 27 makes it an offence to fail to comply with a requirement to give information or provide documents.

Clause 28 is extracted from section 6 of the 2009 Act and empowers an enforcement officer to enter and inspect premises, other than domestic premises, at any reasonable time. The enforcement officer may observe business, inspect or take copies of documents and require an explanation in relation to any matter relevant to the financially restricted person.

Clause 29 is extracted from section 7 of the 2009 Act and empowers an enforcement officer to apply for a warrant where there are reasonable grounds for believing certain conditions have been met.

Clause 30 imposes reporting obligations on the relevant institutions defined in clause 3 where they have knowledge or reasonable cause for suspicion in relation to financially restricted persons.

Clause 31 empowers the Treasury to disclose any information or evidence it obtains in the exercise of its functions to the persons or bodies set out in subsection (1).

Clause 32 provides for disclosure of information or evidence to the British intelligence services.

Clause 33 provides that if the Treasury informs only certain persons of a designation, then it may specify that the information they are given is to be treated as confidential.

Clause 34 requires the Treasury to co-operate with any investigation in the Island or elsewhere relating to the funds etc of a financially restricted person.

Clause 35 clarifies that nothing done under clause 25 to this clause is to be treated as a breach of any legal or other restriction.

Madam President, I beg to move that clauses 25 to 35 inclusive do stand part of the Bill.

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

The President: The motion is that clauses 25 to 35 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 36 to 38.

Mr Coleman: Madam President, division 2 consists of clauses 36, 37 and 38, which relate to the power of the Treasury to impose a civil penalty in respect of failure to comply with directions.

Clause 36 provides that a civil penalty may be imposed by the Treasury on a person who fails to comply with a requirement of a direction or a condition of a licence issued under paragraph 7 of schedule 1.

Clause 37 sets out the procedure where the Treasury determines to impose a civil penalty on a person for breaching a direction.

Clause 38 makes provision for appeal against the decision of the Treasury under clause 37.

Madam President, I beg to move that clauses 36, 37 and 38 do stand part of Bill.

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

The President: The motion is that clauses 36 to 38 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 39 to 56.

Mr Coleman: Madam President, division 3 consists of clauses 39 to 56 and is divided into four sub-divisions. These set out the offences relating to the three types of financial restriction and deal with general provisions in relation to offences. I propose to move these clauses together.

Sub-division 1 consists of clauses 39 to 41 inclusive, which relate to offences in relation to directions.

It is an offence to contravene a requirement of a direction under clause 39 and to circumvent a requirement of a direction under clause 40.

Clause 41 provides that it is an offence to provide false information, or be reckless as to whether information is false in order to obtain a licence under paragraph 7 of schedule 1.

Sub-division 2 consists of clauses 42 and 43, which concern offences in connection with freezing orders.

Clause 42 makes it an offence to contravene a prohibition imposed by a freezing order, or indeed to engage in an activity knowing or intending that it will facilitate contravention by another person.

Clause 43 provides a defence.

Sub-division 3 consists of clauses 44 to 52, which relate to offences in connection with designations and are drawn from the Order in Council applying the UK Terrorist Asset-Freezing etc. Act 2010 to the Island.

Clause 44 makes it an offence to deal with funds or economic resources owned, held or controlled by a designated person.

Clause 45 makes it an offence to make funds or financial services available, whether directly or indirectly, to a designated person.

Clause 46 is similar, but makes it an offence for a person to make any funds or financial services available to any person for the benefit of a designated person.

Again, similarly, clause 47 makes it an offence to make economic resources available, whether directly or indirectly, to a designated person.

Under clause 48, it is an offence to make economic resources available to any person for the benefit of a designated person.

Clause 49 makes it an offence to participate in any activity the purpose or effect of which is to either circumvent any of the prohibitions in clauses 44 to 48, or to enable or facilitate the contravention of such a prohibition.

Clause 50 sets out exceptions to the prohibitions.

Clause 51 states that the prohibitions in those clauses do not apply to anything done under the authority of a licence granted by the Treasury.

Clause 52 sets out the penalties for prohibition offences under clauses 44 to 49.

Sub-division 4 consists of clauses 53 to 56 and sets out general provisions in respect of offences.

Clauses 53 and 54 set out the liability of officers of bodies corporate and deal with the proceedings against unincorporated bodies.

Clause 55 deals with the liability of residents or businesses associated with the Island where the offence takes place wholly or partly outside the Island, and enables the offence to be treated as having been committed in the Island for the purposes of proceedings.

