

Bribery Bill 2012
Clauses considered

5.2. Mr Watterson to move.

The Speaker: We turn now to the Bribery Bill, and I call on the mover, Mr Watterson, to move clauses.

Mr Watterson: Thank you, Mr Speaker.

The Second Reading of this Bill took place on 22nd January 2013 and was approved with no division. I am grateful to Hon. Members for their support.

I would like to take and vote on clauses 1 and 2 together, with your permission, Mr Speaker.

Clause 1 gives the short title of the Bill as the Bribery Act 2013.

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

It is anticipated that the Bill will be brought into operation within six months of the announcement of Royal Assent to Tynwald.

Mr Speaker, I beg to move that clauses 1 and 2 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clauses 1 and 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3, please.

Mr Watterson: Mr Speaker, clause 3 provides general interpretation terms for the Bill.

I beg to move that clause 3 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Watterson: Mr Speaker, this clause and the subsequent two clauses define in greater detail keywords or terms.

Clause 4 defines the meaning of the term 'relevant function or activity' for the purposes of offences under this legislation. The term includes functions of a public nature, business activity, activity in connection with employment, and any activity performed by or on behalf of a body of persons.

The person performing the function or activity is expected to do so in good faith or impartially. It is immaterial whether the function or activity is performed on or off the Island.

Mr Speaker, I beg to move that clause 4 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

The Speaker: I put the question that clause 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Watterson: Mr Speaker, clause 5 defines the meaning of the words 'improper performance'. Essentially, this is where the function or activity, for example the process of granting a contract, is not undertaken in good faith or impartially, or it is not granted at all, despite the correct procedures being followed by the applicant.

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

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

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

Mr Watterson: Mr Speaker, clause 6 defines the word 'expectation'. This is the test of what the reasonable person in the Island would expect in relation to the performance of a function or activity. We would not expect to have to pay a bribe in order to get a contract, obtain a job, get a passport or have a service denied to us because we have not paid a bribe.

Unless particular additional action is set out in the written law of another country or territory, the fact that bribe is paid as part of the custom and practice of such a place is irrelevant.

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

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

The Speaker: I put the question that clause 6 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

Mr Watterson: Mr Speaker, clause 7 sets out the offence of bribing another person. It does not matter if the person bribed or offered the bribe is the same person as the person who is to perform or who has performed the function or activity; nor does it matter if the advantage offered or promised is made or given directly or via a third party.

Mr Speaker, I beg to move that clause 7 do stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

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

Mr Watterson: Mr Speaker, clause 8 makes it an offence to request, agree to receive or to accept the financial or other advantage for the improper performance of an activity or function. It is also an offence to request, agree to or merely allow another person to undertake the improper performance of the activity or function. The offence is committed irrespective of whether the person knows or believes he or she is performing the function improperly.

Mr Speaker, I beg to move that clause 8 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 9.

Mr Watterson: Mr Speaker, clause 9 makes it an offence to bribe a foreign public official. The person must intend to retain business or gain advantage in the conduct of business. The foreign official may have been influenced either to exercise or to fail to exercise functions or indeed to use his or her position to the company's advantage.

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

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 9 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 10, sir.

Mr Watterson: Mr Speaker, under clause 10, if a person who is associated with a commercial organisation commits a bribery offence for the benefit of that organisation, the organisation is also guilty of an offence. However, it is a defence for the organisation to show that it had adequate procedures in place, designed to prevent those who work for the organisation either as employees, contractors, agents or self-employed persons, etc from engaging in bribery to obtain, retain or further the business interests of the organisation.

Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

Mr Watterson: Mr Speaker, clause 11 defines the meaning of ‘associated person’ with regard to commercial organisations referred to in the previous clause. An associated person may be, for example, an employee, agent contract or subsidiary of the organisation.

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

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

The Speaker: I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Watterson: Mr Speaker, clause 12 require the Department to produce guidance that relevant commercial organisations, referred to in clause 10, can put in place to prevent bribery. In the event that the Bill passes through the branches and Royal Assent is announced to Tynwald, the Department intends to prepare guidance material and consult with relevant representative parties. Whilst the material is readied, the Act will be brought in by Appointed Day Order and the guidance issued forthwith.

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

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

Mr Watterson: Mr Speaker, if I may, I would like to take these three clauses together and have them moved and voted on together.

These three clauses are current sections 5, 6 and 7 in the Corruption Act 2008, which is repealed by this Bill.

Clause 13 requires public officials on the Island to report attempts made to bribe them, to either a constable or, if procedures have been established, to their employer.

Clause 14 makes it an offence of public official to fail to report bribery as required under clause 13.

Clause 15 makes it an offence to take action harmful to any person, on the grounds that the person has made a disclosure further to clause 13.

Mr Speaker, I beg to move that clauses 13, 14 and 15 do stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: Happy to second, sir, and reserve my remarks.

The Speaker: I put the question that clauses 13, 14 and 15 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

Mr Watterson: Mr Speaker, clause 16 ensures the prosecution of offences under this Act can only be brought by or with the consent of the Attorney General.
I beg to move that clause 16 do stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: Happy to second, sir, and reserve my remarks.

The Speaker: I put the question of clause 16. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 17.

Mr Watterson: Mr Speaker, clause 17 deals with penalties.
I beg to move that this clause stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: Happy to second and reserve my remarks.

The Speaker: I put the question that clause 17 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 18.

Mr Watterson: Mr Speaker, clause 18 provides that if a Manx resident or business does anything off the Island that would constitute an offence under this Act, then they are liable to be investigated and prosecuted as if the offence was committed on the Island.
I beg to move that clause 18 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir.

The Speaker: I put the question that clause 18 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 19.

Mr Watterson: Mr Speaker, clause 19 provides a defence for persons exercising any functions of an intelligence service or as part of active service with the armed forces.
I beg to move that clause 19 stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: Happy to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 19 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 20.

Mr Watterson: Mr Speaker, under clause 20, if a body corporate commits an offence under this legislation, other than an offence under clause 10, and the offence was committed with the consent or connivance, or is attributable to the neglect, of an officer of the body corporate, then the officer as well as the body corporate is liable to the penalty provided for the offence.
I beg to move that clause 20 do form part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 20 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21, sir.

Mr Watterson: Mr Speaker, clause 21 provides for an offence under clause 10 to apply to a partnership.

Clause 22 requires proceedings for an offence under this legislation to be instituted within 21 years of the alleged commission of the offence.

I beg to move that clauses 21 and 22 do stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clauses 21 and 22 together – so Mr Watterson, you moved 21 and 22 together? (**A Member:** Right.) – that they do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 23, part 5, Mr Watterson.

Mr Watterson: Mr Speaker, I would like to take clauses 23 to 26 together, as they are supplemental and final provisions of the Bill.

Clause 23 applies the Act to civil and public servants.

Clause 24 provides for transitional arrangements with regard to any actions or legal proceedings which may have been commenced under the Corruption Act 2008, prior to this legislation coming into operation.

Clause 25 provides for schedule 1 to make consequential amendments to legislation and also allows for schedule 2 to repeal legislation, such as the Corruption Act, which is no longer required as a result of this Bill coming into effect.

Finally, Mr Speaker, clause 26 provides for the clause, clause 25(1) and (2) and schedules 1 and 2 to expire, once the last of these provisions has been brought into operation.

Mr Speaker, I beg to move that clauses 23 to 26 inclusive stand part of the Bill.

The Speaker: Mr Quirk.

Mr Quirk: I beg to second, sir, and reserve my remarks.

The Speaker: Hon. Members, I put the question that clauses 23 to 26, including schedules 1 and 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.