



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th November 2013

*All published Official Reports can be found on the Tynwald website
www.tynwald.org.im/Official Papers/Hansards/Please select a year:*

Reports, maps and other documents referred to in the course of debates may be consulted on application to the Tynwald Library or the Clerk of Tynwald's Office. Supplementary material subsequently made available following Questions for Oral Answer is published separately on the Tynwald website, www.tynwald.org.im/Official Papers/Hansards/Hansard Appendix

Volume 131, No. 4

ISSN 1742-2272

Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J Quinn),
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,
Mr E A Crowe, Mr A F Downie OBE, Mr J R Turner and Mr T P Wild
with Mr J D C King, Clerk of the Council.

Business transacted

Leave of absence granted	39
1. Public Health (Amendment) Bill 2013 – Third Reading approved	39
2. Criminal Justice, Police Powers and Other Amendments Bill 2013 – Second Reading approved	40
Criminal Justice, Police Powers and Other Amendments Bill 2013 – Clauses considered	41
<i>The Council sat in private at 12.36 p.m.</i>	70

Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Leave of absence granted

The President: Hon. Members, the Hon. Member, Mr Corkish, will be with us for part of this morning's sitting, but will be leaving at about quarter to one, when he eventually arrives – sorry, quarter to twelve – to deal with Post Office business.

1. Public Health (Amendment) Bill 2013 – Third Reading approved

10 **The President:** We have before us the Public Health (Amendment) Bill for Third Reading.
I call on Mr Turner.

Mr Turner: Thank you, Madam President.

15 Hon. Members will note that the officers of the Department have put round a general paper in response to some of the issues raised at the clauses and Second Reading stage. I do not propose to read the paper out but, having informally spoken to Members, they seem quite content that it answers all the queries. It is quite a detailed paper, which all Members I believe have been circulated with a copy of.

20 For this, the Third Reading, the Bill makes a number of amendments to the Public Health Act 1990. The amendments provide new health control measures which will assist the Island in dealing with the prevention and control of the spread of serious diseases caused by infection and contaminations from chemicals or radiation.

With the modern day of increased international travel, the Island is not immune to such problems; therefore, we must have robust procedures in place to enable the authorities in the Island to address any threat that occurs in relation to these issues.

25 Madam President, I move that the Bill be read a third time.

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

30 **The President:** The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**2. Criminal Justice, Police Powers and Other Amendments Bill 2013 –
Second Reading approved**

The President: Turning now then to the Criminal Justice, Police Powers and Other Amendments Bill, I call on Mr Coleman to take the Second Reading.

35 **Mr Coleman:** Madam President, I am grateful to Hon. Members for their support for the First Reading of the Bill.

In my opening First Reading speech, I gave an overview of background and purpose of the Bill with a brief summary of its contents. May I remind Hon. Members that the main purpose of this Bill is to update legislation underpinning the work of the Isle of Man Constabulary.

40 The Department took note of the reaction to a previous Bill – the Criminal Justice Miscellaneous Provisions Bill 2010 – which did not complete its passage through the House of Keys before the 2011 General Election. The Department therefore considered what matters were sufficiently important to merit re-introduction after the General Election.

The Bill before Council reflects the outcome of that consideration and consists of provisions the Department considers essential if we are to address the needs of the Force in the 21st century. 45 Those needs include promoting the efficiency, effectiveness and good conduct of officers, enabling the Constabulary to combat serious organised crime and crime that crosses borders.

Turning to one or two matters raised during the first reading, Mr Downie noted that the proposed new provisions relating to police regulations provided for regulations to be made in respect of special constables. The Department would not consider that the power to make such 50 regulations would be an appropriate vehicle to address the matter raised by Mr Turner in relation to TT marshals. Mr Turner's issue is a matter for debate in the event he brings forward his Private Member's Bill.

Mr Butt indicated his broad support for the Bill, although not for proposals relating to bail from the scene of arrest. Mr Butt asked if the Police Federation were content with proposals within the 55 Bill relating to the Police Act and whether or not the proposed powers to make police regulations are as per the UK. The answer to both of those is yes.

In respect of the power to make regulations for police cadets, this is an enabling power but does not necessarily indicate any intention in the foreseeable future to introduce or recruit police cadets.

60 I will speak more about the power to make regulations at the appropriate time during the clauses stage.

Madam President, I beg to move that the second reading of the Criminal Justice, Police Powers and Other Amendments Bill be approved.

65 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: 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.

**Criminal Justice, Police Powers and Other Amendments Bill 2013 –
Clauses considered**

70 **The President:** We turn to the clauses. I understand you want to take clause 1 to 3 together.

Mr Coleman: Madam President, part 1 of the Bill is introductory and I would like to take and vote on clauses 1, 2 and 3 together.

Clause 1 gives the short title of the Bill as the Criminal Justice, Police Powers and Other Amendments Bill 2013.

75 Clause 2 provides that the Bill will be brought into operation by Appointed Day Order.

Clause 3 provides that the Act expires, in effect, once the last provision contained within it is brought into operation.

Madam President, I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

80 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

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

Part 2, clauses 4 to 11.

85 **Mr Coleman:** Madam President, part 2 of the Bill consists of clauses 4 to 11, which all relate to bail through amendments to the Bail Act 1952. I would like to propose these clauses and have them voted on together.

90 At present, there is provision to enable the taking of money from a person released on bail to ensure they return to court at the time, date and place stated. The purpose of these amendments is so that money can also be taken as security to ensure a person who is released on bail complies with all the terms of their bail.

Clause 4 introduces the amendments set out in clauses 5 to 11.

95 Clauses 5 and 6 delete the same words from both sections 2 and 3 of the Bail Act. These sections currently provide for a person to be released on bail by recognizance. That means bail with the proviso that the person surrenders to court at the time, date and place stated. These deletions pave the way for the main changes in clauses 7 and 11.

100 Clause 7 substitutes the current provision in section 3A and provides a new term for conditions of bail. These are called ‘recognizance conditions’. This new power to impose conditions restates those previously in place, and additionally inserts the power to impose conditions to ensure the person makes him or herself available for appearances or hearings at any time during the proceedings and to ensure the person does not leave the Island. In addition, these recognizance conditions may now be imposed or varied at any time during proceedings by the court, of its own motion or at the request of either or both parties.

105 Clause 8 repeals section 4 of the Bail Act. This section is repealed because it is covered by the previous clause.

Clause 9 deletes the words ‘with or without sureties’, because bail is now about entering into a conditional obligation called recognizance, which is subject to conditions, including the taking of surety.

110 Clause 10 is repealed, because the subject of bail on arrest is dealt with in clause 11 through the substitution of section 15 of the Bail Act.

Clause 11 substitutes section 15 and inserts four new sections that are pivotal to the changes to bail. They provide for the forfeiture in whole or in part of bail money where any or all of the recognizance conditions are breached.

115 Substituted section 15 restates the power to arrest a person who breaches any condition of their bail and sets out how and when they are to be brought before a court for breaching bail.

120 New section 15A sets out a court's options in the event someone is brought before it for breaching any or all conditions of bail. Previously, forfeiture might be ordered only if a person had failed to surrender to custody. In this new provision, a court must order forfeiture unless it can find reasons not to do so. If a court does find reasons not to order forfeiture for breach of bail, it must give those reasons. The court may do a number of things in relation to the person, including re-admitting them to bail on the same conditions, changing those conditions, or remanding the person in custody.

125 New section 15B gives more detail about the procedure for forfeiture of bail money and provides the court with the option of finding that the person had a reasonable excuse for breaching a condition of bail.

New section 15C defines 'bail by recognizance', 'bail condition' and 'recognizance condition'.

130 Madam President, I beg to move that part 2 of the Bill, comprising clauses 4 to 11 inclusive, do stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

135 **Mr Butt:** Thank you, Madam President.

I support all these clauses.

140 I think clauses 5 to 10 really are a rewording of the current situation without any major difference, but clause 11 is quite important in that it gives a lot more surety – excuse the pun; I did not mean to do that – to get clarity about how breaches of bail are dealt with and gives more powers to deal with breaches. I think that is something that has long been overdue, and so I will support on those clauses.

145 **The President:** The motion is that clauses 4 to 11 do stand part of the Bill. Those in favour, please... Sorry, I did not give the mover an opportunity to reply.

Mr Coleman: Madam President, I thank the Hon. Member, Mr Butt, for his comments and am very grateful for them.

150 **The President:** Right, we now move to the vote, then. The motion is that clauses 4 to 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clause 12.

155 **Mr Coleman:** Madam President, this clause repeals section 5 of the Criminal Law Act 1981, which previously provided for the arrest of persons granted bail, as that matter is now covered by new section 15 inserted into the Bail Act.

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

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

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

Part 4, clause 13.

165 **Mr Coleman:** Madam President, clause 13 amends the wording of section 83(1) of the Summary Jurisdiction Act 1989 in relation to warrants endorsed for bail by a JP in consequence of the substitution of previous references to sureties.

Madam President, I beg to move that clause 13 do stand part of the Bill.

170 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

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

The mover has asked if he could move clause 14 later on, after certain other clauses upon which it hangs. So we will turn now to part 6 and clause 15.

