

Order of the Day

1. Customs and Excise Bill 2017 – Second Reading approved

Mr Henderson to move:

That the Customs and Excise Bill 2016 be read a second time.

The President: Item 1 on our Order Paper, the Customs and Excise Bill, and I call on the mover, Hon. Member of Council, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

5 The purpose of this Bill is to amend three existing Acts of Tynwald. The reasons for the amendments are: to ensure the continuing relevance and effectiveness of one of the main tools that enables compliance with the terms of the Customs and Excise Agreement with the United Kingdom; to recognise the need for the Treasury to be able to co-operate with a wider range of
10 bodies outside the Island in assigned matters; and, to implement some of the recommendations of the recent Moneyval Report on the Island, and seek to ensure that any further examination of the Island by way of a national risk assessment or Moneyval review produces a favourable result.

Part 1 of the Bill deals with its short title, its commencement and the fact that it expires once all the amendments it makes are in place.

15 Part 2 contains the amendments to the Customs and Excise Act 1993. It is this Act that Treasury uses to ensure compliance with the terms of the Customs and Excise Agreement. The Act allows for the application of relevant United Kingdom and European Union legislation by order. For example, the Act has been used to introduce and update legislation dealing with export control licensing, excise duty on sales of National Lottery tickets, and the structure of
20 reviews and appeals against decisions involving Customs, Excise and VAT matters.

The amendments take account of developments in the way certain prohibitions and restrictions are expressed, such as the use of the phrase ‘placing on the market’; they remove any doubt over use of the Act to apply measures concerning trade controls on the trafficking and brokering in certain goods; and will allow for the revocation and replacement of the principal
25 Order dealing with the co-operation with the United Kingdom on assigned matters, updating the provisions and making explicit the need to lay before Tynwald the annual report on the operation of the agreement produced by the UK’s National Audit Office.

Part 3 of the Bill concerns amendments to the Customs and Excise Management Act 1986. This is the main piece of legislation governing Customs and Excise matters in the Island. The first
30 change affects Part VA of the Act, fulfilling a Moneyval recommendation that there be an explicit requirement in law for the Treasury to record details of cash declarations and seizures relating to the requirement to declare any cash entering or leaving the Island that exceeds €10,000.

The amendments also require that Treasury lays before Tynwald an annual report on the operation of the cash declaration regime.

35 The second change affects sections 174B and 174D of the Customs and Excise Management Act 1986, and extends the discretion available to the Treasury to disclose information and documents to outside agencies to cases where civil investigations are being undertaken by an enforcement authority.

40 Part 4 of the Bill makes a small technical, but important, amendment to the Terrorism and Other Crime (Financial Restrictions) Act 2014. The replacement of a single word in section 63 of the Act will remove a legal barrier preventing delegation by the Treasury to the Financial

Intelligence Unit of the role of receiving and acting upon reports concerning United Nations and European Union sanctions.

45 Eaghtryane, I also wish to advise Council that, all being well, I would like to seek the suspension of Standing Orders at the end of the clauses stage to move that the Third Reading be also taken of this Bill at that time.

Eaghtryane, I beg to move the Second Reading.

50 **The President:** Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

The President: I put the motion that the Customs and Excise Bill be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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

The President: Mr Henderson, clause 1.

Mr Henderson: Gura mie eu, Eaghtryane.

60 I would just like to seek permission if I could move clauses 1, 2 and 3 together as they are all interconnected with the short title.

The President: Is that agreed? (**Members:** Agreed.)
Mr Henderson.

65 **Mr Henderson:** Gura mie eu, Eaghtryane, and my thanks to hon. colleagues.

Clause 1 provides that its short title shall be the Customs and Excise Act 2017.

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

Clause 3 provides that the Customs and Excise Act 2017 shall expire once all of its provisions are in operation, and hence that all of 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.

75 Eaghtryane, I beg to move clauses 1, 2 and 3.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

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

Clause 4.

85 **Mr Henderson:** Gura mie eu, Eaghtryane.

Clause 4 amends section 1 of the Customs and Excise Act 1993.