Clause 56 imposes a time limit for the instigation of summary-only proceedings.

Madam President, I beg to move that clauses 39 to 56 inclusive do stand part of the Bill.

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

The President: The motion is that clauses 39 to 56 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 4, clauses 57 to 62.

Mr Coleman: Madam President, part 4 of the Bill consists of clauses 57 to 62 and provides for supervision by the court of the exercise of powers by the Treasury.

In moving these clauses together we can see clause 57 provides the right of appeal to the High Court to set aside any decision of the Treasury in relation to its functions under the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002, or a financial restriction under part 2 of this Act other than a matter described in clause 24(2).

Clause 58 provides for the review of any other decision of the Treasury under part 4, other than a decision to which clause 57 applies. Any person affected by a decision of the Treasury under part 4 may apply to the High Court to have that decision set aside.

Clause 59 is supplementary.

Clauses 60 and 61 provide general provisions about rules of court and specific provision about rules of court regarding disclosure.

Clause 62 relates to the appointment of a special advocate.

Clauses 60, 61 and 62 are drawn from sections 25, 26 and 27 respectively of the 2009 Act.

Madam President, I beg to move that clauses 57 to 62 inclusive do stand part of the Bill.

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

The President: The motion is that clauses 57 to 62 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 63 to 70 – or do you wish to include 70A?

Mr Coleman: We will include 70A.

The President: Clauses 63 to 70A.

Mr Coleman: Thank you, Madam President.

I would like to move clauses 63 to 70A inclusive of part 5 together, and deal with clauses 71, 72 and 73 separately. Mr Downie has some amendments to the Bill he will wish to introduce before clause 71 and in relation to clauses 72 and 73.

Clause 63 enables the Treasury to delegate its functions under this Act, other than the power to make orders to any organisation in the Island responsible for the prevention or investigation of financial crime and of the financing of terrorism.

Clause 64 is about the giving of notices as required under the Act to the person or business, or the last known address of the person or business.

Clause 65 requires the Treasury to provide an annual report to Tynwald on the exercise of its functions; or to state that it has not exercised any of its functions, if that is the case. Where it differs from similar provision in section 19 of the 2009 Act is that if the Treasury has delegated any of its functions to an organisation in the Island it should include in its report the exercise of its functions by that organisation.

Clause 66 provides for the supervision of businesses in the regulated sector for the purposes of securing compliance with the requirements of any direction. A relevant supervisory body is one set out in paragraph 2 of schedule 4 to the Proceeds of Crime Act 2008, and this provision is drawn from section 20 of the 2009 Act.

Clause 67 requires the Treasury to assist a relevant supervisory authority or other appropriate body drawing up guidance that would be relevant guidance when issued and published for the purposes of the Act. This is drawn from section 21 of the 2009 Act.

Clause 68 provides for codes of practice for the purposes of preventing and detecting the financing of proliferation and terrorism, and is drawn from section 27A of the 2009 Act. The difference is that it now refers also to the financing of proliferation. The addition of the power to make codes in relation to proliferation as well as the financing of terrorism is another element in the Island, as a responsible jurisdiction, ensuring its legal powers and standards meet international expectations.

Clause 69 empowers the Council of Ministers to apply to the Island with such modifications as it considers appropriate any Order in Council made under the United Nations Act 1946 (of Parliament). This is in relation to the implementation of United Nations resolutions dealing with international terrorism, conflict, crime against humanity and related matters. Any order made by Council is subject to the positive Tynwald procedure.

Clause 70 applies the Act to the Crown.

Clause 70A is about an amendment in the Keys to correct a drafting error in the Bail Act made to the Police Powers Bill.

Madam President, I beg to move that clauses 63 through to 70A inclusive do stand part of the Bill.

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

The President: The motion is that clauses 63 to 70A inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now call on Mr Downie to move the amendment to the Bill listed at Item 2 – an amendment to introduce clause 70AA.

Mr Downie: Yes, thank you, Madam President.

Firstly, I would like to thank Hon. Members for agreeing to amend the long title of the Bill to enable the insertion of the two new clauses.

The clauses are very short and straightforward but deal with entirely separate matters, so I propose to move them separately.

Tabled amendment number 2 proposes the insertion of a new clause 70AA and relates to a new provision inserted into the Summary Jurisdiction Act 1989 by the Summary Jurisdiction and Miscellaneous Amendments Act 2013.

As it happens, by virtue of an Appointed Day Order [SD 406/2013], the new provision came into operation today. The problem – and it is only a minor one, but nevertheless worth resolving – is that it contained words that mean it is only possible to apply the provisions designed to enforce the effective collection of fines by means of an attachment of earnings or application for benefit deductions in relation to those imposed on or after today.