175

Mr Coleman: Madam President, clause 15 substitutes section 32(1) of the Criminal Jurisdiction Act 1993 in respect of bail pending determination of appeal. In effect, it simply expands the existing provision to permit the Appeal Division to admit an appellant to bail by recognizance in accordance with substituted section 3A of the Bail Act 1952.

180 Madam President, I beg to move that clause 15 do stand part of the Bill.

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

185 **The President:** The motion is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 7, clauses 16 and 17.

Mr Coleman: Madam President, part 7 of the Bill currently consists of clauses 16 to 19, which amend the Police Act 1993.

190 Clause 16 introduces clauses 17 to 19, and I beg to move that clause 16 do stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

195

Mr Butt: Thank you, Madam President.

I have a couple of queries over this clause, which brings in, I think, part 8 through to 8G.

The President: The mover has only moved clause 16 at the moment.

200

Mr Butt: Sorry, Madam President, you are right. My apologies.

The President: Hon. Members, the motion before you is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

205

Clause 17.

Mr Coleman: Madam President, clause 17 substitutes the existing powers to make regulations as to government, discipline, administration and conditions of service of the Police Force in section 8, and inserts additional provisions to make regulations in new sections 8A to 8F, that is clearer in legal terms, specific, and enables the Department to make regulations dealing with various policing matters in the 21st century.

210

New section 8G tidies up the statute book by clarifying what regulations may remain extant and sets them out in new schedule 1A to the Police Act 1993.

The provision also clarifies the legal position in relation to current or past police regulations and confirms the validity of them and/or the actions taken in accordance with them.

215

Madam President, I beg to move that clause 17 do stand part of the Bill.

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

220 **The President:** The Hon. Member, Mr Butt.

Mr Butt: I will cover it at the right time now, Madam President.

225 Just, as I say, a couple of queries. In regulation 8D – the new 8D – there is a comment in there which I do not quite understand. First of all, it has always been a principle, I think, that the Department cannot interfere with the operational policing of the Police Force. (**Mr Braidwood:** Correct.) That is always a strong principle.

When you read part 1, it seems to say the Department may make regulations making provision requiring all the Police Force to adopt particular procedures or practices. That could be seen to be an attempt by the Department to actually tell the Police Force how to do their operational business. But it then goes on talk about documents in the next two parts of that clause.

230 So I am just wondering, does the mover... can he tell us what that actually means? Is it purely to do with some document processing, or is it to do with the fact the Department can make the Police Force adopt procedures that they want them to adopt?

The President: Mr Downie.

235

Mr Downie: Yes, thank you, Madam President.
Subsection (3) relates to:

'The regulations may also establish, or make provision for the establishment of, procedures for cases in which a member of the police force may be dealt with by dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution.'

240 Just for the record, could the Hon. Member please tell us whether there is an appeal mechanism in place here? In these days of human rights compliant legislation and other matters appertaining to that issue, it would be good just to get that on the record.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

245 Just to pick up on the point Mr Butt made about 8D, I would have a slightly different view, in that I would have thought the Department is the policy-making Department of Government, as in the representative of the people, and procedures and practices and policies is exactly what a Government Department charged with overseeing police forces should be doing.

250 I agree that, when it comes to operational matters to do with cases and how they execute those functions, it is down to the operational part of the Police and the various policing services, but I would certainly support the view that procedures, practices and policies is the very job of the Department of Home Affairs, as it is the Home Office in the UK.

The President: The Hon. Member, Mr Butt.

255

Mr Butt: A second point I did not mention before: at 8G(3) and (4) there is a date there of 14th September 2007, and I wonder why that is there, what the significance of that date is, and why that should be a particular note in this clause.

260 **The President:** The mover to reply.

Mr Coleman: If I may, Madam President, I would like to introduce Mr Tom Bateman, Legislative Manager from the Department of Home Affairs, and would ask him to respond to some of the questions that have been placed.

265

The President: For the purposes of *Hansard*, could you introduce yourself and your role?

Mr Bateman: Madam President, I am Tom Bateman, Legislation Manager, Department of Home Affairs.

270 To answer Mr Downie's question first about police regulations substitute section 8, referring to dismissal etc, there will be some updated police regulations made, subsequent on this measure being approved and Royal Assent, which would provide for appeal mechanisms in terms of disciplinary procedures etc.

275 Mr Butt made a point about the Department potentially impliedly interfering in operational independence in respect of 8D. One of the reasons we have gone for the substitution of regulations is to make them as near as identical to the UK, based on the fact that, operationally, the Police follow UK practices currently. There is no intention to dictate operationally what is done, so that is the reason for that.

280 In terms of subsection (2) and subsection (3), the drafter introduced the idea that if there are policies or practices that it is good to adopt, we could either adopt them in specific Manx form or by reference to a similar document in another jurisdiction. So there is nothing more to that than enabling us, and similar provision is made elsewhere in the Bill to do that. It gives us several options: either we do it in Manx form, or we do it by reference.

285 I am grateful to Mr Turner for his comments in respect of the Department's policies, but indeed operationally they are and remain as before.

In terms of the date, 14th September 2007, I did ask the drafter about this and am a little bit hazy precisely, but... I ought, really, Mr Butt, to get back to you at Third Reading. There was a good reason for it, relating to the history of the regulations in terms of what is trying to be achieved. If I may, I will get back on Third Reading.

290 I think, Madam President, that addresses the issues.

The President: Mr Coleman, did you want to add anything?

295 **Mr Coleman:** No, not really. I think Mr Bateman has explained the issues.

The President: The motion is that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we move to the new clause 18, as printed on our Order Paper and moved in another place.
Mr Coleman.

300 **Mr Coleman:** Madam President, this new clause was inserted into the Bill after clause 17 in the House of Keys and changes the cross-reference to section 11 in section 10 of the Police Act 1993, so that it now refers to section 8B, which deals with police cadets. The insertion of this new clause means all subsequent clauses are renumbered accordingly.

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

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

310 **The President:** The motion is that the new clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In order to avoid confusion, Hon. Members, I am going to put to you the clauses as numbered on the Green Bill, although we accept that, as a consequence of what you have said, they are effectively renumbered. So we will take clause 18 as printed, which is the new clause 19.

Mr Coleman.

315 **Mr Coleman:** Madam President, a further new clause substitutes a reference in section 21 of the Police Act 1993 as a result of clause 17 being accepted and standing part of Bill.

The reference in section 21 'Interpretation of the Act' to the police regulations would now be to section of 8 to 8E, rather than section 8(1).

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

The President: We have not dealt with clause 18.

Mr Braidwood: Which is now renumbered 19.

325

Mr Coleman: Madam President, although we have just inserted a new clause, for the sake of clarity I will also refer to subsequent clauses as they are printed in the green copy of the Bill.

Accordingly, clause 18 repeals section 11 of the Police Act, because the making of regulations for police cadets is now covered by section 8B.

330

I beg to move that clause 18 do stand part of the Bill.

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

335

The President: The motion is that clause 18, as printed, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move now to new clause 20 as printed on the Order Paper.

Mr Coleman: Madam President, a further new clause was inserted in the House of Keys and this new clause substitutes a reference in section 21 of the Police Act 1993.

340

As a result of clause 17 being accepted and standing part of the Bill, the reference in section 21 'Interpretation of the Act' to police regulations should now be to sections 8 to 8E rather than section 8(1).

Madam President, I beg to move that this new clause do stand part of the Bill, as inserted by the Keys after clause 18 in the green copy of the Bill.

345

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

The President: The motion is that the new clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

350

We move then to clause 19 as printed in the Bill, which is actually now clause 21, along with schedule 1.

Mr Coleman: Madam President, clause 19 inserts a new schedule 1A into the Police Act, which sets out the regulations to be regarded as continuing in operation as if made under section 8 to 8D, once those and sections 8F and 8G are brought into operation.

355

Madam President, I beg to move that clause 19 do stand part of the Bill.

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

360

The President: The motion is that clause 19, as printed in schedule 1, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 8 clause 20, as printed.

Mr Coleman: Madam President, part 8 of the Bill comprises clauses 21 to 49, which amend the Police Powers and Procedures Act 1998.

365

Clause 20 introduces the amendments set out in clauses 21 to 49.

Madam President, I beg to move that clause 20 do stand part of the Bill.

The President: Do we have a seconder?

370

Mr Downie: Yes, I beg to second and reserve my remarks.

The President: The motion is that clause 20 do stand part of the Bill – clause 20 as printed. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

375 I understand, Mr Coleman, you would like to move clauses 21, 23, 24 and 25, as printed, together.

Mr Coleman: And, Madam President, also clause 14.

380 **The President:** Which is consequential upon the other clauses. (**Mr Coleman:** Yes.) Do you want to move it with them?

Mr Coleman: I guess we had better make certain... Yes, we will move it with.

385 **The President:** Right, including clause 14. Back to page 19. Would you like to take clauses 21 to 25 first, and then 14?

Mr Coleman: I think we should do, yes, if we may, Madam President. Clauses 21 to 25 inclusive deal with the capacity of search warrants

390

The President: I understand you want to move 22 separately though, sir.

Mr Coleman: Yes, 21 to 25, excluding 22.

395 With your consent, Madam President, I would like to move clauses 14, 21, 23, 24 and 25 and have them voted on together.

