

4. Police (Amendment) Bill 2015 – Second Reading approved

Mr Coleman to move:

That the Police (Amendment) Bill 2015 be read a second time.

The President: Moving on to Item 4, the Police (Amendment) Bill 2015, I call on the Hon. Member Mr Coleman to take the Second Reading and clauses.

Mr Coleman: Thank you, Madam President.

In my First Reading speech I gave a short overview of the Bill and indicated that, in respect of the provisions relating to police complaints, the Bill underwent significant amendment in the House of Keys by way of the substitution of clause 5 and the associated schedule 2. As to the amendments made in the Keys, I will explain more about these when we get to the clauses stage.

The essential aim or principle behind the Bill is to increase the ability of the Constabulary to discharge its duties in the most efficient and effective manner, and to do so in accordance with international standards and human rights jurisprudence. The legal ability to contract out the performance of functions set out in clause 4 and schedule 1 will only be exercised where there are benefits in terms of efficiency and other cost savings, with the other aim being to free up police officers to carry out their key functions of law enforcement and community safety. The provisions in respect of police complaints will have the effect of increasing the accountability of the Constabulary as well as the performance and conduct of individual officers.

It is intended to introduce a new clause during the clauses stage of the Bill to enable special constables to join the Isle of Man Police Federation, and this is as much as anything about recognising the valuable work special constables perform and their importance in delivering effective law enforcement and the safety of our community.

Madam President, I beg to move that the Police (Amendment) Bill 2015 be read a second time.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: I beg to second, Eaghtyrane, and reserve my remarks.

The President: If no one wishes to speak, 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.

Police (Amendment) Bill 2015 – Clauses considered

The President: We move now then to the clauses.

Clauses 1 and 2

Mr Coleman: Clause 1 provides that the short title of the Bill is the Police (Amendment) Act 2015.

Clause 2 provides that it will come into operation by Appointed Day Order. If passed by the Branches, it is envisaged the provisions in the Bill will be brought into operation within six months of Royal Assent.

Madam President, I beg to move that clauses 1 and 2 do stand part of the Bill.

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

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 3.

Mr Coleman: Madam President, clause 3 is about the appointment, or rather the reappointment, of an incumbent Chief Constable. What this clause does is to insert new subsections (3A) and (3B) into section 2 of the Police Act to place beyond doubt two matters: firstly, if the Department is satisfied with the performance of the incumbent Chief Constable and that person is willing to serve a further term of office, the Department may reappoint that person for another fixed term; secondly, the amendments confirm that in such circumstances it will not be necessary to re-advertise the position and go through a fresh selection process.

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

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Could I ask the mover: where it says this, is there a maximum or does the amended clause simply give the ability that the current term is about to expire so it can be reappointed? And does that mean it can just keep going on – not indefinitely, obviously, but it can just keep rolling on – or is there a maximum amount of term that a Chief Constable can serve?

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

There is no maximum. It is based upon the will of both parties to continue with the process.

As a matter of interest, I can give you some terms for the previous Chief Constables that they have actually served: Mike Langdon, five years – that is just one term; Mike Culverhouse, one and a bit; and Robin Oake did 13 years. So, what we are faced with ... We have precedence here where people have renewed and we have been happy with them but we have been obliged to go through the reappointment process, and so we are attempting to avoid that – the cost and the delays and the uncertainties with that – by imposing this.

Obviously, if someone is not performing to the best of their ability they will not get reappointed.

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

Clause 4 and schedule 1. Members will note these have both been amended in another place, and the version you are considering is printed on page 3 of our agenda.

Mr Coleman: Madam President, clause 4 inserts a new section 77B into the Police Powers and Procedures Act 1998 to empower the Department to contract out functions currently performed by officers of the Isle of Man Constabulary.

Subsection (2) enables the Department, by order, to empower persons who are employees of a contractor so they can carry out functions set out in the contract.

Subsections (3), (5) and (6) set out what the order must contain in terms of the functions to be performed by contracted staff, their title and their powers and duties.

After sub-section (5) new sub-sections (5A) and (5B) were inserted by way of amendment in the Keys to ensure the function of executing search warrants through gaining entry to premises remains a function of police officers and cannot be contracted to other persons.

Subsection (5) makes it clear it will still be possible for the Police to take with them civilian technical experts to assist in making searches effective.

Other provisions require the Department to consult the Chief Constable, the Police Complaints Commissioner and the Police Federation. The Department would also consult the Law Society and issue the draft order for general public consultation. The order must then be approved by Tynwald before it can take force.