In order to solve the problem, the new clause 70AA standing in my name amends section 94A(5) of the Summary Jurisdiction Act 1989 by omitting the words ‘on or after the commencement of this section’. The effect of this amendment, therefore, is that in any case before the court relating to non-payment of a fine, whenever imposed, the court may make an order using this provision to secure effective payment of moneys due.

Madam President, I beg to move that the insertion of new clause 70AA is accepted and do form part of this Bill.

Insertion of new clause

Page 49, after clause 70A (inserted by the Keys at Clauses stage in that Branch) insert —
‘70AA Amendment to the Summary Jurisdiction Act 1989

(1) The Summary Jurisdiction Act 1989 is amended as follows.

(2) In section 94A(5)1 omit ‘on or after the commencement of this section’.

The President: The Hon. Member, Mr Braidwood.

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

The President: The motion is that clause 70AA, the amendment standing in the name of Mr Downie, be accepted. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

A further amendment to be moved by Mr Downie, 70AB.

Mr Downie: Yes, thank you, Madam President.

The amendment number 3 proposes the insertion of a new clause 70AB, and is promoted in order to remove subsections (3) and (4) from section 10 of the Sexual Offences Act 1992.

When homosexual activity was decriminalised a number of years ago, a regrettable oversight occurred when making consequential amendments with the result that we have suffered and continue to suffer some reputational damage. The acceptance of this new clause will mean that homosexual activity on a Manx-registered merchant vessel is decriminalised.

Madam President, I beg to move that the insertion of the new clause 70AB is accepted and do form part of the Bill.:

Insertion of new clause

*Page 49, after clause 70AA (inserted by the preceding amendment) insert —
'70AB Amendment to the Sexual Offences Act 1992
(1) The Sexual Offences Act 1992 is amended as follows,
(2) In section 10 omit subsections (3) and (4).'*

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

The President: The motion is that clause 70AB be accepted and do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 71 and schedule 3.

Mr Downie: Another one yet.

The President: Sorry?

Mr Braidwood: 70B. It was an amendment made by the Keys.

The President: Sorry, I have got three versions of it all here – 70B, right.

Mr Braidwood: Amendment to the Police Powers and Procedures Act 1998.

The President: I call on Mr Coleman.

Mr Coleman: Thank you, Madam President.
Clause 70B corrects a drafting error in the Police Powers and Procedures Act 1998 with reference to bail.

I beg to move that clause 70B is accepted and do form part of the Bill.

The President: Do we have a seconder?

Mr Butt and Mr Crowe: I beg to second.

The President: The motion is that clause 70B do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 71 and schedule 3.

Mr Coleman: Madam President, clause 71 refers to schedule 3, which sets out the amendments to the 2003 Act.

Paragraph 1 of the schedule slightly amends the definition of terrorism set out in section 1 of the 2003 Act in order to take into account helpful observations by MONEYVAL. Section 1 will now be clear that the commission of a Convention offence is of itself terrorism, whether or not it is carried out with the intention or purpose set out in subsection (a).

Paragraph 2 amends the requirement in section 2 of the 2003 Act to publish amended lists of proscribed organisations so that they must be published electronically rather than in two newspapers published and circulating in the Island.

Paragraphs 3 and 4 deal with the offences of facilitating funding and money-laundering.

In relation to the offence of facilitating funding, it is currently an offence to fail to exercise due diligence or adequately investigate whether the money is or will be used for terrorist purposes. It is recognised that the exercise of due diligence is sufficient and is a realistic expectation on business.

In the case of money-laundering, the defence of neither knowing nor having responsible suspicion that property is terrorist property has been reinserted into section 10.

Paragraph 5 amends sections 11 and 14 of the 2003 Act so that they refer to section 4 of the Proceeds of Crime Act 2008 in respect of the definition of business in the regulated sector. This amendment will ensure that the same definition of business in the regulated sector applies both in respect of terrorism offences and ordinary criminal offences.

Paragraph 6 amends references to the disclosure of information so that they now refer to information or evidence. This takes account of a legal opinion in a matter which identified that there can be a difference in law between the two.

Paragraph 7 inserts a considerable amount of material designed to place further safeguards on the police power of stop and search in relation to terrorism. Safeguards include the requirement to make a code about the exercise of the power, and the new schedule 8B is inserted to control the power to search in specified areas or places.