I mentioned earlier that clause 14 makes a change to section 22 of the Criminal Justice Act 1991, which is consequential on the changes to search warrants being agreed in these clauses.

400 Clauses 21, 23, 24 and 25 amend sections 11, 18 and 19 of schedule 1 respectively of the Police Powers and Procedures Act 1998 to expand provision for a constable to apply for and a judicial person to consider issuing a search warrant.

405 Clause 14 makes similar provision in respect of section 22 of the Criminal Justice Act 1991. Currently, a warrant may, on application, be issued for single entry to a set of premises within the maximum period of one month. The amendments to these clauses enable a warrant to be issued valid for up to three months, authorising entry to one or more sets of premises, either specified or belonging or connected to the person or body under investigation. The scope of the warrant may be expanded further to enable entry to be specified singly or for any number of entries within a specified period. Subsequent entries for the same or additional premises permitted by the terms of the warrant must be authorised in writing by an officer of at least the rank of inspector.

410 Whilst it is the case that overall crime in the Island, as evidenced by the Annual Reports of the Chief Constable, has declined, it is also the case that the nature of crime has changed. For sure, there is the usual type of crime where a warrant for single entry to a single set of premises is all that is required. However, the nature of some types of crime has become more organised and sophisticated – for example, concerning drugs or financial dealings. These may quite often involve other jurisdictions as well and require swift and co-ordinated investigation.

415 In these kinds of scenarios it is considered necessary to have powers for the judiciary to expand the capacity of search warrants to enable investigations to be swiftly and effectively executed without the person or persons under investigation having an opportunity to destroy evidence.

420 Warrants for searches are not, I understand, given lightly, and the enhanced capacity of these warrants will be subject to the level of scrutiny deemed appropriate by the judicial person to whom the application is made.

Madam President, I beg to move that clauses 14, 21, 23, 24 and 25 do stand part of the Bill.

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

425 **The President:** The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think it is right to point out that this is a considerable increase in the powers of the Police, compared to what used to be in power. It used to be that once a warrant was issued, once it was
430 executed, that was it – it was extinguished there and then; but now the warrants can not only have multiple visits to the same premises, and also different premises, but it is extended now for three months from a month.

So I think Members should be aware that this is a big increase in the powers of the Police, compared to what used to happen. I personally am happy with that, because it would have been a
435 very useful tool to use, but I think it is something that needs to be carefully watched in the future, because this is a significant increase and the stringent application of the warrants in the past has now been relaxed considerably.

The President: The Hon. Member, Mr Turner.

440

Mr Turner: Yes, Madam President, if I can pick up on that: is this one of the provisions that mirrors the situation in the United Kingdom?

Mr Coleman: Yes, it does; in fact, it is a direct copy. It reflects the change in the UK, where there
445 was a case which was going through – which was, I think, if my memory serves me properly, a divisional court in *R v Chesterfield Justices and Chief Constable of Derbyshire, ex-parte Bramley* – where the existing powers of warrants were brought into question and legislation was passed to make sure that the warrants were brought in to combat the increasing level of organised crime... and where you want to go in one set of premises, you may find a piece of information and then you
450 want immediately to go to another set premises.

Financial crime comes to mind, even drug dealing, where you might want to get some information from... He may have other addresses, or a very large electricity bill in a house, which might indicate hydroponics going on.

It does reflect what has happened in the UK, but has been based upon failure of the previous
455 legislation in court.

Mr Butt: I wish I had had those powers in my day! (*Laughter*).

Mr Corkish: Hang on – you had a truncheon!

460

The President: The motion is that clauses 14, 21, 23, 24 and 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22, as printed.

Mr Coleman: Madam President, clause 22 inserts new section 11A into the Act and enables the constable applying for a warrant to ask the judge or JP to authorise persons with scientific or other technical expertise to accompany the constable. This provision is in addition to current provision enabling other persons to accompany a constable, and enables the constable to have persons with particular expertise who are capable of assisting in the more detailed or technical aspects of a
470 search.

Madam President, I beg to move that clause 22 do stand part of the Bill.

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

475 **Mr Braidwood:** Madam President, just a quick one. I presume this would be scene-of-crime officers to go with the constable, because they would have expertise in certain areas? (*Interjection by Mr Turner*)

480 **Mr Butt:** And computer experts.

The President: The Hon. Member, Mr Butt.

485 **Mr Butt:** Sorry, Madam President. I think most scene-of-crime officers are constables, but I think this might mean people like computer experts etc. People with expertise in certain areas can accompany the police officer as well.

Mr Braidwood: The only reason I said scene-of-crime officers was that I believe some are civilians.

490 **The President:** The Hon. Member, Mr Turner.

Mr Turner: It was just to expand on that point, actually, Madam President. I know in our own Department we have got a range of experts in areas such as environmental health. Other things that people may want to consider is, for example, a dog warden may be requested to attend in case there are animals that need making safe – other non-Constabulary officers may be required.

I think this is a sensible provision and the taking of experts with them may well save officers leaving the premises and not having obtained the right items they wish to seize, and obviously leaving behind things that the experts feel are not relevant. So, it is a sensible provision.

500 **The President:** The mover to reply.

Mr Coleman: Thank you, Madam President.

Some searches, to be effective, need computer experts or forensic accountants, or others who can decipher code or handwriting – skills that a constable *may* possess, but not necessarily. This clause therefore empowers the judge or Justice of the Peace to authorise named suitable persons with the requisite technical expertise to actually assist the constable in the practical aspects of the search – for instance, gaining access to computers or identifying specific accounting or financial records.

Thank you, Madam President.

510

The President: The motion is that clause 22 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 26 and 27 and schedule 2, as printed.

515 **Mr Coleman:** Thank you, Madam President.

Clause 26 inserts new sections 26A to 26P, and clause 27 inserts new schedules 1A and 1B into the Police Powers and Procedures Act.

These provisions give legal clarity to those conducting complex investigations which require material to be extracted during a search under warrant of premises. The powers sought and introduced by this clause also have application with the expansion of the capacity of search warrants debated under clauses 21 to 25, excluding clause 22, in relation to the Island's obligations, as a responsible jurisdiction, to assist other countries and territories in the investigation and apprehension of international crime.

525 What they enable, for example, is the seizure of material that contains evidence sought, but where irrelevant material is inseparable from the relevant. This is important where the relevant material is on a computer or is part of a book and the relevant material cannot readily be extracted

during the time available for search on premises. The provisions enable the material to be removed from the search site to another location for examination or interrogation.

530 Part 1 of schedule A outlines powers in legislation to which new section 26A, 'Additional powers of seizure from premises', apply.

Part 2 outlines the powers and legislation to which new section 26B, 'Additional powers of seizure from the person', apply.

Part 3 relates to the powers to which section 26, 'Obligation to return excluded and special procedure material', apply.

535 Schedule 1B applies some enactments and makes some minor and consequential amendments.

Madam President, I beg to move that clauses 26 and 27 do stand part of the Bill.

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

540 **The President:** The Hon. Member, Mr Butt.

Mr Butt: Just a minor point. I think we have discussed this before. I see that it refers in here to a judge – making applications to a judge – which jars rather with the idea that we have Deemsters here. I think we have had this debate before, Madam President, I am not sure.

545 **The President:** We have indeed, yes.

Mr Butt: I just wondered if anybody has any information on that.

550 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Yes, I recall the debate we had on a few occasions about the word 'judge', and I think Mr Butt had raised concerns that the word 'Deemster' was disappearing. I think it was because they had rolled out a range of judicial officers, such as the High Bailiff. When they get temporary Deemsters brought in, acting Deemsters, it covers the whole range, which gives the judiciary flexibility, I think was what we had discovered at the time.

Mr Downie: Yes.

560 **Mr Butt:** It does ring a bell.

The President: The mover to reply.

565 **Mr Coleman:** Madam President, I am grateful to the Hon. Member, Mr Turner, for his eloquent removal of me making a different... Well, not different, but exactly the same comments.

Mr Turner: I am glad about that!

570 **The President:** The motion is then, Hon. Members, that clauses 26, 27 and schedule 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, introducing part of schedule 3.

575 **Mr Coleman:** Madam President, clause 28 substitutes sections 27 and 28 of the Police Powers and Procedures Act 1998. In place of the concept of an arrestable offence, the new section 27 replaces a list of conditions with a necessity test. Essentially all offences are arrestable offences, but an arrest will only be justified if the constable believes it is necessary for any of the reasons set out in subsection (5).

580 This is an important human rights provision because it provides that a constable must have reasonable grounds to believe one of a list of reasons is satisfied, and that it is actually necessary to make an arrest.

The purpose and indeed the practical effect will be not to extend the powers of arrest of a constable, which apply to all offences in any event, but to control them by ensuring a constable uses a test of necessity before arresting. This is, in effect, a safeguard, rather than a new power.

585 Following consultation, the substituted section would be governed by a new police code of practice to give this safeguard the appropriate backing as a disciplinary offence if breached by a police officer.

Substituted subsection 28(3)(b) restricts the common-law power of citizen's arrest to those occasions where it is not reasonably practical for a constable to make the arrest.

590 Madam President, my hon. colleague, Mr Braidwood, has two amendments to this clause, which are supported by the Department, and so I formally beg to move that clause 28 stand part of the Bill.

