

3. Custody (Amendment) Bill 2016 – Second Reading approved

Mr Coleman to move:

That the Custody (Amendment) Bill 2016 be read a second time.

The President: We move on to the next Item on our Order Paper, the Custody (Amendment) Bill 2016.

I call on the Hon. Member, Mr Coleman, to take Second Reading and clauses.

Mr Coleman: Madam President, before I start can I just ask if you have received a letter from me about the sequencing of the clauses?

The President: Yes, I have, sir, thank you.

Mr Coleman: Fine, thank you.

The President: Please proceed with the Second Reading.

Mr Coleman: Thank you, Madam President.

In my First Reading speech a few weeks ago I outlined the reason for the Bill and its purpose. In principle this Bill is promoted to meet modern standards in terms of its enhanced security provision for the Prison; more solid legal powers to make and use custody rules; to clarify the role of the Independent Monitoring Board so that it can concentrate on looking out for the welfare of detainees; to enable the boards for the Prison and Cronk Sollysh and Parole Committee to regulate their own procedures rather than have those procedures regulated by means of custody rules; to expand legal provisions surrounding the testing of detainees for drugs; and to address one or two issues surrounding the early release of detainees from custody.

In short, the Bill, as promoted, makes a number of amendments to legislation but does not introduce any new policy in relation to custody. Human rights are a factor in any legislation and the Department has been required, on the advice of Chambers, to seek further amendment of the Bill by this Council. This is regrettable, but the advice was received at such a late stage that the matter could not be addressed during the clauses stage in the House of Keys.

Madam President, I beg to move that the Second Reading of this Bill be approved.

Mr Henderson: I beg to second, Eaghtyrane.

The President: If no Member wishes to comment, 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.

Custody (Amendment) Bill 2016 – Clauses considered

The President: We move to clauses. Clauses 1, 2, 3 and 4.

Mr Coleman: Madam President, clauses 1 and 2 provide for the title and commencement by Appointed Day Order.

Clause 3 provides interpretation.

Clause 4 provides for the expiry of this Act after its promulgation and once all its provisions are in operation.

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

Mr Henderson: Eaghtyrane, I beg to second.

The President: The motion is that clauses 1, 2, 3 and 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Coleman: Madam President, 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 do stand part of the Bill.

The President: The Hon. Mr Henderson.

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

The President: The motion is that clause 5 stand part of 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 amends the power to make custody rules in section 16 so the Department must make custody rules to provide for the healthcare arrangements entered into for detainees.

A new power is inserted so custody rules may also provide for certain types of person to be termed 'prisoner' and others 'detainee'.

The clause also inserts subsection (4) into section 16 to enable the Department to give guidance or directions. This would enable the Department, for example, to guide the Parole Committee 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 repeals subsection (5) of section 22.

Madam President, I beg to move that clause 6 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 motion is that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Coleman: Madam President, 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 suites 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.

Madam President, I beg to move that clause 7 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 motion is that clause 7 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Coleman: Madam President, 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 Independent Monitoring Board. Once the adjudicators are appointed, the Independent Monitoring Board will be released from its adjudication function and free to fulfil its role as a monitor of detention conditions and prisoner welfare.

Madam President, subsection (1) of the clause was amended in the Keys by Mr Thomas MHK, by substituting the words 'terms and conditions' for the word 'tenure' in the inserted new section 18B(1)(a). This amendment was made so there would be no doubt that not only could an independent adjudicator be appointed but that terms and conditions could be provided for, to include terms of office and conditions of service, etc. Subsections (2) and (3) of the clause substitute references to the IMB and 21, so they refer to 'an adjudicator' and '18', respectively.

The second amendment made by Mr Thomas in the Keys inserted a new subsection (4) into the clause providing that the appointing body in section 18B(1)(a) could be changed by Order made by the Department.

The third amendment he made in the Keys was to insert a further subsection (5) into the clause, which then amends paragraph 13 of schedule 3 to the Legal Aid Act 1986 by substituting the references there in the manner stated on the Order Paper so they refer to 'independent adjudicator' instead of 'Board of Visitors'.

Madam President, I beg to move that clause 8, as amended in 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 motion is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9 and schedule.

Mr Coleman: Madam President, clause 9 and the schedule, which introduces new schedule 1A, are about modernising the law in relation to security in the Prison. As well as providing 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 for 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 illicit 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.

Madam President, before Mr Crookall moves some amendments relating to paragraphs 8, 9 and 10 of the schedule, I formally beg to move that clause 9 and the associated schedule do stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

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

The President: The Hon. Member, Mr Crookall, to move the amendments numbered 4 and 5 on page 9 of your Order Paper.

Mr Crookall: Thank you, Madam President.

I wish to move the amendments numbered 4, 5, 6 and 7 standing in my name. These amendments are required on the advice of the Attorney General's Chambers in order to comply with the determination of an issue with human rights implications in the UK Supreme Court.

The four amendments relate to the provisions in the schedule concerning the use of CCTV and similar other devices, and disclosure of information obtained through their use.

What amendment 5 does is to remove paragraph 9(3)(a) and then immediately reinsert the paragraph as a separate paragraph 8A.