Paragraph 8 clarifies the provisions relating to search warrants by limiting the life of search warrants under schedule 5 of the 2003 Act to three months.

Paragraph 9 substitutes section 82 of the 2003 Act.

Madam President, I beg to move that clause 71 and schedule 3 do stand part of the Bill.

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

The President: The motion is that clause 71 and schedule 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 72.

Mr Downie: The tabled amendments, Madam President.

The President: I will take the amendments when it has been moved. Thank you.

Mr Coleman: Madam President, clause 72 makes a number of amendments to the Proceeds of Crime Act 2008.

In formally moving this clause, Members will see there are amendments numbered 4 and 5 relating to subsection (1), as printed in the green copy of the Bill. I will nevertheless highlight the other provisions in this clause.

Subsection (2) ensures the penalty for breaching the provision of a code of practice in respect of money-laundering is the same as applies for breaching a code of practice in respect of the countering of the financing of terrorism or proliferation.

Subsections (3) and (4) are about ancillary money-laundering offences.

Subsection (5) inserts subsection (5) into section 223 so codes of practice are made subject to the negative Tynwald procedure.

Madam President, I formally beg to move that clause 72 do stand part of the Bill.

The President: Do we have a seconder?

Mr Wild: I beg to second, Madam President.

The President: We have amendments tabled in the name of Mr Downie.

Mr Downie: Yes, thank you, Madam President.

The tabled amendments numbered 4 and 5 standing in my name relate to the provision in subsection (1) of clause 72, as printed in the green copy of the Bill.

Taking the amendment numbered 5 first, it has the effect of omitting the amendments to subsection (1) of section 140 of the Proceeds of Crime Act 2008. Whilst the Department had placed this provision in the Bill in good faith, it has considered the matter once more and taken further counsel and accepts that at this time the change it had set out in the Bill to section 140 should not be made. Accordingly, I invite Hon. Members to support my amendment, which will mean section 141 of the Act remains as it is.

The amendment numbered 4 reflects the drafter's view that, from a drafting perspective, subsection (1) should have been in line 29 and introduced the amendments that follow in subsections (2) to (5). The amendment is therefore tidying up the drafting in the Bill.

Madam President, I beg to move the amendments to clause 72, numbered 4 and 5, standing in my name.

Mr Braidwood: I beg to second, Madam President.

The President: Hon. Members, just for clarity, the amendment tabled number 5 has an error in it. It should read 'line 4', I believe, not 'line 3', if you are taking out the whole of clause (1). *(Interjection by Mr Braidwood).*

If we understand that, Hon. Members, I will be happy to take both amendments together. I think the intention is clear but the wording is wrong.

Mr Downie: Yes, happy with that. Absolutely right, Madam President, yes.

The President: So it is 'line 4' not 'line 3'.

Mr Downie: Yes. I beg to move:

Amendments to clause 72

Page 49, line 29. Renumber the text as subsection (1) of the clause.

Omit page 49, line 30 to page 50, line 4 (subsection (1) in the Bill as originally printed).

The President: Hon. Members, the motion is that the amendments numbered 4 and 5, tabled in the name of Mr Downie, be approved and do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will now take the clause as amended, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 73 and schedule 4.

Mr Coleman: Madam President, clause 73 deals with the expiry of certain provisions of this Act and repeals the provisions set out in schedule 4.

These include the repeal of the 2009 Act in its entirety and part VII, relating to freezing orders, of the 2003 Act, as their provisions are now incorporated in this Bill.

Madam President, Mr Downie has an amendment to this clause, and so with that in mind I formally beg to move that clause 73 and schedule 4 do stand part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, thank you, Madam President.

I am grateful to Hon. Members for agreeing to amend the long title of the Bill and to the insertion of new clauses 70AA and 70AB.

As a consequence of these amendments, the list of repeals in clause 73 needs to be amended to include sections 70AA and 70AB as well as the new clauses introduced in the other place in sections 71 and 72.

The drafter of my amendments concluded it would be better to reword line 1 on page 51 as set out in the last amendment numbered 6 standing in my name.

Madam President, I beg to move that clause 73 be amended in accordance with the amendment standing in my name.

Amendment to clause 73

Page 51, line 1 leave out the words from 'This section' to 'Schedules' and substitute 'This section, sections 70A to 72 and Schedules'.

Mr Braidwood: I beg to second, Madam President.

The President: The motion is that clause 73 be amended in line with the proposal from Mr Downie. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will now move the amended clause along with schedule 4, Hon. Members, as the substantive motion. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of the clauses stage of the Bill.