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

The President: The Hon. Member, Mr Braidwood.

595

Mr Braidwood: Thank you, Madam President.

As just mentioned by the Hon. Member of Council, Mr Coleman, the Department supports the two amendments to this clause which, Madam President, with your permission, I propose to move and invite Members to vote on together.

600 The amendments, which have been circulated, revert the definition of an address satisfactory for the service of a summons to the wording in the current section 28(3)(c) and (4) of the Police Powers and Procedures Act 1998.

605 This reinstatement of the existing provisions back into the Police Powers and Procedures Act 1998 stems from the debate in another place, when it was felt that the new provisions would result in more arrests. Although the Department refuted this suggestion, the Minister considered that this could be a disputable matter and was content to invite the Council to amend the clause accordingly.

Therefore, Madam President, I beg to move that the amendments 1 and 2 standing in my name be approved and stand part of clause 28:

Amendment 1

Page 49, line 35, for paragraph (b), substitute —

(b) that —

(i) the person in question has failed to give a satisfactory address for service; or

(ii) the constable has reasonable grounds for doubting whether an address given by the person in question is a satisfactory address for service;

Amendment 2

Page 50, after line 16 insert —

(6A) For the purposes of subsection (5)(b), an address is a satisfactory address for service if it appears to the constable —

(a) that the person in question will be at that address for a sufficiently long period for it to be possible to service a summons on him or her; or

(b) that some other person specified by the person in question will accept service of a summons for the person in question at it.

610 **Mr Downie:** I beg to second, Madam President, and reserve my remarks. *(Interjection)* Can I not reserve my remarks?

The President: Is somebody else seconding the amendments?

Mr Braidwood: Didn't you second clause 28 before? No?

615 **Mr Crowe:** I will second the amendments.

The President: Thank you.
The Hon. Member, Mr Butt.

620 **Mr Butt:** On the main motion as well?

The President: On that and the amendment, whatever you wish to say.

Mr Butt: This is a radical change, in terms of the powers of arrest given to police officers, and I do
625 have some slight concerns about it, but it is actually a bit of a curate's egg.

There used to be powers of arrest for misdemeanours and felonies many years ago – misdemeanours were up to two years' imprisonment; felonies beyond two years – and it was changed to arrestable offences some time ago. They were offences... I think murder was one, and then there were offences where the penalty was five years or more and certain specified offences –
630 for the very serious offences, really, there was a power of arrest.

What this means is that for any offence – and it could be a chimney fire, it could be a tax disc, it could be anything at all – there is now a power of arrest, but only if the conditions in part (5) are actually adhered to.

The same applies to members of the public: they have the same powers, in effect. So it could be that for a very minor offence you could be arrested, if you qualify for any of the parts in section (5) –
635 for anything – because the offence does mean literally offence.

On the other hand, it could mean that for a very serious offence, like wounding or something, if you do not qualify for any of section (5), there will be no power to arrest.

So it is a bit of a mixed bag in a way. I can see the intent behind it, and it follows, I think, UK
640 procedure; but it does change fundamentally the powers of arrest. There used to be a certainty that, for a serious offence, there was a power, whatever the circumstances; but now you could have a serious offence and there may be no power because they would not qualify for any of the qualifications in part(5). It is unlikely, but it could happen. But on the other hand, you could be arrested for parking on yellow lines, in theory, if you actually meet one of the conditions in part (5).

645 So there are some interpretations that need to be carefully looked at, and I believe there are regulations to go with this, which may be the answer to that.

Mr Crowe: So it comes down then, Madam President, to reasonableness in the administration.
Sorry, Mr Corkish.

650 **Mr Corkish:** Exactly what I was going to say.

Mr Butt: Part (5) is the safeguard, I think.

655 **The President:** Hon. Member, Mr Corkish, do you want to add something?

Mr Corkish: Yes, Madam President.

I was just about to say that it comes down to, in so many cases, that this would be a matter of
660 reasonableness in how the officer deals with the matter before him, really. Is that permissible? Is that within the matter, that there is a cause of reasonableness there?

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

665 I was just going to make the observation that, to me, it is the application of common sense.
(Interjections)

The President: The Hon. Member, Mr Turner.

670 **Mr Turner:** Sometimes the law has been accused of not always being of common sense, of being
outside that; so I think we have to also bear in mind that the law is what it says, not what we think it
should say. That is why I think it is important that we are content with each of these clauses and we
do not just rely on common sense to prevail every time – although I agree entirely with the
sentiments, you would certainly hope that some of these minor things would not be taken to the
675 extreme, but never say never. Cases do appear in the national papers – whether you can believe
them all or not is another story. But yes, I would agree with the sentiment: you would hope common
sense would prevail.

The President: The Hon. Member, Mr Corkish.

680

Mr Corkish: Probably, Madam President, it comes down to the zealotry of the individual who
is patrolling the street at the time, which is a grey area.

The President: The Lord Bishop.

685

The Lord Bishop: Madam President, it is a little bit concerning that a Bill as complicated as this
one should come down at certain points to common sense. I think I would be quite worried about
that, really, and I hope to hear an answer from the mover on this question.

690 **The President:** We turn now to the mover to answer the question.

Mr Coleman: Firstly, I think that this particular legislation, as I said before, is an incredibly
important human rights provision that reasonableness has to be present. If you go through a lot of
European legislation, reasonableness comes into so much of the legislation there, where they are
asking, was this a... Someone looking at it afterwards would say 'Is this reasonable, or is this not?'

695

So the reasonableness, I agree with you: you are talking about human nature here. That is one of
the reasons why there is going to be a new police code to safeguard this and provide an appropriate
back-up. As with all these things, they are often retrospective, but once you have done something
retrospectively, then you can impose a learning regime for the future.

700

So it is my expectation that this will add to the actual powers of the police officer to actually use
his common sense.

The President: The motion, Hon. Members, is that clause 28 and part of schedule 3 stand part of
the Bill.

705

To that we have two amendments in the name of the Hon. Member, Mr Braidwood. I will put to
you the amendments first. Those in favour of amendments 1 and 2 in the name of Mr Braidwood,
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.

710

Clauses 29 and 30.

Mr Coleman: Madam President, clauses 29 and 30 provide for bail to be granted at a place other
than a police station. For that reason, and with your consent, I would like to move the clauses
together.

715 Clause 29 restates the general provision in section 33 of the Police Powers and Procedures Act 1998 relating to arrest at a place other than a police station and prepares the ground for clause 30, which empowers the granting of bail at a place other than a police station.

Clause 30 inserts new sections 33A to 33D into the Police Powers and Procedures Act 1998.

720 New section 33A enables a police officer to grant bail at the scene of arrest. Where a constable makes the arrest, an officer of the rank of sergeant or above must authorise the release on bail from the street. The only requirement is that the person shall attend a police station at a later date or time. If there is any dispute, question about identity, or complexity, then of course one would expect the sergeant or other senior officer to advise the officers who made the arrest to take the arrested person to the police station to be processed there.

725 New section 33B requires the Police to give such a person a notice in writing, specifying the offence and grounds for which they have been arrested and the date, time and police station they are required to attend.

New section 33C is supplemental.

730 New section 33D deals with those instances where a person is bailed from a place to attend a police station at a time and date stated, yet fails to do so. They may be arrested without warrant and must then be taken to a police station.

Madam President, I beg to move that clauses 29 and 30 do stand part of the Bill.

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

735

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

740 This is the clause which I have the most difficulty with, as the mover is aware. There is provision under the current Act whereby, if an officer decides he does not need to carry on with the arrest, he can release the person before they arrive at a police station. In this case, it would appear there is a clause now to say they have made the arrest but decide to bail them at the scene.

745 Making the arrest of a person is the most fundamental power a police officer has, taking away the liberty of somebody. At the moment, once the arrest is made, the defendant or the person arrested has to be taken before a sergeant in custody to actually explain to the sergeant why the arrest has been made, to justify the exercise of that considerable power. Then there is a decision made as to whether the arrest was lawful and whether it is justified, and what action to take next.

750 In this case, it would appear that the constable himself can make a decision at the scene to release the person on bail and let him go on his way. That person who has been arrested would then lose the opportunity, when he meets the custody sergeant, to say, 'But you have got wrong person; I have witnesses; there is something at the scene that might help my case.' Once the man has gone away from the scene and away from the arrest, that all could be lost and the defendant may not have the ability to garner the evidence and the support he needs to fight his case in the future.

755 So I think, actually, this is to the detriment of a person arrested, because if they are given the chance to leave the area and get out of the van or whatever, most people will take it rather than thinking through the consequences of 'What will this mean for me in the future?' So, when they come back to the police station a few days later, they may not have the evidence they need, that should have been gathered at the time. That is a possibility.

760 The fact that a sergeant has to be informed of this as well is an improvement on what used to be in the previous proposed Bill, but even then the sergeant could be at the scene as well and there might be a decision made at the scene, and I do think the fundamental taking away of somebody's liberty has to be explained at the time in the right way.

