

5. CONSIDERATION OF CLAUSES

5.1. Custody (Amendment) Bill 2016 – Clauses considered

The Speaker: Hon. Members, we move now to Item 5.

Mr Watterson: Thank you, Mr Speaker.

Clauses 1 and 2 provide the title commencement by Appointed Day Order. Clause 3 provides interpretation and clause 4 provides the expiry of this Act after its promulgation and once all its provisions are in operation.

Mr Speaker, I beg to move that clauses 1 to 4 inclusive do stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: Hon. Members, I put the question that clauses 1 to 4 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, sir.

Mr Watterson: Members will be disappointed to know that it is going to slow down at this point.

Mr Speaker, clause 5 substitutes section 12(2) of the Custody Act 1995 so that persons under the age of 18 are required to be kept separate from those aged 18 years or over. This reflects the norms of international law in the treatment of children. Currently, the law refers to the age of 21, and then only to male detainees.

I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second and reserve my remarks.

The Speaker: The Hon. Member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker.

Could I just ask the Minister, it does actually say 'as far as is practicable' – is it foreseen that there might well be problems and if so where and when?

The Speaker: Mover to reply.

Mr Watterson: Thank you very much, Mr Speaker.

I think the problems are simply ones of practicality. We have seen cases in the past where the prison in Victoria Road was full, and you will see later on that there are provisions as to how we would deal with a full prison so it is not expected to be used, it is going to be very rarely. However, I think it is important – as in most cases in legislation – to deal with every practically foreseen scenario, and that is why it is in there.

With that, I beg to move.

The Speaker: Hon. Members, I put the motion that clause 5 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 6, Mr Watterson.

Mr Watterson: Mr Speaker, clause 6 amends the power to make custody rules in section 16 so the Department must make custody rules to provide for the health care arrangements entered into for detainees. A new power is inserted so custody rules may also provide for certain types of person to be deemed prisoner and others detainee. The clause also inserts subsection (4) into section 16 to enable the Department to give guidance or directions. This will enable the Department, for example, to give the Parole Committee guidance in the exercise of its functions. The minor amendment to section 17(3) set out in subsection (2) of the clause relates to contracts and subsection (3) of the clause repeals section 13(1)(b) which required the Department to appoint a medical officer and consequentially repealed subsection (5) of section 22.

I beg to move that clause 6 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I beg leave to second.

The Speaker: Clause 6. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

Mr Watterson: Mr Speaker, clause 7 is about clarifying the powers and role of the Independent Monitoring Board in relation to the Prison, Cronk Sollysh and police and court cells.

Substituted section 18 is broadly similar to the existing section 18 except in two matters. Firstly, it enables the Department to call an Independent Monitoring Board by whatever other title is appropriate. In practice, this would enable the body monitoring the detention of persons under the age of 18 to be given a title appropriate to the overall work of Cronk Sollysh.

Secondly, it no longer refers to cells in a court or police custody suite as these are covered by the new inserted section 18A. Section 18A expressly empowers the body established under section 18 to monitor the treatment of persons in police detention or being held in court cells.

I beg to move that clause 7 stands part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I beg leave to second.

The Speaker: I put the question clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 8.

Mr Watterson: Mr Speaker, clause 8 inserts a new section 18B to provide by custody rules for the Appointments Commission to recruit and appoint independent adjudicators. The person or persons appointed will be expected to deal with a wider range of disciplinary offences than are currently dealt with by the IMB. Once adjudicators are appointed, the IMB will be released from its adjudication function and free to fulfil its role as a monitor of detention conditions and prisoner welfare. Subsections (2) and (3) of the clause substitute references to the IMB and 21 so they refer to an adjudicator and 18, respectively.

Mr Speaker, Mr Thomas will move some Government amendments to this clause, but before he does so, I formally beg to move that clause 8 do stand part of the Bill.

The Speaker: Mr Skelly.

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

The Speaker: The Hon. Member for Douglas West, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Mr Speaker, I rise to move the amendments standing in my name.

The first amendment substitutes the words 'terms and conditions' for the word 'tenure' in the new section 18B part (1)(a). The reason for this change is to provide greater legal certainty as to the provision that may be made for the terms and conditions of office, including qualifications for appointment, length of term of office, expenses, and any consequences in the unfortunate event an adjudicator ought to be retired.

The second amendment will enable the Department to change the appointing body by order subject to the order being laid before Tynwald.

The third amendment deals with the existing provision for legal aid in respect of persons subject to a prison discipline charge. It changes the out-of-date references in paragraph 13 of Schedule 3 to the Legal Aid Act 1986, to 'a board of visitors' thus substituting references to the 'independent adjudicator'.

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

1. Page 10, line 24, for 'tenure' substitute 'terms and conditions'.

2. Page 11, line 8, at the end insert —

'(4) The Department may by order substitute another person or body in place of the Appointments Commission in subsection (1)(a) and such order must be laid before Tynwald as soon as may be after it is made.'

3. Page 11, line 16, at the end insert —

'(5) In Schedule 3 to the Legal Aid Act 1986, in paragraph 13 of the Table —

(a) for "a board of visitors and the board determine" substitute «an independent adjudicator and the adjudicator determines»;

(b) for "The board of visitors" substitute «An independent adjudicator».'

Mr Thomas: The Hon. Member, Mr Joughin.

Mr Joughin: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: I call on the mover to reply.

Mr Watterson: Just to thank Mr Thomas for moving those Government amendments and I hope other Members will support them.

Thank you.

The Speaker: Hon. Members, I put clause 8 and, to that, there is an amendment in the name of Mr Thomas. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Watterson.

