



CUSTODY (AMENDMENT) BILL 2016

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon. Juan Watterson BA (Hons), FCA, MHK

INTRODUCTION

- 1.** These explanatory notes relate to the Custody (Amendment) Bill 2016. They have been prepared by the Department of Home Affairs in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 2.** The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

- 3.** Should the Bill be passed by the branches, and receive Royal Assent, it is proposed its provisions would be brought in individually, or together, by Appointed Day Order.
- 4.** The legislation governing all matters relating to the detention, welfare and release of detainees in or from an institution in the Island is found in the Custody Act 1995. The Act has been amended, from time to time, principally to take account of changes of name or definitions and in relation to matters in Schedule 2 regarding the early release of prisoners.
- 5.** The Bill aims to update and clarify the powers to make custody rules, to clarify certain provisions relating to the independent monitoring of the welfare and treatment of detainees in particular so the powers to monitor treatment in police cells or in the court cells are legally clearer, to provide for an Independent Adjudicator to hear disciplinary charges instead of the Independent Monitoring Board, to provide further measures in connection with the security of institutions, amend the powers relating to testing for drugs or other substances etc and in relation to the release or early release of detainees. Lastly a provision relates to court security officers and amends the Criminal Justice, Police and Courts Act 2007.
- 6.** This Bill relates specifically to procedures and technical matters relating to the Prison and other custodial facilities. For this reason consultation was undertaken on a limited basis with some persons or bodies directly related to the changes proposed within the Bill.

7. EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Custody (Amendment) Bill 2016 are compatible with the Convention rights.

8. FINANCIAL EFFECTS OF THE BILL

In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any, or any significant, financial or personnel implications.

NOTES ON CLAUSES

PART 1 – INTRODUCTORY

9. **Clause 1** provides that the short title of the Act will be the Custody (Amendment) Act 2016.
10. **Clause 2** provides that the Act will come into operation by Appointed Day Order. The provisions of the Act may be brought in all together or at different times and subject to such transitional arrangements as are appropriate.
11. **Clause 3** states that in this Act, references to “the Act” mean the Custody Act 1995.
12. **Clause 4** provides for this Act to expire on the day after its promulgation, if all its provisions are in operation or else after the last provision is brought into operation.
13. **Clause 5** substitutes section 12(2) of the Act. Current provision requires the separation, wherever practicable, of male detainees under 21 years of age. The substitution requires the separation, so far as is practicable, of any detainee under the age of 18. The change is made to reflect practical reality in law as the key age now is 18 rather than 21, and should apply to all such detainees regardless of gender.
14. **Clause 6** makes a few amendments to the powers to make custody rules under section 16 and repeals provisions in sections 13 and 22 of the Act. The additional powers to make custody rules set out in subsections (1) and (2) of the clause do the following –
 - the insertion of new subsection (2A) requires custody rules to make provision in relation to the healthcare of detainees. The change reflects the fact healthcare is not now provided by a medical officer appointed by the Department to the Prison but through arrangements with, or via, the Department of Health and Social Care to provide detainees with the range of healthcare services required and used in the 21st century;
 - the insertion of new subsection (2B) empowers the Department, through custody rules, to designate some persons held in an institution, such as the Prison, as detainees whilst others may formally be designated as prisoners;
 - new subsection (4) clarifies the power to make custody rules so it is clear the Department may give general guidance or directions to any person or persons exercising functions under the rules. The guidance or directions must be in relation to the exercise of those functions.Subsection (3) of the clause repeals the provision requiring the Department to provide a medical officer in respect of every institution and repeals another provision consequentially.
15. **Clause 7** substitutes the power to appoint independent monitoring boards in section 18 primarily to enable the Department to call a monitoring board by such other title as is considered appropriate and to empower a board to regulate its own procedure. At present the power to monitor the welfare and treatment of detainees at a police station or at court is mixed in with similar powers in relation to the monitoring that takes place in each institution (i.e. the Prison and Cronk Sollysh). A new section 18A is inserted to

ensure the power for the relevant board to monitor the welfare and treatment of detainees at a police station or at court is more clearly set out in law.

- 16. Clause 8** empowers custody rules to be made providing for the appointment of independent adjudicators to deal with offences against discipline in an establishment instead of the Independent Monitoring Board (IMB) as is currently the case. The Department accepts the welfare/monitoring role the IMB performs is best kept separate from the functions related to determining offences against Prison discipline. Furthermore, the appointment of adjudicators will be made by the Appointments Commission rather than the Department.
- 17. Clause 9** introduces new Schedule 1A that brings in a number of provisions designed to reflect and address current issues in relation to security within an institution.
- 18. Clause 10** further clarifies and adds to the power to test for illicit substances etc. It enables institutions to test a detainee for traces of drugs, alcohol or, additionally, tobacco in his or her body. It also extends testing so that it may include any residue, derivative or metabolite of the aforementioned. The definition of "drug" has been extended to include any psychoactive substance; the definition of which has been drafted to encompass the damaging effects exhibited from time to time within the Prison environment.
- 19. Clause 11** consists of a few amendments related to the early release of detainees. Subsection (1) empowers rules of procedure to be made for the Parole Committee and, subject to such provision, enables the Committee to regulate its own procedure.