765 I will not be supporting this, but I am not expecting other Members to support me on this. It is just a point I make. The Member, when he moved the Second Reading, said this is for the needs of the Force, and I really think the needs of justice and the law and the defendants take priority over the needs of the Police Force. It will save time for the Police, it will make things much more simple

and save delays etc, but the needs of the Police Force should not take precedence over the needs of the defendant, the person being arrested.

770 **The President:** The Hon. Member, Mr Downie.

Mr Downie: I listened quite intensely to what the Hon. Member, Mr Butt, was saying. Obviously, he has got a lot of experience in this particular sphere, much more than mine; but from my perspective I can see a situation... Let's say a Sunday night: a police officer, a rural constable, just happens to be at the Point of Ayre, finds one of the local guys trying to break into some buildings round about the lighthouse. He is known to the officer, so is not as if it is a stranger, and the officer can confirm that he might have a previous conviction. But surely it would make more sense then to leave it at the constable's discretion, if he wants to arrest him there. He cannot go to Ramsey, because Ramsey police station is closed, there is nobody there. So he drags this person all the way in to Douglas to appear before a custody sergeant, or whatever, only to be bailed again. To my mind there is an instance where – we were talking about discretion earlier on – that person could be arrested by the constable and then bailed to appear at Ramsey police station at nine o'clock the following morning, when the office is manned.

780
785 This is a scenario that has happened not just in the Isle of Man, but across the length and breadth of England, where we do not have all these rural police stations any more, and there are times when officers do have to use their discretion.

I agree, it is a serious matter, but surely it is best to put that person on notice and have them appear somewhere the following day than to go through a whole procedure only to let the person go, after dragging him miles and miles away – and probably the Police would have to take him back home. It does cut down a little bit of the inconvenience and make the procedure easier to follow.

790
The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

795 I am quite concerned about the view that we are hearing about this fast-track justice all the time. We have recently had some provisions going through the other place where certain things can be dealt with by fixed penalty. I think that is a reasonable thing to do where there are low-level crimes or breaches of various provisions where they can issue a fixed penalty.

800 But I think the Hon. Member, Mr Butt, raises an important issue, that we are hearing things about... the cell blocks are busy on a Saturday night and a Friday night and they need more space and it is taking a lot of time. That, to me, is tough, really: that is the job. I agree with the point that this should not be just because it is inconvenient and the numbers are there. The reason that we have these procedures in place is to ensure that innocent people are not caught up in this. You hear all the time that if there is somebody there who feels they are, they will just cave in because they think it is the easier option.

805 I think that is where we come back again to the zealotry of the officer. We can have people arrested and bailed on the hoof, without the proper checks and balance, and I think it is a dangerous thing to have. It seems to be that a lot of the modernisation of these procedures is to make it easier and cheaper and simpler, which is not the whole idea of proper, firm justice. You will get innocent people just agreeing to all sorts of things because it is the easier option, and I do not agree with that principle.

810
The President: The mover to reply.

815 **Mr Coleman:** Thank you, Madam President.

This provision will save Police time, but in addition to that it will also – using the example that the Hon. Member, Mr Downie, quoted – mean that policing would still be available in that area, rather than it being on its way into Douglas to have someone appear in front of the custody sergeant.

820 I think we are all talking about an arrest in the street here. What happens if a policeman turns up
at a house to arrest somebody and there is a woman there with three young children? That lady
could be arrested. Do you take the children to the police station? What this would allow would be
something which said, 'Okay, you can appear in 24 hours, giving you time to arrange for babysitters.'
So again, as long as it is deemed to be appropriate, and the sergeant is the one who will approve this
at the point of arrest. On top of that, you would have time to schedule the duty advocate to be
825 available, rather than coming out in the middle of the night to deal with it.

Again, I think we are coming down to zealousness and reasonableness, but also you can only be
zealous and reasonable if you are available to be there. If you are off taking someone into the
central police station to go in front of the custody sergeant from a remote part of the Isle of Man,
then there will not be local policing available while you are doing that, in some areas, and the Police
830 are just wasting their time.

We are living in an economically strained environment and we have to make our suit to the width
of our cloth; and so I feel that this is a very important tool that can be added as an option to the
people who care for our safety.

Thank you, Madam President.

835

The President: Hon. Members, the motion is that clauses 29 and 30 as printed do stand part of
the Bill. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Braidwood
Mr Coleman
Mr Downie
Mr Crowe
Mr Wild
Mr Corkish

AGAINST

The Lord Bishop
Mr Butt
Mr Turner

The President: With 6 votes cast in favour and 3 votes against, the motion therefore carries, Hon.
Members.

840 Clause 31 as printed.

Mr Coleman: Thank you, Madam President.

Clause 31 means that the current duty on a custody officer, set out in section 40, to inform the
person responsible for the welfare of a young person that a young person has been arrested must
845 now be applied to a person under the age of 18, rather than 17 as now. This is necessitated by the
UN Convention on the Rights of the Child.

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

850 **The President:** The motion is that clause 31 do stand part of the Bill. Those in favour, please say
aye; against, no. The ayes have it. The ayes have it.

Clause 32, as printed.

855 **Mr Coleman:** Madam President, clause 32 inserts a new section 49A in the Police Powers and
Procedures Act 1998 entitled 'Remand of suspected drug offenders to detention'.

The new section will enable a court of summary jurisdiction, if it considered it appropriate to do
so, to remand a person charged with an offence of possession of a controlled drug, or a drug
trafficking offence, to the custody of a constable for the period not exceeding 192 hours. This
provision will enable any further evidence the Police have reason to believe is on or in the prisoner
860 to pass through his body.

For the purposes of this provision, a police station will be designated as an institution under the Custody Act 1995, and the prisoner will be treated as a remand prisoner.

Madam President, I beg to move that clause 32 do stand part of the Bill.

865 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33, as amended in another place.

870

Mr Coleman: Madam President, clause 33 substitutes section 50 and inserts new sections 50A to 50E into the Police Powers and Procedures Act 1998, which empowers the Police to impose conditions on bail after arrest.

875 Such conditions may include surrendering to custody, not committing an offence whilst out on bail, not leaving the Island, not interfering with witnesses, and making themselves available to enable inquiries or a report to be made to assist the Police or the court in dealing with the person.

The imposition of conditions to bail by a custody officer of at least the rank of sergeant may be appealed initially to an officer of at least the rank of inspector.

880 Once a person is brought before the court for his first appearance, the court may vary the conditions, impose more onerous conditions or remand the person in custody. If the court releases the person on bail, then police bail automatically becomes court bail from then on. This is intended to free up court time so as not to take routine bail matters to court. If a person is unhappy with the decision of the custody officer and the more senior officer who would hear the appeal, the person would then be able to appeal over the heads of the Police to the court, as at present. As such, these provisions can only serve to speed up the process, not delay it, with advantages for courts, Police
885 and the person being bailed.

Mr Hall had this provision amended in the House of Keys to clarify that, where an accused person wishes to appeal against the imposition of conditions of bail, their first avenue of appeal against the decision of a custody officer is to an officer of at least the rank of inspector. Mr Hall's amendment
890 clarified that if the functions of the custody officer were performed by an officer of the rank of inspector, or an even more senior rank, then the rank of officer to whom the appeal is made must be of an even more senior rank.

Madam President, I beg to move that clause 33 do stand part of the Bill.

895 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 33 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34 as printed.

900

Mr Coleman: Madam President, clause 34 makes minor consequential amendments to section 52 and elsewhere as a result of the amendments to the Bail Act and the revisions to police bail through the substitution of section 50.

Madam President, I beg to move that clause 34 do stand part of the Bill.

905

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

The President: The motion is that clause 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

910 Clause 35 as printed.

Mr Coleman: Madam President, clause 35 concerns a child arrested for a serious offence, where the child is aged 10 years or over but is under 14 years of age.

915 The current section 55 of the Police Powers and Procedures Act 1998 only allows proper investigation by Police for the offence of homicide. This clause substitutes a new provision for section 55 so that where the Police arrest a child for an offence that leads, or is intended or likely to lead, to a person's death or physical injury, or where arson or sexual offences are alleged, the Police will be able to properly investigate the alleged offence in accordance with the Police Powers and Procedures Act.

920 This brings it into line with section 76(14) of the Children and Young Persons Act 2001. There was originally an order-making power which would have allowed the Department to vary the list of offences by order. After consultation, the Department has removed this order-making power.

Madam President, I beg to move that clause 35 do stand part of the Bill.

925 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 35 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 36 as printed.

930 **Mr Coleman:** Madam President, clause 36 makes two changes to section 58, which relates to intimate searches. It changes the rank of officer who may authorise an intimate search from chief inspector to inspector, and redefines a juvenile as someone who is under the age of 18, rather than 17 as now.

935 Madam President, I beg to move that clause 36 do stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

940 **Mr Butt:** Thank you, Madam President.

I would just like to ask what the rationale is for reducing the rank from chief inspector to inspector. When there were only two chief inspectors it did cause considerable problems, but now there are several more than two, I believe. I wonder why the need for that is evidenced in this Bill – the reduction. Is it following the UK example, or is there some other rationale behind that?

945

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

950 I am just wondering what constitutes an intimate search, because I believe, under the British Medical Association, that doctors have been advised not to conduct intimate searches of people, even if they are under 18 or over 18.

The President: The mover to reply.