Firstly, the clause adds the Export Control Act 2002 of the UK 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 controls, export licensing and trade control licensing.

90 Under the terms of the Customs and Excise Agreement 1979 between the United Kingdom and the Isle of Man Government, the Island is obliged to maintain export control law in line with that of the United Kingdom.

'Export Control Law' has been extended in recent years to include what are termed 'trade controls' – these are controls on the movement between two other countries of certain goods, such as military and torture equipment, where any part of the transaction involves activity in the UK or the Isle of Man, or a UK or Island person. An 'Island person' is a person, including a legal person such as a company, who is in the Island, or a British national normally resident in the Isle of Man.

100 As trade controls involve the movement of goods between two third countries these movements are not deemed to be exports as they are not leaving from the Island or the UK; however, because of the type of goods or destination it is important to ensure that there are adequate measures in place to ensure the Island meets international obligations.

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.

105 Clause 4 also amends section 1 of the Customs and Excise Act 1993 so that measures concerned with prohibitions and restrictions that refer to the placing on the market of certain goods are capable of being applied in Island law using that Act.

'Placing on the market' is a term that is being used more in UK and EU legislation, particularly in connection with public health and public safety, as an alternative to the imposition of an import ban. This especially relates to goods within the European Union which may have been produced domestically within the union, where the movement of goods between member states are not technically 'imports' because of EU customs law. It can allow for there to be an effective import ban on a commercial importation, for example, controls on tobacco or health products, whilst permitting purely personal imports which are not going to be placed on the market.

115 Adding the term to section 1 removes any doubt that measures using that term can, if considered necessary, be applied in Island law using the 1993 Act.

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

125 Finally, the Act amends section 1 of the Customs and Excise Act 1993 to add a new subsection (5) to provide that any reference to an EU 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 any EU legislation which the Island has chosen to adopt to apply as it changes, without the need for further amendment orders. An example of such an instrument could be the so-called 'VIES regulation' that governs administrative co-operation and the combating of fraud in the field of VAT, which allows for such flexibility.

Eaghtyrane, I beg to move.

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The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

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The President: Mr Cretney.

140 **Mr Cretney:** Just for clarification, and I am sure the Hon. Member will be able to clarify ... in fact he spoke at the end about the reputational interest of the Isle of Man which is obviously very important. But earlier on in his presentation he spoke about persons resident on the Island and including companies where the principals were resident on the Island. There is not a

situation where somebody who is not resident on the Isle of Man could use a company for this purpose, is there?

The President: Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

That is a very good question from the Hon. Member and what I would like to do at this point in time if I could ask our Legislative Officer to attend the Bar of Council just to give a little bit more clarity on that particular point. If I could call Mrs Kennedy?

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The President: If you would like to come forward just when we get the microphone set up. Thank you very much. Then if you could identify your name and position, please?

Mrs Kennedy: My name is Lucie Kennedy, I am the Legal and Policy Officer at Customs and Excise Division.

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When we refer to an 'Island person' an Isle of Man company is included in that. So a person who is a resident of another country who is a director or a shareholder of an Isle of Man company would be covered by that.

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Mr Cretney: Thank you.

The President: Thank you very much, madam.
Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

I have nothing further to that but to move the clause.

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

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Clause 5.

Mr Henderson: Gura mie eu, Eaghtyrane.

Section 2(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 a restriction on the import, export or removal of goods, as well as modifying any provision of any enactment concerned with such a duty or restriction.

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These powers are to be used to ensure compliance with the terms of the Customs and Excise Agreement 1979.

This section is being amended to include situations involving 'the placing of goods on the market' for the same reasons as relate to the amendments contained in clause 4.

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Eaghtyrane, I beg to move.

The President: Mr Coleman.

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Mr Coleman: Thank you, Mr President, I beg to second.

The President: I put the motion, clause 5: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

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Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 6 replaces subsection (3) of section 3 of the Customs and Excise Act 1993, and makes a small technical amendment to subsection (4).

195 Subsection (3) is replaced, and its replacement contains a revised list of matters that an Order made under sections 1 or 2 of the 1993 Act may deal with.

