

4.1 Terrorism and Other Crime (Financial Restrictions) Bill 2014

Mr Watterson to move.

The Speaker: Item 4. Consideration of Council amendments to the Terrorism and Other Crime (Financial Restrictions) Bill.

I call on the mover, Mr Watterson.

Mr Watterson: Thank you very much, Mr Speaker. More than happy to talk to this one.

The opportunity was taken to use this Bill to address a few issues in the Legislative Council through the insertion of two new clauses and to reconsider a matter in relation to the Proceeds of Crime Act. I will outline the changes made in the Council and invite Hon. Members to support them.

The first amendment further amends the long title to permit two new clauses to be introduced relating to sexual offences and the enforcement of fines and other financial penalties.

The second amendment introduces a new clause after 70A, which has been inserted by this House, which amends section 94A(5) of the Summary Jurisdiction Act so that it omits the words 'on or after the commencement of this section'. The problem the court has identified is that unless the words are omitted the court would only be able to enforce the collection of fines by means of an attachment to earnings in cases after 1st April. The benefit or effect of this amendment is that it will enable the court to make an order to secure effective payments of moneys due in any case relating to the non-payment of a fine, whether the fine was imposed before or after 1st April 2014.

The third amendment inserts 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 Manx merchant vessels is decriminalised.

The fourth set of amendments relate to clause 72 as printed in the green copy of the Bill, which made amendments to the Proceeds of Crime Act 2008. Subsection (1) was intended to make the offence of facilitating the acquisition, retention or use of criminal property by or on behalf of another person clearer. The Department placed this provision in the Bill in good faith, but having taken further counsel it considers that the change to section 140(1) of the Proceeds of Crime Act set out in the Bill should not be made at this time. On page 49, line 29 the text is therefore renumbered consequentially.

The last amendment, to clause 73, reflects both the insertion of the new clauses made in the Council and further minor drafting refinement of the clause.

Mr Speaker, I trust Hon. Members will consider the amendments and insertions made by the Legislative Council to be appropriate and beg to move that this House agrees with the Council's recommendations to the Terrorism and Other Crime (Financial Restrictions) Bill 2014 and that the Bill do pass.

The Speaker: Mr Shimmin.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, the situation that concerns me is that... I have no problems as far as the issue of the Sexual Offences Act as far as the long title of the first amendment on our

agenda paper, because quite frankly it is something that has been an anomaly. The principle has been established and, to be perfectly honest with you, the sooner it is off the statute book the better it is as far as the Island is concerned, because we have still got quite a lot of people who are quite moronic when it comes to... that the Isle of Man is somehow a terrible homophobic society – which it is not any more. We have still got battles to win, but it is nothing like it was 30 years ago. So I have got no problem with that.

I have got a problem with the new clause after clause 70A because of the fact that... is it actually a new principle? I would be wanting to know from the Minister whether there was some oversight as far as the principle that it was going to be that it would not be backdated before this legislation came into place.

What we are seeing here, Vainstyr Loayreyder, is that it would effectively mean that they would be able to impose collection of fines and attachments of earnings in relation to this on and after today, but the fact is that what we are doing here is backdating legislation so that it actually is... legislation that... I am having a senior moment now... We talk about... We are backdating legislation... I have completely lost my thread as far as the... (*Interjections*) Well, that's what you would like, I know, and that is why we are in the mess we are in.

The Speaker: Hon. Member, order! Carry on.

Mr Karran: The... *ultra vires*... and I think it is an important principle that we need to sort out as far as this legislation is concerned. There needs to be good reason why we should be allowing legislation to be backdated in this way. It is one of the things that some of us who have been in here a long time, when we did do the job that we were supposed to do, would be arguing – that there would have to be a real meaning for why we should backdate such legislation.

There is a legislative principle here, as far as I am concerned, especially... not only because of it being backdated, but also the fact that it is being done by the Chamber that is the revising Chamber. Matters of principle should be done in this House (**A Member:** Hear, hear.) and I believe that this is an issue where I have to say, unless the Minister, the Shirveishagh son Cooishyn Sthie, comes up with a real good reason why we should do this, then I am afraid I think I will be inclined to vote against this section, because I think it is wrong to backdate legislation. What concerns me... and I know the Chief Minister gets upset about it, about saying about prioritising and an inclusive and not an exclusive society, but the fact is that if we were backdating legislation when it comes to the financial sector or other things, would that get the same support in the Upper House?

So I think Hon. Members need to think about – before I shut up – the issue of whether we should be creating backdated legislation and should we be allowing the Upper House the opportunity to make policy, because obviously it went through this House that it was going to go through on the day that it received Royal Assent.

The other thing that I am concerned about is on the... I was interested to know, on the negative Tynwald procedure, why is it a negative Tynwald procedure? One of the biggest problems we have is that so many things in this House, in another place –

Mr Watterson: Mr Speaker –

Mr Karran: – as far as Tynwald is concerned –

The Speaker: Mr Watterson, do you have a point of order?

Mr Watterson: Well, it is not a point of order; it is an intervention, if we are permitted those yet, sir?

The Speaker: Yes, you are indeed.