955

Mr Coleman: Intimate search, essentially, is one where... If you can remember the Custody Act amendment, that actually involved the taking of a urine sample, but it would involve taking of blood, semen, and I think anything which may be taken from another orifice of the body. That is about as delicately as I can really put it.

960

Mr Braidwood: I understand from the Custody Act taking those samples, but in actual fact people with drugs can hide the drugs in their body, and it is normally only a doctor who can conduct an

intimate search; and I was under the impression that the British Medical Association had advised their members not to undertake intimate searches.

965

The President: I wonder if the mover has any knowledge or can answer that?

Mr Coleman: Firstly, within this Bill there is the availability of an ultrasound, an X-ray to identify something is within someone's body. In addition to that, if you note the remand on drug offences for up to eight days, that gives it time to pass through the body. So I think that what we have within the Bill should give us the tools to identify anyone who is acting as a mule.

970

Mr Butt: Madam President, you can have an intimate search of –

975

The President: We are rather going backwards, but for clarification, please.

Mr Butt: For Mr Braidwood, you can have an intimate search without actually looking in body orifices, which would not actually need a doctor or medical person present. There are some searches which do not require that... *[Inaudible]* the detail.

980

The President: Well, we shall wait and see. *(Laughter)*.

Mr Coleman: Eight days.

985

The President: The matter of definition will no doubt be of interest to someone who might be subjected to it.

Clause 36, Hon. Members. The motion is that clause 36 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 37 as printed.

990

Mr Coleman: Madam President, clause 37 inserts a new section 58A into the Police Powers and Procedures Act 1998.

Where an officer of at least the rank of inspector has reasonable grounds to believe a person who is in police detention may have swallowed or concealed a class A drug on or in their person, he or she may authorise an X-ray or an ultrasound of the person. If the person refuses to consent without good cause, then the court may draw such conclusions from the refusal as seem proper.

995

The purpose of the scan or ultrasound is really twofold. On the one hand, if a person is in police custody, then the Police have a duty of care to know of anything that may endanger the detained person's health or life. On the other hand, if a person is suspected of an offence, the Police are entitled to investigate that offence, and in the case of drugs on or in the person, they should be able to identify what they are and therefore the exact type of offence alleged to have been committed.

1000

Madam President, I beg to move that clause 37 do form part of the Bill.

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

1005

The President: The motion is that clause 37 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 38 as printed.

1010

Mr Coleman: Madam President, clause 38 inserts a new provision in relation to the conduct of interviews.

Section 63 of the Police Powers and Procedures Act 1998 currently only provides for the tape recording of interviews. This clause substitutes section 63 to provide for the audio and visual recording of interviews, with or without sound.

1015 This provision enables the use of modern technology for the recording of interviews not just by tape recording. There is no requirement to record interviews visually. Whether an audio record or a Subsection (2) restricts the visual recording of interviews to those permitted by order.
Madam President, I beg to move that clause 38 do stand part of the Bill.

1020 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member... I thought you wished to speak, sir – no.
Clause 38. The motion is that clause 38 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1025 Clause 39, as amended in another place.

Mr Coleman: Madam President, clause 39 substitutes subsection (6) of section 64 to provide that fingerprints may be taken without the appropriate consent if the person has been convicted of a recordable offence or given a caution in respect of a recordable offence.

1030 This clause was amended in the House of Keys by Mr Quirk to re-insert new subsection (2)(a) to section 64 to enable fingerprints to be taken at a location other than a police station.

Madam President, I beg to move that clause 39 do stand part of the Bill.

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

1035

The President: The motion is that clause 39 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 40 and 41, as printed.

1040 **Mr Coleman:** Madam President, clauses 40 and 41 make similar provision in that they provide that the rank of officer authorising the taking of intimate or non-intimate samples, as the case may be, at a place other than a police station should now be an inspector or more senior, rather than chief inspector or more senior, as now. The clause then makes consequential amendments.

Madam President, I beg to move that clauses 40 and 41 do stand part of the Bill.

1045

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

The President: The Hon. Member, Mr Butt.

1050 **Mr Butt:** Thank you, Madam President.

In respect of section 40, could I just repeat my query from the previous clause, where the mover did not get a chance to reply, about the justification for moving from chief inspector down to inspector? I wonder could he oblige me, please?

1055 **Mr Coleman:** I appreciate the Hon. Member, Mr Butt's remarks, but the feeling within the Police Force is that we are a small Force and therefore sometimes it becomes necessary for people of a lower rank to assume what in other places may well need a more senior police officer. That is the authorised view of the Police Force.

1060 **Mr Butt:** Again, Madam President, this is about the convenience of the Force, rather than the interests of justice. I did ask is it the UK practice to reduce that down: that may give me some comfort.

Mr Coleman: I am of the view that it is not.

1065

Mr Butt: There are now more chief inspectors than there used to be, and I thought...

Mr Coleman: Yes, well, the –

The President: Can we not just have a conversation, please. Do you want to make a point?

1070

Mr Butt: Just repeating my point that I believe there are more chief inspectors than there used to be and it should be an easier practice to maintain this level of rank to make these decisions, and I would like to ask if the UK have a similar rank structure. If the Member could give us that on the Third Reading, I would be grateful.

1075

The President: The mover to reply.

Mr Coleman: I do not think it is necessarily a question of numbers; it is a question of availability. If there are four, then how many would be on duty at any one time versus the number of inspectors that might be available?

1080

This could actually be to the benefit of a person involved, in that they might get this person of the lower rank to them quicker and able to make the decision sooner and expedite the matters on behalf of the person involved.

1085

The President: The motion is that clauses 40 and 41 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 42 as printed.

Mr Coleman: Madam President, clause 42 substitutes subsection (1) of section 67 and places the practice of comparing fingerprints and samples obtained from a person with those held on records held by other bodies, particularly those held off Island, on a more extensive statutory basis.

1090

Madam President, I beg to move that clause 42 do stand part of the Bill.

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

1095

The President: The motion is that clause 42 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 43 and 44.

Mr Coleman: Madam President, clause 43 is amended to permit the taking of a person's photograph at a place other than a police station.

1100

As in the case with clause 31, the definition of a child or juvenile in international and human rights terms is now a person aged under 18. Consequently, clause 44 changes the interpretation of 'juvenile' in part V of the Police Powers and Procedures Act, from a person aged 17 or under to a person under the age of 18. This has the effect of meaning that a person responsible for the welfare of a person aged under 18 must be present and consent to a search being carried out on that young person.

1105

Madam President, I beg to move that clauses 43 and 44 do stand part of the Bill.

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

1110

The President: The Hon. Member, Mr Downie.

Mr Downie: I would just like to clarify one point regarding clause 43 and the photographing of suspects. If a suspect is to be photographed, does it have to be done officially; or, in this day, with modern technology, could a suspect's picture be taken by an officer using his mobile phone and then transmitted all round the Police Force if the person has not been apprehended as a suspect? What is

1115

the situation now regarding the photographing of subjects and the transferring of images to different officers? Is this allowed?

1120

Mr Coleman: I think we will come back to you at Third Reading with that, if we may.

Mr Downie: Right, thank you.

1125 **Mr Butt:** Madam President, I think this would only apply to people who have actually been arrested and in custody.

The President: That is a view expressed. Perhaps you could confirm at the next reading.

1130 The motion is that clauses 43 and 44 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 45 and 46 as printed.

Mr Coleman: Madam President, clauses 45 and 46 relate to the power to make codes of practice regulating police conduct and practice in their execution of their duties.

1135 Clause 45 substitutes and slightly expands existing provision, so that, for example, codes may be specifically made about the exercise by officers of the power of arrest.

Clause 46 makes a minor insertion to the supplementary powers to make codes set out in section 76 to enable any order bringing in a code, or a revised code, to include transitional or saving provisions.

1140 Codes of practice are safeguards on the exercise of police powers and breach of them by an officer is ultimately a disciplinary offence.

Madam President, I beg to move that clauses 45 and 46 do stand part of the Bill.

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

1145

The President: The motion is that clauses 45 and 46 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

New clause after clause 46: new clause 47.

1150 **Mr Coleman:** Madam President, this new clause was inserted into the Bill after clause 46 in the House of Keys with the purpose of extending the jurisdiction of Manx constables to Manx-registered vessels, wherever they may be.

1155 Currently the jurisdiction of Manx constables is limited to the investigation of crimes that occur on vessels within the territorial seas of the Island, or to Manx vessels which call into a port on the Island following the suspected committing of a crime, no matter where in the world the ship was at the time of the incident. This leaves a gap in the powers of a Manx constable to investigate a crime that is committed on board a Manx-registered vessel which never visits the Island.

1160 To put this in context, there are currently over 550 internationally trading merchant vessels and commercial yachts on the Manx register, with only five of these vessels that call regularly to the Island. This leaves some 545 that never actually call here.

1165 Even though we have had an international register for almost 30 years, we have rarely needed these powers, but recently there have been a number of high-profile cases where serious crimes have been committed on board vessels – fortunately, not Manx registered – where investigation was required. There is no overarching international convention which covers criminal jurisdiction globally on vessels.