One of the chief reasons for the amendment was the recognition that an existing Order, made in 1980 under the predecessor to the 1993 Act, and originally dealing with co-operation with HM Customs and Excise, had become too restricted and did not appear to be capable of being updated using powers now found in the 1993 Act.

200 The amendment will allow for the revocation and replacement of that 1980 Order, in particular taking into account the several bodies that now share the functions formerly solely the responsibility of HM Customs and Excise – such as HMRC, the National Crime Agency and the Border Force.

At the same time, the amendment makes explicit provision for laying before Tynwald the Annual Report of the UK National Audit Office on the functioning of the Customs and Excise Agreement between the UK and IOM Governments.

Clause 6 also amends subsection (4) of section 3 of the 1993 Act, which requires the text of any legislation applied using powers contained in the Act to be annexed to the application Order, replacing a reference to ‘the legislation’ to ‘any legislation’.

210 Eaghtyrane, I beg to move.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

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The President: I put clause 6: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, sir.

220 **Mr Henderson:** Gura mie eu, Eaghtyrane.

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

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The records involved are, of course, already maintained by the Customs and Excise Division. However, the Moneyval Report commented that there was no requirement in law for them to be maintained. When considering the response to the criticism the Treasury considered it a sensible move, and one aiding the transparency and awareness of the regime, for an annual report to be laid before Tynwald.

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The Treasury is required to lay an annual report before Tynwald dealing with the use of certain powers relating to financial sanctions under the IOM Terrorism and Other Crime (Financial Restrictions) Act 2014. That report also provides a useful means of reporting to the court on matters involving UN and EU sanctions as a whole. It is envisaged that the annual report on the cash declaration regime will serve a similar role.

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Eaghtyrane, I beg to move.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

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The President: Mr Anderson.

Mr Anderson: Thank you, Mr President.

245 I was just wondering if I could ask the Hon. Member moving, if he could explain what the limit at the moment is, as far as cash declarations sending by post off Island?

Mr Henderson: It is €10,000, sir.

250 **Mr Anderson:** It is not bringing it in to that level now?

Mr Henderson: I believe that is correct, Eaghtyrane, but again I would like to refer to Mrs Kennedy just for a double check on that to make sure.

255 **Mr Anderson:** Mr President, could I maybe ask something else at the same time to save duplication?

The President: Indeed.

260 **Mr Anderson:** And what means of communication to the general public will you be making once this legislation is enacted in this respect?

265 **Mr Henderson:** In answer to the latter part we will be now placing a report to Tynwald on an annual basis with such transactions highlighted in there so that the general public have an awareness.

Mr Anderson: They will all know that they have to ... in the future?

270 **Mr Henderson:** Yes, that is correct, Hon. Member.

The President: I will invite Mrs Kennedy to deal with the first query, please.

275 **Mrs Kennedy:** Yes, any cash over €10,000 which enters or leaves the Island whether it is carried by person or by post, that amount is not changing, that has been the way for some time.

And in terms of informing the public: as there are no real changes to the public, this is merely a change to the way that we are reporting to the Court, we are not planning to advise the public about this. However, this report would be made available to the public once it goes through the Court in the future.

280 **Mr Anderson:** Thank you.

The President: Mr Henderson.

285 **Mr Henderson:** Thank you, Eaghtyrane.

I think with those explanations it leaves me just to move the clause, sir.

290 **The President:** Yes, before you do so, I just have a little query of my own. The clause requires Treasury to lay an annual report before Tynwald which summarises cash declarations and disclosures in their records. Can I just ask what steps, if any, are to be taken to maintain commercial confidentiality so that the identity of individuals or companies are not divulged in this public manner?

295 **Mr Henderson:** Eaghtyrane, I think there are guidelines on the sensitivities of such matters and again I think rather than me giving an overview explanation I would like to call Mrs Kennedy again just to give a further in-depth point on that, if I may, Eaghtyrane?

The President: Mrs Kennedy.

300 **Mrs Kennedy:** Yes, the report will not contain any personal or confidential information, it will be merely more amounts that have been declared and seized.