Amendment 4 inserts a preamble to paragraph 8 to explain the purpose of the subsequent provision enabling the installation and use of CCTV and similar devices and restrict their use so that the use of CCTV must be overt – that is, clear to all that CCTV is in operation. By way of explanation, and very briefly, Chambers have advised that there must be an explicit statement of purpose so that the law about CCTV provision is clear and persons may regulate their conduct accordingly. For those who may be interested, the Supreme Court judgment that the drafter in Chambers referred the Department to was *Beghal v Director of Public Prosecutions (Secretary of State for the Home Department and others intervening)*.

The two other amendments, 6 and 7, are consequential.

Madam President, I beg to move the four amendments to the schedule standing in my name and numbered 4, 5, 6 and 7 on the Order Paper:

Amendments to schedule

Page 28, line 7 —

(a) at the beginning insert 'Where this is necessary for one or more of the purposes mentioned in paragraph 8A and proportionate in view of those purposes';

(b) after 'use' insert 'overtly'.

Page 28, after line 11 insert —

'CCTV: permissible purposes

8A. The purposes are —

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety; 10 PP 2016/0069
- (d) securing or maintaining security or good order and discipline in the relevant institution;
- (e) the protection of health or morals.’.

Page 28, for ‘on one’ in line 25 to ‘morals; and’ in line 33 substitute ‘for one or more of the purposes mentioned in paragraph 8A; and’.

Page 29, lines 8 and 9, for ‘on one or more of the grounds specified in paragraph 9(3)(a)’ substitute ‘for one or more of the purposes mentioned in paragraph 8A’.

Renumber accordingly.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.
I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

In the schedule, I just wondered, in the list of articles, why a transmitting device is not listed in there. It has got a mobile telephone, but there are many other devices, even the likes of walkie-talkies, and they are not mobile telephones.

I just wondered, where it says 'sound-recording device', why they had not taken the opportunity to include transmitting devices which could be received outside the premises. So, for example, you could have a sound-transmitting device or even ... Well, a picture-transmitting device would be covered by a camera, of course, because the camera would provide the feed to the transmitting device; but, certainly in sound, it does not appear to be covered.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I think you may remember that in some previous custody legislation we passed an amendment whereby we can actually jam signals – we were going to start to get devices into prison to jam all signals. These devices are normally smuggled into the Prison internally, and there is a chair that all incoming prisoners sit on which identifies anything metallic within their body. But now, if you go eBay, you can actually buy something ... That chair, by the way, is called the BOSS chair – it stands for the Body Orifice Scanning System. They are actually marketing a BOSS mobile phone, which is so small that even our BOSS chair will not pick it up. We are now at the point of looking at blocking signals, because the things just get in anyway.

Mr Turner: Good luck with that.

Mr Coleman: Yes. But that actually impacts on the Communications Act as well, so that one is still going through.

I hope that answers the question.

Mr Turner: It doesn't! (*Laughter*) It doesn't – or just not in the list.

The President: Hon. Members, the motion is that clause 9 and the schedule stand part of the Bill. To that we have four amendments, in the name of Mr Crookall, to the schedule.

I will take those amendments as a group, Hon. Members, first. Those in favour of the amendments, please say aye; against, no. The ayes have it. The ayes have it.

I will now take clause 9 and the schedule, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Coleman: Madam President, 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 combating general threats to prison security and the health and well-being of detainees.

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

The President: The Hon. Member, Mr Henderson.

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

The President: The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Coleman: Madam President, 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 a condition of their release, such as continued good behaviour, is breached.

Another amendment inserts a new paragraph (6) in 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.

Madam President, I beg to move that clause 11 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 motion is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Coleman: Madam President, 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.

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

The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Coleman: Madam President, clause 13 will restrict the ability to pass an additional sentence of an extended licence period 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 do stand part of the Bill.

The President: The Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The motion is that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Coleman: Madam President, 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 8A and titled '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 the 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.

Madam President, I beg to move that clause 14 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 motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Coleman: Madam President, 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.

Before Mr Crookall moves some amendments in relation to this matter, I formally beg to move that clause 15 do stand part of the Bill.

The President: Hon. Member.

Mr Henderson: Gura mie eu, Eaghtyrane.

I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crookall.

You are moving an amendment, sir. Page 9 of our Order Paper, the amendment to clause 15. Were you not briefed?

Mr Crookall: Thank you, Madam President.

The three amendments in relation to this clause, numbered 1, 2 and 3 on the Order Paper, further amend section 1 of the Prisoner Escorts Act 2008 to enable the Department to specify, by order, further premises between which a detainee may be escorted. By doing this it would enable the Department to use contracted staff to escort detainees to premises, for example, where a public inquiry is being held.

As indicated by the amendment numbered 3, where the Department makes an order it must be laid before Tynwald.

Madam President, I beg to move the three amendments numbered 1, 2 and 3 standing in my name:

Amendments to clause 15

Page 18, line 26 at the end insert —
'(da) any premises specified by the Department by order;'

Page 18, line 29 for 'or (d)' substitute ', (d) or (da)'.

3. Page 18, line 29 at the end insert —
'(c) after subsection (5) insert —
«(5A) An order under subsection (3)(da) shall be laid before Tynwald.»'.

Renumber accordingly.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.
I am happy to second the amendments in the name of Mr Crookall.

The President: The motion is that clause 15 stand part of the Bill. To that we have the amendments in the name of the Hon. Member, Mr Crookall. I will now put the three amendments to clause 15 to you *en bloc*. Those in favour of those three amendments, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Bill this morning, Hon. Members.