The current problem can be stated by example. A serious crime occurs on a Manx vessel on the high seas and the vessel's first port of call is another state. The state has no jurisdiction on board the vessel to investigate the crime; nor at present does the Isle of Man. Who deals with it? Does the Isle

1170 of Man investigate without jurisdiction? Does the Isle of Man permit another state to investigate without jurisdiction? Does the Isle of Man ignore the issue and hope it goes away?

The international community would expect us to deal with crimes on our ships ourselves. We accept the benefits both economically and reputationally of having a successful, well-regulated ship registry. In almost 30 years of the Isle of Man Ship Register, the incidences of reported serious crime on board our ships has been negligible. The impact of this amendment in increased resource requirement is minimal, whereas the risk in terms of reputation, if we do not put the right legal framework in place, is substantial.

The insertion of this new clause means all subsequent clauses will be renumbered accordingly. Madam President, I beg to move that this inserted clause do stand part of the Bill.

1180 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1185 Could this not be incredibly expensive? I take the point the hon. mover has made and it is a very interesting piece of information he has given us, but these vessels are obviously all over the world, crewed by non-Manx and quite often non-British nationals. I have seen various yachts and things in marinas in holiday destinations, such as Grand Canaria and all these other places, with people who have absolutely nothing to do with the Isle of Man. I just wondered how this would work in practice, in terms of... If a crime is committed, we certainly do not want a loophole, and I am surprised no other nation does either, so why isn't there legislation in these other parts?

1190 We have seen the problems that UK police have had when dealing with crimes. I think one of the most high-profile crimes – not relating to a ship, but it was on land – was the involvement of the British police forces in the likes of the Madeleine McCann case, dealing with authorities in these jurisdictions, and I just wondered... In reality, I cannot see how this is going to work. I think it would be a huge amount of cost and expense to deal with nationals of other countries; and then, if they are arrested for a crime on board the vessel, how do they then get them out through the country where the vessel is berthed? Extradition powers?

I can just see all sorts of problems, and I would like more information on how it is going to work.

1200

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I support the amendment, I can see the reasoning for it, and I suspect it will be used fairly rarely.

1205 I do have a query about our local shipping. I am presuming that the Isle of Man Steam Packet boats, if they are not registered in the Isle of Man, the powers of a consul will still be limited to the territorial waters. Can you confirm that?

The President: Lord Bishop.

1210

The Lord Bishop: Thank you, Madam President.

I too support the amendment on the principle that if you take the shilling, then you provide the service; and since we are willing to register the vessels, it is our responsibility to police them, if necessary.

1215

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

1220 Just looking for clarification as to whether the Police would have the right to claim expenses – to pick up on my hon. colleague, Mr Turner’s point – if a vessel was say in Hong Kong and it necessitated two or three officers having to travel out there.

The President: The Hon. Member, Mr Crowe.

1225 **Mr Crowe:** Madam President, yes, I too support the amendment and support, as the Lord Bishop says... When you register a ship under the Manx flag and you commit an offence on that ship when you are at sea, you have broken the laws of the Isle of Man and the Isle of Man is responsible for dealing with that problem.

1230 I think, as the hon. mover, Mr Coleman has said, there has been minimal use of this or need for this in the past, but I think we have a reputational... and a real responsibility for seeing that we are accepting responsibility.

The President: The Hon. Member, Mr Downie.

1235 **Mr Downie:** Thank you, Madam President.

I too support the amendment, and if I could just take a little bit of time to explain to Hon. Members of Council what some of the issues have been, the most common cause for concern on ships is a sudden death, and what has happened traditionally... There is always an investigation carried out when somebody dies at sea. If the captain has any concerns about it, he can either divert his ship and go and seek support from whichever authority he wants – he has the power to do that under the various maritime conventions... But what tends to happen... Crime on ships is very low. Lots of ships now do not allow alcohol. They are quite well regulated internally, and by and large the numbers of incidents on Isle of Man ships are very low. But there is a human element here. People have fallen from bridge wings; they have gone missing over the side. People, I dare say, have committed suicide when they have been at sea.

1245 There has always been an obligation on behalf of the Register to investigate. Historically, the Registrar is empowered to go with a surveyor and investigate the causes – sit down with the crew and talk about it. Latterly, when we have had issues, the Minister is empowered under the Merchant Shipping Act to actually sign a police officer in now as an appointed person by the Department to carry out an investigation under the various Maritime Acts.

1250 What this does now, this amendment... this puts things on a much more formal footing, so that internationally there is somebody who would be brought in to deal with issues as and when they arise on ships. You might not get anything for two or three years, and then something may come along which needs to be investigated. But as other Members have said, we take the king’s shilling, so we have got to provide the proper safeguards and I think this does deal with that admirably.

1255 My colleague, Mr Butt, made reference to the Steam Packet. They are ships registered here in the Isle of Man. We have jurisdiction out to our limits, but then they come under the jurisdiction of British waters. There is a 500-mile zone around the British Isles and there are agreements in place between the Isle of Man Constabulary, Merseyside and so on; so there is always someone there to deal with issues in home ports.

1260 I know in the past, when there has been an issue, the Department has actually asked someone from the Hong Kong police to go and have a look at an issue and investigate things and do a report.

1265 As far as travel is concerned, part of this travel would have to be paid for by the ship owner and not necessarily fall onto the Manx taxpayer, because we are only providing a Register, and a lot of the other things ancillary to that... For example, when a ship is involved in an accident or a collision or has been detained somewhere because the equipment has not been functioning properly or inadequate safety equipment and you have to send somebody out, that is all passed on to the owner.

1270 I think we are going down the right route here and we are providing a mechanism should anything go wrong that needs to be properly and thoroughly investigated. At the end of the day, the onus rests on us to do that.

The President: The mover to reply.

1275 **Mr Coleman:** Thank you, Madam President.

When this Bill was going through another place, the Minister for Home Affairs indicated that before it would actually come into force there would be a memorandum of understanding between the Department of Home Affairs and the Department of Economic Development Ship Registry with reference to the funding implications, such that DED would essentially pay for this.

1280 But as Mr Downie has just alluded to, there is an analogy with the surveyors, whereby if there has been an accident a surveyor may be taken on on a contractual basis as an appointed member of the Department. He can then go out there, travel expenses, do the work, do the surveying, and his expenses would normally be picked up by the company, the vessel, and they presumably can claim it on their insurance. I would imagine that will be a system which will come into force with reference to this as well. So I think I have covered your –

Mr Turner: What do other countries do?

1290 **Mr Coleman:** I would have to come back to you on that. We will come back to you on Third Reading as to what other countries, with their ship registries... how do they handle this.

I think the situation at the moment is that most of the... It is not legislation. It is normally governed by conventions – there is the United Nations Convention on the Law of the Sea – but what this does is to enshrine into Manx legislation essentially the contents of the Convention, because you have to remember not all countries are members of the UN and not all shipping registries are in the IMO, are they? (*Interjection*) So it gets excluded from that.

1295 I know that, in some jurisdictions such as Australia... I read a paper on the legal jurisdiction on the seas to do with Australia, and it gets *very* complicated, depending upon whether they have continental shelves or they do not have continental shelves. I think this will all be coming out in the memorandum of understanding between the two Departments, but at the Third Reading we will let you know what other countries are doing.

The President: Did you want to make another point, Hon. Member?

1305 **Mr Turner:** I did, yes, Madam President, if I may. Thank you.

The President: We are getting a little out of kilter this morning, but come on.

1310 **Mr Turner:** I just think it is important that we understand what we are passing here; hence my question about what other countries do, because from the opening speech to do with this section it was that this was somewhat unique to ourselves.

I understand the surveyor issues – that is common practice, because they have to go and license and register the vessels in accordance with the procedures. That is why I was asking about how this is all going to operate and what happens when they arrest somebody, and I think we really need more information on exactly what this is – what we are subscribing to – because it is a bit lacking in the detail.

The President: You have answered as far as you can, I think, Hon. Member.

1320 I am also a little bit concerned about the numbering. We seem to be getting a little bit out of kilter on that, in terms of a consistent pattern. It may be because the amendments were moved in another place by different people.

With the second new clause, it took into consideration the renumbering of the clauses imposed by the first new clause. In this case, we do not take into consideration the new numbering, and this is being put in as a clause 47. It should actually be clause 49, I think. However, I think we had better leave this to the draftsman, at the end of the day, to get them numbered in proper sequence.

1325 On that basis, Hon. Members, the motion is that a new clause be substituted after clause 46 as printed.

The Clerk: Madam President, the motion is that the clause, which is already part of the Bill, stand part of the Bill. You are not putting it in; you are deciding whether to keep it in.

1330

The President: Yes, but what I am explaining is that the clause that we are talking about is the new clause which was introduced in another place, numbered 47 but probably should be 49.

Are we clear, Hon. Members, on what you are voting on? It is printed on your Order Papers.

Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1335 We move, then, to the clause printed as clause 47 on the Green Bill, along with part 2 of schedule 3.

Mr Coleman: Madam President, clause 47 was consequential on the approval of clause 28, which substituted provision in respect of powers of arrest.

1340

What clause 47 does is to rephrase section 79 so that it refers to serious offences rather than to serious arrestable offences. This is purely a matter of terminology to ensure that the differences in detention procedures that existed between arrestable offences and serious arrestable offences is maintained.

I beg to move that clause 47 do stand part of the Bill.

