

5. CONSIDERATION OF CLAUSES

**5.1. Customs and Excise Bill 2017 –
Clauses considered**

Mr Peake to move.

The Speaker: We move then to the Consideration of Clauses and in a change to our advertised schedule the Customs and Excise Bill 2017 is for the consideration of clauses. I call on Mr Peake to move.

5 **Mr Peake:** Thank you very much, Mr Speaker.
With your permission I would like to bring clauses 1, 2 and 3 at the same time.

The Speaker: Is that agreed, Hon. Members?

10 **Members:** Agreed.

Mr Peake: Thank you, Mr Speaker.

Part 1 of the Bill is concerned with the short title of the Bill, its commencement and its expiry. Clause 1 provides that the short title shall be the Customs and Excise Act 2017.

15 Clause 2 provides that the Bill shall come into operation upon Royal Assent. However, its various provisions shall be brought into operation by order or orders, and such an order or orders may bring different provisions into effect at different times, and contains such savings or transitional arrangements that are required.

20 Clause 3 provides that the Customs and Excise Act 2017 shall expire once all its provisions are in operation and hence that all the amendments it makes have been made. This may be the day after its promulgation on Tynwald Day or if not all its provisions have been brought into operation, when its final provision is brought into operation.

I beg to move clauses 1, 2 and 3.

25 **The Speaker:** I call on the Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second.

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

Clause 4, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

35 Clause 4 amends section 1 of the Customs and Excise Act 1993. Firstly, this clause adds the Export Control Act 2002 (of Parliament) to the list of instruments which the Treasury may apply to the Island. The Export Control Act 2002 is the chief piece of legislation governing export control, export licensing and trade control licensing under the terms of the Customs and Excise agreement the Island is obliged to maintain.

40 Its export control law, in line with that of the UK export control law, has been extended in recent years to include what is trade controls. These are controls in the movement between two other countries of certain goods such as military or torture equipment where any part of the transaction involves activity in the UK or the Isle of Man or a UK or Island person. This amendment is intended to remove any doubt concerning the use of the Customs and Excise Act 1993 to apply measures concerned with trade controls.

45 Clause 4 also amends section 1 of the Customs and Excise Act 1993 so that measures
concerned with prohibition and restrictions that refer to 'placing on the market' of certain goods
are capable of being in Island law using the Act. This is a term that is used particularly in
connection with public health and public safety as an alternative to the imposition of an import
50 ban. It can allow, for example, that there be an effective import ban on a commercial
importation whilst permitting purely personal imports. Adding the term in section 1 removes
any doubt that the measures using that term can, if considered necessary, be applied in Island
law using the 1993 Act.

An important consideration is the desire to avoid the Island being used as a conduit for
supply into the United Kingdom of goods which are subject to an effective ban there, with the
55 consequent reputational damage that could result.

Finally, the Act amends section 1 of the Customs and Excise Act 1993 to add a subsection (5)
to provide that any reference in the united union instrument applied using section 1 is a
reference to that instrument. However, it may in future be amended, extended or applied by
another instrument. This is a convenient move to allow the united union legislation which the
60 Island has chosen to adopt to apply as it changes, without the need for a further amendment
order.

An example of such an instrument could be so called the VIES Regulation – Council
Regulations 904/2010 – and this stands for VAT Information Exchange System, which is an
electronic means of transmitting information relating to VAT registration of registered
65 companies within the European Union. This governs the administration of co-operation and the
combating of fraud in the field of VAT.

I beg to move.

The Speaker; Mr Shimmins.

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Mr Shimmins: Thank you.

I beg to second and reserve my remarks..

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

Clause 5, Mr Peake.

Mr Peake: Mr Speaker, section 25(b) of the Customs and Excise ACT 1993 allows the Treasury
to make an order imposing, abolishing or varying a customs or excise duty, or the restriction of
80 an import, export or removal of goods. As well as modifying any provision of any enactment
concerned with such a duty or restriction, these powers are used to ensure compliance with the
terms of the Customs and Excise Agreement.

This section is being amended to include situations involving the placing of goods on the
market for the same reasons as related to the amendment contained in clause 3.

85 I beg to move.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you.

90 I beg to second and reserve my remarks.

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

Clause 6, Mr Peake.

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Mr Peake: Thank you, Mr Speaker.

100 This clause replaces subsection (3) of section 3 of the Customs and Excise Act 1993 and makes a small technical amendment to subsection (4). Subsection (3) is replaced and its replacement contains a revised list of matters that an order made under sections 1 or 2 on the 1993 Act may deal with.

105 One of the chief reasons for the amendment was the recognition that the existing order made in 1980 under the predecessor of the 1993 Act and originally dealing with the co-operation with HM Customs and Excise had become too restrictive and did not appear to be capable of being updated. Using powers now found in the 1993 Act, the amendment will allow for the revocation or replacement of that order of 1980 in particular taking into account that several bodies now share the functions formally, solely the responsibility of HM Customs and Excise. At the same time, the amendment makes explicit provision for laying before Tynwald an annual report by the National Audit Office of the functioning of the Customs and Excise agreement.