Subsection (2) does two things in terms of amendments to Schedule 2 to the Act. Where the Committee recommends that a person be released on parole, it does so on the basis of a number of factors, and attaches conditions to a person's release licence. If, in the period between the decision to grant parole being communicated to the detainee and that person's release date, the detainee's behaviour or circumstances give cause for concern, this provision would enable the Department to revoke the licence and refer the matter back to the Committee to consider both the Department's reasons for revoking the licence and any representations made by the detainee and then re-consider the person's parole. If there is sufficient time between the decision to grant parole and the date set for the detainee's release on parole then the Committee may review the Department's decision before that date. However, where the matters giving rise to the Department's concern arise so close to the detainee's date of release that it is not possible to refer the matter to the Committee before the original date of release then it must so refer the matter as soon as possible after the licence has been revoked.

The second matter subsection (2) attends to is where a person who is serving an extended sentence has been released on parole, but has then been recalled to custody. Currently, under paragraph 13B(4) of Schedule 2, a detainee so recalled may only be directed by the Committee to be released if it is satisfied it is no longer necessary for the protection of the public that the person be confined in custody. Whilst that is a pre-eminent consideration the Department recognises there are occasions whereby a person can be recalled to custody (for example on an allegation of an offence or a breach of a licence condition) and yet after investigation and due consideration the circumstances of the recall no longer apply (i.e. the allegation is unsubstantiated or the condition breached was a minor infraction). In these circumstances it would seem unreasonable to detain a person. The State has an obligation to protect all its citizens, and this may be effected by virtue of the power of recall and yet the rights of the detainee are safeguarded in that the Department is able to release a detainee if the circumstances which justified the recall no longer obtain.

- 20. Clause 12** simply provides a specific power for the Department to release detainees where there is a threat to health or security or the safe operation of the institution in question. In effect persons eligible to be released are short term detainees other than those serving a sentence for a sexual offence or a violent offence as defined in section 38 of the Criminal Justice Act 2001. Other conditions apply as set out in subsections (2) and (3) of section 22.
- 21. Clause 13** restricts the power to pass an extended sentence under section 38 of the Criminal Justice Act 2001 to those cases where the custodial term is at least 4 years. In other words, an extended sentence under that Act may only apply to long term detainees. The Department considers that if a matter merits a custodial term of less than 4 years it is, by definition, not so serious that an extended sentence/licence would be appropriate.
- 22. Clause 14** inserts provision into the Criminal Justice, Police and Courts Act 2007 to provide legal backing and protection for the work of those who perform security functions within court premises. New sections 28A to 28E empower the Chief Registrar to appoint persons to perform court security functions, define such officers and the meaning of "court building", and set out the powers of search, exclusion and removal from court and powers of restraint. Inserted section 28C provides for the surrender, seizure and retention of knives and other articles on grounds including the maintenance of order in the court building, the safety of any person within the court building and where the article may itself be evidence of, or in relation to, an offence. The Deemsters may make rules about the retention of knives and other articles. It is an offence to assault a court security officer. Before entering into any contract in connection with court security officers the Chief Registrar must consult the Department, the Chief Constable and such other persons as he or she considers appropriate.
- 23. Clause 15** amends the Prisoner Escorts Act 2008 in consequence of the substitution of section 18, and the insertion of new section 18A, of the Custody Act 1995 in relation to the title and functions of the body or bodies responsible for monitoring the welfare and treatment in general of detainees.
- 24. Schedule 1A** is inserted by clause 9 and replaces the current provision set out in section 19. It does so by making provision for two lists of prohibited articles; List A concerns the most serious kinds of prohibited article such as explosives, controlled drugs, firearms and regulated weapons and any other offensive weapon. List B concerns other prohibited articles such as liquor, a mobile telephone, a camera, a sound recording device and any other article prescribed in custody rules as a prohibited article. By nature, the conveyance of List A articles into or out from an institution attracts a higher criminal penalty than similar criminal action in relation to List B articles. Paragraph 4 of the Schedule provides the officer in charge of an institution (the Prison Governor or some other officer in charge howsoever designated) with the powers necessary to deal with unauthorised articles in various circumstances. The officer may dispose of, destroy or otherwise arrange for the destruction or other disposal of such articles.

Paragraph 5 empowers the Prison Governor, or other officer in charge of an institution, to seize cash found in the possession of a detainee either in the institution or in an escort vehicle where the detainee is not authorised to have such cash. The power extends to persons other than detainees in the circumstances set out in sub-paragraph (1)(c), namely that the person intends to convey it to a detainee who is not authorised to have the cash or it appears to the officer the cash is intended to be used in the commission of an offence. Amongst other concerns, this is intended to address money laundering in and through the custodial environment. Later sub-paragraphs deal with appeals and provision to deal with the seized cash, including returning it to

the person entitled to have such cash or applying to a court for an order for its disposal.

Paragraph 6 deals with other offences against security including the unauthorised taking of photographs or sound recordings or unauthorised activity in relation to restricted documents. Paragraph 7 provides interpretation for paragraph 6.

Finally, paragraphs 8, 9 and 10 make provision in relation to the use of CCTV in or in the vicinity of an institution, the disclosure of information in certain regulated circumstances (set out in paragraph 9(3)(a)) and the destruction or retention of such information or records.