Subsection (2) of this clause introduces schedule 1 of this Act. The schedule inserts new schedule 2A into the Police Powers and Procedures Act 1998, which makes further provision about contracted staff.

In the heading to schedule 1, in line 3 on page 9, the year of the Police Powers and Procedures Act was amended in the Keys from 1988 to 1998. That was, I think, simply a typographical error.

A quick run through the provisions in new schedule 2A shows that paragraph 1 provides for the Chief Constable to designate and then assign functions in the designation to a contracted person named in it. Such a person must be fit and proper and have received adequate training.

Paragraph 2 sets out powers and duties, and in consequence of the amendment in clause 4 relating to the execution of search warrants, subparagraph (3) was removed from the Bill because we are only expecting police officers to use force, not those who may accompany the police officers.

In line 3 on page 11 in subparagraph (5), the word 'be' was inserted by the Keys after 'shall' and therefore corrects a proofing error.

Paragraph 3 enables the police complaints regime set out in schedule 1 to the Police Act 1993 to be applied to contracted staff.

Paragraph 4 deals with offences against contracted staff.

Madam President, I beg to move that clause 4 and its associated schedule 1, as both amended by the Keys, do stand part of the Bill.

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

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

I would just ask the mover: it makes reference to individuals in these subclauses and presumably it also includes companies that are subcontracted by the Police Force.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I see the part-privatisation here of functions of the Police Force. I wonder if the mover could give some examples of what functions the Department and/or the Constabulary would consider suitable for contracting out.

The President: The mover to reply.

Mr Coleman: In reply to Mr Anderson, it is predominantly going to be companies but it may be individuals as well with special skills.

With reference to Mr Turner's question, the functions that we are looking at are possibly the management of the custody suite at Police Headquarters under the direction of a custody sergeant of the Constabulary. It is possible that some road traffic functions which are not involving stopping or questioning or anything like that could be undertaken by them. I think we have had examples of how this is operated previously, where we now have ... rather than prison wardens taking prisoners to and from the courts it is now in the hands of Resource. Those are the types of operations that we

would be looking at. We would call them perhaps 'housekeeping' type operations rather than policing operations.

The President: The motion is that clause 4 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.

Clause 5 and schedule 2, both as amended by the Keys in another place, and printed on your Order Paper on pages 3 to 12.

Mr Coleman: Madam President, whilst this clause and the associated schedule were wholly substituted in the Keys, the substituted provisions before Council promote the same policy but incorporate the revised provisions required by Chambers to comply with human rights jurisprudence. It was decided it would be clearer to make the required changes by way of substitution rather than by amending a schedule in Keys that itself was amending a schedule.

Clause 5 amends the title of section 9 of the Police Act 1993 and the preceding cross-heading so it refers to complaints and conduct matters and adds a few words at the end of the section to that effect – that schedule 1 of the Act applies also to the investigation of certain other matters relating to the conduct of the Police.

Subsection (2) introduces schedule 2 to the Bill, which amends schedule 1 of the Police Act. In the Keys this clause was substituted for technical drafting reasons mainly relating to how the changes to the cross-headings and the section-headings are amended to include conduct matters as well as complaints.

Turning to the amendments in schedule 2, both as seen in the green copy of the Bill and then as substituted by the Keys, they are designed to enable the Chief Constable or the Police Complaints Commissioner to refer certain matters for investigation despite those matters not having been the subject of a complaint by a member of the public. This ensures that where a person has either died or sustained serious injury in custody or following contact with the Police it could be investigated, even if no complaint had been made by a member of the public. It had always been envisaged that such incidences would be investigated by a person or body from off the Island. However, on looking at the provisions again, Chambers ruled that, in order to comply with human rights, the primary legislation set out in the schedule to the Police Act 1993 must specifically provide for the investigation to be undertaken by a person or body completely separate from the Isle of Man Constabulary. The provisions of schedule 2 are designed to enable other matters to be investigated where the Chief Constable felt it appropriate because of the gravity of the matter or any other exceptional circumstances.

Other changes the Bill makes to schedule 1 of the Police Act include referring to disciplinary 'proceedings' instead of disciplinary 'charges', as the way police discipline is undertaken has been changed, requiring a few more definitions in paragraph 1 of schedule 1 to the Act. One of those new definitions in effect means that when an investigator is used from off Island that person may be from a police force or body in the UK, the Channel Islands or the Republic of Ireland.