Mr Watterson: The Hon. Member has referred to a negative resolution procedure. I would need to know which clause, because there is nothing about negative resolution procedure in any of the amendments that are before the House today. Also, I will happily address the reasons why I do not think this is backdating legislation – this is about backdating enforcement provisions – but I will maybe get into a bit more detail on that in my summing up, sir.

The Speaker: Mr Karran.

Mr Karran: I welcome the intervention. I think that is good to see.

I am happy as far as the issue is the issue of backdating and the issue of policy. I totally agree with the mover of the amendments from the Upper House. My concern is the Upper House is a revising Chamber. We made the decision that it came in at the date as far as the law is concerned, and now we are changing policy. That is all I want to know and that is what good parliamentary process is about.

The Speaker: Before I call on the... Mrs Cannell.

Mrs Cannell: Yes, thank you, Mr Speaker.

I was just going to say, Mr Speaker, it might be advisable... if the Minister has not got an awful lot of information on the reasons and the thought processes that went into suggesting these changes to the House, then might I suggest that he withdraw it today?

I would echo Mr Karran's comments, in terms of the retrospective element of the changes in the amendments, if it is to make legislation; or, as the Minister has just clarified, to make the aspects of the legislation retrospective. That principle in itself is not a good one and it is one that the House has always resisted. There has been very good reason years ago for making legislation retrospective or the regulations retrospective, but it has always been resisted by the House, for very good reason. So there is a precedent that would be set if the House were to support this today without the necessary information to back up why the Minister is asking the House to accept and support and vote for the amendments coming down from the Legislative Council.

I do not feel like I have had sufficient information or background to clarify the reasons why these amendments are good, are appropriate and should be supported today. So I am asking the Minister, Mr Speaker, if he might consider pulling it today and bringing it back to the next sitting of the Keys with a better explanation.

The Speaker: The mover to reply. Mr Watterson.

Mr Watterson: In my naivete, Mr Speaker, I had presumed that people had gone through the Bill and would have come to me with any issues if they thought that they had them. Indeed, I spoke to Mr Karran yesterday about these amendments, albeit briefly, and there was an opportunity there, but it does not appear to have been taken.

I do have good reasons, and of course because I felt that I was pushing at an open door, I kept my opening remarks brief for the benefit of Hon. Members, who presumably had supported the Bill and the amendments. But I am happy to address the issues and the reasons why I do not think I need to pull this today, because I am on top of these amendments and do know why they have been moved and do have reason for supporting them.

It seems that the only one that seems to have promoted some sort of anxiety is the one that is down on the Order Paper on page 7 at 4.1.2 about the new clause after 70A, which allows the enforcement of attachment-to-earnings provisions to fines that were awarded by the court before 1st April 2014.

We are not making any new crime here. We are not creating a new offence where we could backdate them and prosecute people for it before 1st April, so in other words making a new crime and saying, 'Actually, you did that a year ago – we can now prosecute you for it.' We are not doing that. I also would be concerned that Mr Karran made the point that he seemed to think that the House had made a decision on a matter of policy that is being overturned by the Legislative Council. I do not think that is the case either.

What has been brought to our attention is that for fines already determined by the court, we cannot collect those currently by attachment to earnings. So what we are saying is if the fine was awarded before 1st April, what can happen now is that we can go back to the court and ask the *court* – and no more than that: ask the court – for an attachment to earnings for fines that have been doled out by the court before 1st April. We are not creating any new offence, which I would quite agree with the Hon. Members would offend the principle of legislation that you should not make law retrospectively, but what we are doing is making the enforcement provisions (**A Member:** The recovery.) retrospective, the recovery of the fines, and expanding the way that we can recover the fines.

Again, this is all subject to judicial process, rather than just going along, filling the form in at the Treasury and saying that we can now take it out of your earnings. That of course is not the case and there are safeguards in place to the judiciary to ensure that this is only done through the courts.

So I hope that gives Hon. Members the satisfaction that they are looking for in terms that it does not offend the retrospective legislation precedence of this place, it does not mean that the Legislative Council is in the driving seat with policy, and it is only about expanding the enforcement provisions for the collection of fines through the courts to fines that were levied before 1st April.

I beg to move the amendments standing in the name of the Legislative Council supporting the Bill.

Mr Speaker: Hon. Members, I put first Council amendment 4.1.1 as set out on page 7 of the Order Paper. Those in favour of that amendment, please say aye; against no. The ayes have it. The ayes have it.

The next amendment is 4.1.2, new clause. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mr Anderson
Mr Bell
Mr Cannan
Mr Cregeen
Mr Cretney
Mr Crookall
Mr Gawne
Mr Henderson
Mr Houghton
Mr Quayle
Mr Quirk
Mr Robertshaw
Mr Ronan
Mr Shimmin
Mr Singer
Mr Skelly
Mr Teare
The Speaker
Mr Watterson

AGAINST

Mrs Beecroft
Mrs Cannell
Mr Karran

The Speaker: With 19 votes for and 3 against, that amendment carries. I put the remaining amendments as set out in 4.1.3, 4.1.4 and 4.1.5. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting the amendment as a whole, those in favour, please say aye; against, no. The ayes have it. The ayes have it.