1345

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

The President: The motion is that clause 47 as printed, which incorporates part of schedule 3, stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1350

Clause 48 as printed.

Mr Coleman: Madam President, clause 48 inserts further definitions into the general interpretation located within section 81 of the Police Powers and Procedures Act 1998. These are required by virtue of amendments made in earlier clauses; hence the insertion of definitions for 'all premises warrant', 'serious offence' and 'specific premises warrant'. Definitions for 'registered medical practitioner' and 'registered nurse' are also inserted.

1355

Following the substitution of the concept of the power of arrest, the definition of an arrestable offence is removed; and in respect of children, with a child being a person under the age of 18, the definitions of 'child', 'young person' and 'juvenile' are also repealed.

1360

Madam President, I beg to move that clause 48 be approved.

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

The President: The motion is that clause 48, as printed, stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1365

Clause 49 as printed.

Mr Coleman: Madam President, clause 49 substitutes the word 'judge' for 'Deemster' in the provisions mentioned.

1370

I beg to move that clause 49 do stand part of the Bill.

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

The President: The motion is that clause 49 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1375 Clause 50 as printed.

Mr Coleman: Madam President, clause 50 inserts a new section 49A into the Children and Young Persons Act 2001 to provide specific legal authority to a constable to enable him or her to return a child reported missing to the person responsible for its welfare.

1380 The provision makes it clear that if the constable has any reason to believe the child should not be returned but instead taken into police protection, then the constable may exercise the existing power under section 45 of that Act.

Madam President, I beg to move that clause 50 do stand part of the Bill.

1385 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, Madam President.

1390 Important provisions here. I would hope, though, that... Quite often, these are very delicate matters, and I just wondered is there specific guidance, training or procedures in place that the Police are trained in, in dealing with cases such as these, where sometimes the obvious issue may be just to return them home. Children may well be frightened, and the police officers need to be able to deal with some of these things delicately.

1395 There are also cases where I know in the past children with specific learning difficulties have been mistaken for bad behaviour, and that is of great concern, where officers need to understand some of the conditions that the child may well have and act accordingly.

I just wondered if he could clarify what procedures the Force currently has in place to deal with these delicate issues.

1400

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

1405 In response to what has just been said, I think in recent years the Police Force has come on leaps and bounds, compared to the way they used to behave with children and working with the young people. The Youth Justice Team in particular are very aware of these issues that were mentioned. I am sure there is training in place for police officers.

1410 This gives a power which they did not have before. There was often a real gap in the way you could deal with children, and I am personally confident that the Police are up to speed with how to deal with the incidents you have mentioned.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

1415 Following on from the Hon. Member of Council, Mr Butt, in actual fact, at the Tynwald Advisory Council for Disabilities one evening we had Acting Inspector Cathryn Bradley, who talked about the work ongoing in the Police with children who are autistic and how they can deal with vulnerable children, which many years ago I do not think they actually understood and thought it was just bad behaviour. So there is ongoing training in within the Police Force.

1420

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

1425 I totally agree with the Hon. Member of Council, Mr Turner, that the Police need to have sensitivity training in this area; and from what I hear I am comforted that... The Hon. Member, Mr Butt and Mr Braidwood have indicated that the Police are fully aware of the need for this type of sensitivity training.

1430 You may remember that when this Bill was going through another place it went through with the terminology of 'arrest the child' and that caused a lot of furore and was one of the reasons perhaps why the original Bill did not go through. I think that there has been an awful lot of work done and consultation just simply to come up with the word 'return'.

1435 But your point is well taken, and hopefully, if there is not one in place at the moment, then there will be a police code on what they have to do, with some consciousness given to being a bit human as well as just following a code.

The President: The motion, Hon. Members, is that clause 50, as printed, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1440 Now, Hon. Members, on your Order Paper you will note that Mr Braidwood is to introduce two new clauses. However, I think he wishes to amend one of those and so a further document has been circulated. Please ignore amendments printed on the Order Paper and focus on the document which had been circulated.

Mr Braidwood: Thank you, Madam President. I was going to mention that.

1445 **The President:** So, to introduce the two new clauses, which will be clauses 53 and 54, I think, at the end of the day –

Mr Braidwood: Clauses 54 and 55.

1450 **The President:** Right, 54 and 55 – you are absolutely right, yes.

Mr Braidwood: Thank you, Madam President.

1455 I proposed initially to move the insertion of clauses 51 and 52 as printed on the Order Paper. However, as you quite rightly pointed out, in consequence of the other three new clauses which have been inserted by the Keys and agreed by the Council, they will be numbered 54 and 55.

Madam President, if Hon. Members accept the clauses in principle, I would propose to move the amendments to the Criminal Justice, Police and Courts Act 2007, which is the use of live television links of preliminary hearings, and the Custody (Amendment) Act 2013 separately.

1460 Madam President, new clause 51 seeks to amend section 29(1) of the Criminal Justice, Police and Courts Act 2007, which is about enabling court appearances of those in custody on remand to be heard by means of a live link. This is something I have been lobbying the Department on over the last few years, and I am glad that they are to consider and I am delighted that they have agreed to support the insertion of this clause.

1465 Clause 52, Madam President, reflects the issue raised by yourself when the Custody (Amendment) Act, for which we receive Royal Assent last week, was considered in this branch. This clause contains the now customary expiry provision, and as you have already pointed out, Madam President, this has been truncated and the version which has been circulated is the one to be moved.

1470 Madam President, I beg to move that the insertion of new clauses 51 and 52, as printed on the Order Paper, be approved in principle:

Page 69, after line 34, insert –

*Part 10 – Amendment of the Criminal Justice, Police and Courts Act 2007
Live television links*

Amendment of section 29(1)

In section 29(1) of the Criminal Justice, Police and Courts Act 2007 (use of live television links at preliminary hearings) delete 'and with the consent of the accused'.

Part 11 – Amendment of the Custody (Amendment) Act 2013

Expiry of Act

Insertion of new section 1A

After section 1 of the Custody (Amendment) Act 2013 (short title) insert —

'1A Expiry

(1) This Act expires on the day after its promulgation.

(2) The expiry does not —

(a) revive any Act it amended as the Act operated before the amendment commenced;

(b) revive anything not in operation or existing when the amendment took effect; or

(c) affect the continuing operation of the amendment.'

Mr Crowe: I beg to second both.

The President: The Hon. Member, Mr Downie.

1475 **Mr Downie:** Thank you, Madam President.

Having seen, over the years, the amount of money that has been spent establishing these live links between the courthouse and the Prison and so on, I think it is absolutely vital that we make sure that they are utilised properly. I think the introduction of the clauses will reinforce that, because I am still to be convinced that there is not too much traffic to and from the Prison. There was an article in the paper this week where a certain advocate was looking to buy a minibus to take people to and from the Prison. We have got technology we have invested a lot of money in, and as far as I am concerned we should be using it to its maximum benefit.

1485 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

I support the views of Mr Downie. Having worked in television over a number of years, video links used to be a very expensive way of transmitting pictures, but now, with the internet, people can have good-quality video links with their family in Australia. The technology has changed the way things happen. It is certainly a very cost-effective way of dealing particularly with what may be short appearances at early stages in cases and at various other stages. It makes absolute sense, rather than trailing people down from Jurby for an appearance that may last 20 minutes. So I think it is important that this is a provision that is there. I know when we were touring the Prison as it was getting built, there was room set aside for it and it needs to be used more often.

1495 Thank you.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

1500 I have to totally agree with Mr Downie and Mr Turner. One of the reasons that the Prison was moved to Jurby from the initial site at Ballafletcher was that video-conferencing could be used. I went across and visited some prisons in the UK where video-conferencing was used for remand prisoners. The time saved was absolutely incredible and it was something which the people on remand wanted, because otherwise they would have had to... If they were in a cell, they had to gather all their belongings together, go to court, and if they were remanded again they then had to go back to the Prison, and in some circumstances they did not go back to be the same cell. They lost pay, because generally in the UK they do have a lot of work to do, which they are paid for, and so

1510 they lost that. They preferred video-conferencing on remand, because what would happen if it was the magistrates... or they would be remanded again and then the warrant would be faxed and then the warrant would be sent to the prison.

This is something which should have been introduced for Jurby, I think it was a mistake in the regulations, and it will save a lot of time, as Mr Downie said, in transporting prisoners on remand from Jurby to the courts in Douglas. However, I will expand when I am moving the clause anyway, Madam President.

1515

The President: When you're moving the...?

Mr Braidwood: Well, I am only introducing it in principle at the present.

1520

The President: That is a House of Keys policy. We do not have the same Standing Order up here, so you can move it again if you wish, but... You can move in principle, and you want to move it again.

Mr Braidwood: As far as I am concerned, Madam President, if I have moved it in principle... and again, with the clause, I think I have explained the reasons why it is going to be introduced.

1525

The President: Hon. Members, there is a difference between the Standing Orders in another place and here and whether they move twice on a new motion; but if you are content, we will move it once. *(It was agreed.)*

1530 The motion is, Hon. Members, that after clause 50 as printed, we insert new clauses 51 and 52. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Thank you Hon. Members, that concludes our public business. The Council will now sit in private.

The Council sat in private at 12.36 p.m.