Chambers went further in its critique of the Bill on human rights grounds and advised the Department that it must also attend forthwith to a matter expressly not addressed by the Bill, namely the human rights deficiencies Chambers identified relating to the appointment of a Police Complaints Commissioner. The amendments within the substituted schedule therefore provide for the Commissioner to be appointed by the Governor on the recommendation of the Council of Ministers, instead of after consulting the Department; for his or her term of office to be restricted to five years with the possibility of a single renewal for three years, instead of terms of three years that may repeatedly be renewed; for the ineligibility criteria to clarify that special constables, as well as serving or former police officers, are not eligible to be appointed; and that not only is a Member of Council or Keys ineligible to be appointed but also a former Member unless three years or more have elapsed when the vacancy arises. Lastly, certain criteria have been set out in the event it is

considered the Commissioner ought to be required to retire prior to the Commissioner's term of office expiring.

The principal purpose of this clause and the associated schedule 2 was to ensure that the police complaints process remains human rights compliant in the modern world. The Department considers the provisions before this Council, as substituted by the Keys, achieve that purpose.

Madam President, I beg to move that clause 5 and schedule 2, as in both cases wholly substituted by the Keys, do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Could I ask the mover, with regard to the issues that would be referred to an independent body, why has the Department not considered simply referring these matters to the UK Independent Police Complaints Commission? They have the resources and the infrastructure to deal with such matters, and surely, as a small part of the British family, those resources would be invaluable to such a small Island. It would give it that element of independence.

Also, just whilst we are on the issue of complaints and conduct matters – it is loosely related – I just wondered why the Department did not take this opportunity, maybe when bringing this amendment Bill, to consider elected police and crime commissioners like they have done in the UK, which in many areas have been a great success.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I wonder if the mover could outline in simple terms which of the human rights under the Human Rights Act were those which were considered to be infringed by the previous version of schedule 2 etc.

Mr Coleman: The complaints procedure.
May I ...? Sorry.

The President: Yes – no one else, I think, wishes to speak – reply.

Mr Coleman: May I defer to the Acting Attorney General, because it was the Attorney General's Chambers which found these items to be non-compliant.

The Acting Attorney General: That is very kind. *(Laughter)*

Madam President, I do not have that answer at this stage. I can come back to that at the next reading, if that would help Members. Certainly I do recall that the advice was clear that the changes had to be made, and I can come at the next sitting and explain why. *(Interjection by Mr Coleman)*
Yes.

The President: The mover to reply. Do you want to add anything to that? You will come back with the learned Acting Attorney General?

Mr Coleman: Yes.

I think whether we would refer it away would be based upon ... If it was a complaint against, say, the Chief Constable, that might be something we would move away. If it was a complaint against a member of the Police Force, then the local Police Commissioner could quite easily handle it. I think it would be horses for courses as to which way they went.

I have no knowledge of us considering whether we would look at having police and crime commissioners. I think that really is a political matter rather than an issue here.

The President: The motion then, Hon. Members, is that clause 5 and schedule 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we have the introduction of a new clause 5A. I call on the Hon. Member Mr Crookall.

Mr Crookall: Thank you, Madam President.

The amendment contained within the new clause 5A is proposed in order to enable special constables to become members of the Isle of Man Police Federation.

The reason for bringing this matter forward now is that discussions between the Department, the Chief Constable and the Police Federation have recently been concluded, and in order to give effect to the agreement an amendment has to be made to primary legislation to enable special constables to become members of the Isle of Man Police Federation. This Bill is the appropriate vehicle at the appropriate time to achieve this change.

The purpose of this new clause therefore is to enable an amendment to be made to section 12 of the Police Act 1993, which deals with the constitution of the Police Federation, to enable special constables to become members of the Federation. It does so in subsection (5) by including special constables within the references to members of the Police Force in the section.

Madam President, I beg to move that the new clause 5A be inserted into the Bill after clause 5 and that the amendment contained within it do form part of the Bill. I beg to move:

Insertion of new clause 5A

On page 7 after line 21 insert —

“5A Membership of Police Federation: special constables

In section 12(5) of the Police Act 1993 at the end insert «and to special constables.».”

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Madam President, I am happy to second and reserve my remarks.

The President: The motion is that a new clause 5A be inserted into the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Coleman: Madam President, clause 6 provides that this Act will expire on the day after its promulgation if all its provisions are in operation, or on the day after the last provision is brought in if later.

Madam President, I beg to move that clause 6 do stand part of the Bill.

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

The President: The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I would remind Members that there is no abstention allowed, so I would appreciate it if all Members could actually exercise a vote.

Clause 7. Sorry, that concludes consideration of that Bill, Hon. Members.