Mr Watterson: Mr Speaker, clause 9 and the Schedule which introduces the new Schedule 1A are about modernising the law in relation to security in the Prison.

As well as providing for two lists of prohibited articles, the Schedule empowers the confiscation and disposal of prohibited articles or cash and regulates the use of CCTV. The provisions in the Schedule concerning Lists A and B make it an offence to cause any listed article to be in the Prison or be removed from the Prison without authorisation. List A concerns the most serious threats to security and therefore the penalties are more severe than from List B articles.

Paragraph 4 of the Schedule empowers the Prison Governor to dispose of prohibited articles. Paragraph 5 deals with the seizure of cash held by a person who is not authorised to have it or where the owners cannot be ascertained and sets out how it may be handled or returned to its rightful owner. This paragraph is in part about intervening in a list of transactions that help finance money laundering or other criminal activity. Paragraph 6 deals with other offences such as taking photographs or removing a restricted document without permission. Lastly, paragraphs 8, 9 and 10 regulate the use of CCTV in prison and make provision in respect of the retention or destruction of information or records obtained as a result.

Mr Speaker, I beg to move that clause 9 and the associated Schedule do stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: I put the question that clause 9 and the Schedule do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Watterson: Mr Speaker, clause 10 amends section 19A of the Act and extends the provisions relating to testing for drugs or alcohol, so they include testing for tobacco and for the presence of psychoactive substances. The power to test for drugs etc. remains important in relation to combatting general threats to prison security and the health and wellbeing of the detainees.

I beg to move that clause 10 stands part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: I put the question that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Watterson: Mr Speaker, clause 11 is about the early release of detainees. Subsection (1) empowers the Parole Committee to regulate its own procedures. In deference to the very important function the Committee performs, apart from setting out some very basic procedural matters in custody rules and assisting the Committee in whatever way is appropriate, the Department considers it proper for the Committee to determine for itself how it will deal with parole matters before it.

Subsection (2) enables a person's parole to be revoked before he or she is released and for the matter to be revisited in the event of a condition of their release, such as continued good behaviour,

being breached. Another amendment inserts a new subparagraph 6 into paragraph 13B of Schedule 2 dealing with those released who have to be recalled to prison because of a breach of some condition of their parole. The proposed change will enable the Department to re-release a person if it is satisfied the reason for his or her recall no longer applies or justifies the person's continued detention.

Mr Speaker, I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: Clause 11. Those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 12.

Mr Watterson: Mr Speaker, clause 12 provides grounds for release of detainees in the event the Prison was to become so overcrowded that the health of those persons or the security and operation of the Prison was put at risk.

To pick up Mr Singer's point from earlier, this is not something we anticipate. The Prison population has fallen quite considerably since the move from Victoria Road to Jurby, and long may that continue.

But I beg to move that clause 12 do stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: The Hon. Member for Ramsey, Mr Singer.

Mr Singer: Thank you.

I thank the Minister for that clarification, but I wonder if I could have just a little bit further clarification on what is written here. Who in practice is the Department and who would give advice as to which prisoners can be and cannot be released? Would the conditions include, for example, the maximum length of time that they could be released or might they be released for the rest of their sentence and the conditions; would there be things like they have to ... approved accommodation, tagging, the conditions of curfews etc. and bans from licensed premises etc? Who would make these decisions and is that the sort of thing that will be included in the decision?

The Speaker: Mr Watterson to reply.

Mr Watterson: Thank you very much.

Just to deal with that point, it says quite clearly here that the Department will take that decision. Clearly, that would be taken on advice, and it would be my expectation that that would be done firstly in consultation with the Governor. It would be dealing with ... depending on the security status, where they are on the incentives and privileges regime, and also considering the points in subsection (2) about which types of offence there are, all being taken into account.

Of course, the Department already has the ability to release on temporary licence to allow people to work in the day and come back at night, so this could be an extension of that. The legislation does give sufficient flexibility to allow for time periods; to be allowed out during certain periods rather than just an earlier release generally. Also, it gives the ability to put such conditions as it may direct,

as long as those are reasonable and proportionate, and the sorts of issues that the Hon. Member has raised would be the sorts of things that we would be considering, then this Bill would give the Department the flexibility to do that. So I hope that assists the Hon. Member in consideration.

Thank you.

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

Clause 13.

Mr Watterson: Mr Speaker, clause 13 will restrict the ability to pass an additional sentence of an extended licence on persons unless they are sentenced to four years or more in prison. It is considered that if a matter is so serious that an extended sentence is called for then it must be serious enough to pass a longer sentence.

I beg to move that clause 13 stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: Clause 13. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Watterson: Mr Speaker, clause 14 is a series of provisions designed to provide legal backing to the security staff already operating at the door of the court building. New sections 28A to 28E are inserted into the Criminal Justice, Police and Courts Act 2007 as Part A entitled 'Court Security Officers'. The provisions not only deal with the appointment of security officers at court but empower them to search, restrain, remove or exclude any person in order to secure the general safety of others or good order within a court building. Provisions also permit them to seize knives and other articles and for the Deemsters to make rules about their retention or return. The last inserted section – section 28E – makes it an offence to assault a court security officer.

I beg to move that clause 14 stands part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: I put the question clause 14. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 15, Mr Watterson.

Mr Watterson: This is the final clause of this Bill, Mr Speaker.

Clause 15 amends the Prisoner Escorts Act 2008 as a consequence of earlier provisions about monitoring boards, and clarifies the list of premises a prisoner may be escorted to or between.

I beg to move that clause 15 do stand part of the Bill.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I beg leave to second.

The Speaker: Clause 15. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.