110 Clause 6 also amends subsection (4) of section 3 of the 1993 Act which requires the text of any legislation applied using powers contained within the Act to be annexed to the application order replacing a reference to 'the legislation' with 'any legislation'.

I beg to move.

115 **The Speaker;** Mr Shimmins.

Mr Shimmins: Thank you.

I beg to second and reserve my remarks.

120 **The Speaker:** The question is that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

125 This clause inserts a new section 76J into Part VA of the Customs and Excise Management Act 1986. The new section requires that Treasury maintains such records as it thinks fit, of cash declarations and disclosures made under the cash declaration regime; and of seizures of cash made under that regime, and to lay before Tynwald an annual report summarising the information contained in such records.

130 The records involved are of course already maintained by Customs and Excise; however, the Moneyval Report commented that there is no requirement in law for them to be maintained. When considering the response to the criticism the Treasury considered it a sensible move and want aid in the transparency and awareness of the regime for the annual report to be laid before Tynwald. Treasury is required to lay an annual report before Tynwald dealing with the use of certain powers relating to the financial situation under the Terrorism and Other Crime (Financial Restrictions) Act of 2014. That report also provides a useful means of reporting to the court on matters involving the United Nations and European Union sanctions as a whole.

135 It is envisaged that the annual report on the cash declaration regime will serve a similar role.

I beg to move.

140 **The Speaker;** Mr Shimmins.

Mr Shimmins: Thank you.

I beg to second and reserve my remarks.

145 **The Speaker:** The question is that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

150 This clause amends section 174B of the Customs and Excise Management Act 1986 to provide the Collector of Customs and Excise with discretionary power to disclose information and documents to another agency, where that agency is undertaking a civil investigation or is considering to do so, where there are proceedings resulting from a civil investigation.

155 Sections 174B and 174D of the 1986 Act are important parts of the Act, providing a framework of legal gateways allowing the Customs and Excise Division to co-operate with other agencies on and off the Island, to prevent, detect and combat fraud and other serious wrongdoings. There are supplementary to provisions under other legislation, such as the Income Tax Act 1970 and the Financial Intelligence Act 2016.

160 As well as referring to specific enforcing authorities, either named in the sections or in orders made under them, sections 174B and 174D allow for the co-operation with any agency where criminal investigations or criminal proceedings are involved.

It is important to note that this last mentioned power is discretionary, and is subject to the consent of the Collector of Customs and Excise.

165 Increasingly in recent years, one has seen the use of civil investigations and civil penalties to deal with these matters that might otherwise be dealt with using criminal law. The most obvious example might be seen in the United States authorities and agencies, such as the Securities and Exchange Commission or the Office of Foreign Asset Control.

170 However, in recent months, Her Majesty's Treasury in the United Kingdom has instigated a civil penalty regime for non-compliance with United Nations or European Union financial sanctions. Indeed for many years, both HMRC and the Customs and Excise Division in the Island has had the opportunity of either criminal or civil investigations into suspected VAT fraud, whilst the Island was able to demonstrate to Moneyval evaluators that it had a good record of co-operation with other jurisdictions.

175 The Treasury considers it crucial to ensure that there are no unnecessary barriers to the ability of its Customs and Excise Division to co-operate with outside agencies in any cases involving serious or complex fraud or other unlawful activities.

I beg to move.

The Speaker: Mr Shimmins.

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

The Speaker: The question is that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 9, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

190 The amendment made by this clause follows on from those made by clause 8 by extending the discretionary power of the Collector of Customs and Excise to authorise the disclosure of information and documents in cases involving civil investigations and civil proceedings. It is necessary to define that civil penalty civil proceedings may, according the amendment in sections 174B, be those concerning the potential imposition of a civil penalty.

Clause 9 therefore inserts a new definition of what constitutes a civil penalty into the definitions of section 174D.

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I beg to move.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you.

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I beg to second and reserve my remarks.

The Speaker: The question is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And finally, clause 10, Mr Peake.

205 **Mr Peake:** Thank you, Mr Speaker.

This clause merely replaces a word 'and' with the word 'or' in section 63 of the Terrorism and Other Crime (Financial Restrictions) Act 2014. The Treasury intend to delegate some of its functions under the 2014 Act together with similar functions under various applied European Union regulations to the Financial Intelligence Unit. This forms a part of the plan to fit the

210 Financial Intelligence Unit, the one-stop shop for dealing with all financial crime intelligence.

However, it was found that section 63 only allows delegations of functions to a body with a role of preventing and investigating financial crime and terrorist financing.

The financial crime intelligence does not have an investigation role. The Treasury was advised that section 63 would have to be amended before the delegation could be implemented.

215 I beg to move.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

220 I beg to second and reserve my remarks.

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

That concluded consideration of clauses of the Customs and Excise Bill.