The President: It would take the form of an anonymised summary of the information?

305 **Mrs Kennedy:** Yes, that is correct.

The President: Thank you, very much.

310 **Mr Henderson:** I think it would be a more rolled up, statistical analysis – it is not envisaged there will be any identification.

The President: Mr Anderson.

315 **Mr Anderson:** Mr President, I believe you should have no fear of sending your Christmas presents by post! *(Laughter)*

The President: No fear of that! *(Laughter)*

Thank you.

In that case, I put the motion that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

320 Clause 8.

Mr Henderson: Gura mie eu, Eaghtyrane.

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

330 Sections 174B and 174D of the 1986 Isle of Man 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 Island, to prevent, detect and combat fraud and other serious wrongdoing. They are supplemented by provisions in other legislation, such as in the Income Tax Act 1970 and the Financial Intelligence Unit Act 2016, both Acts of Tynwald.

335 As well as referring to specific ‘enforcing authorities’ either named in the sections or in the Orders made under them, sections 174B and 174D allow for 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.

340 Increasingly, in recent years, one has seen the use of civil investigations and civil penalties to deal with matters that might otherwise be dealt with using the criminal law. The most obvious example might be seen to be the United States’ authorities, and agencies such as the Securities and Exchange Commission or the Office of Foreign Assets Control. However, in recent months HM Treasury in the UK has instigated a civil penalty regime for non-compliance with United Nations or European Union financial sanctions.

345 Indeed, for many years both HMRC and the Customs and Excise Division in the Island have had the option of either criminal or civil investigations into suspected VAT fraud. Whilst the Island was able to demonstrate to the Moneyval evaluators that it had a good record of co-operation with other jurisdictions, the Treasury considers it prudent 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 activity.

Eaghtyrane, I beg to move.

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The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

355 **The President:** I put clause 8: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Henderson: Gura mie eu, Eaghtyrane.

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The amendment made by this clause follows on from those made by clause 8 and further amends the Customs and Excise Management Act 1986. 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 what is a 'civil penalty'.

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Civil proceedings may, according to the amended section 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 in section 174D of the Customs and Excise Management Act 1986.

Eaghtyrane, I beg to move.

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The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

375 **The President:** I put clause 9: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Henderson: Gura mie eu, Eaghtyrane.

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This clause merely replaces the word 'and' with the word 'or' in section 63 of the Terrorism and Other Crime (Financial Restrictions) Act 2014.

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The Treasury intends 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 make the FIU the 'one-stop shop' for dealing with all financial crime intelligence. However, it was found that section 63 only allows delegation of functions to anybody with a role of preventing and investigating financial crime and terrorist financing. The FIU does not have an investigative role and Treasury was advised that section 63 would have to be amended before the delegation could be implemented.

Eaghtyrane, I beg to move.

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The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

395 **The President:** I put clause 10: those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Customs and Excise Bill 2017 –
Standing Orders suspended to take Third Reading**

Mr Henderson to move:

That Standing Orders be suspended to enable the Third Reading to be taken.

The President: Mr Henderson, suspension of Standing Orders.

400 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I would respectfully like to request Hon. Members for permission to suspend Standing Orders to take the final and Third Reading of this Bill through today as we have the time to do so, it expedites the legislation, and with special reference to the Moneyval issues that it intends to recognise.

405 Eaghtyrane, I beg to move.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

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The President: I put that motion: those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Customs and Excise Bill 2017 –
Third Reading approved**

The President: Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

I would like to thank Hon. Members for their consideration and being flexible today in allowing me to progress to the Third Reading. I appreciate that.

420 Eaghtyrane, the purpose of this Bill is to amend three existing Acts of Tynwald. The reasons for the amendments are: to ensure the continuing relevance and effectiveness of one of the main tools that enables compliance with the terms of the Customs and Excise Agreement with the United Kingdom; to recognise the need for the Treasury to be able to co-operate with a wider range of bodies outside the Island in assigned matters; and to implement some of the recommendations of the recent Moneyval Report on the Island, and seek to ensure that any
425 future examination of the Island by way of a national risk assessment or Moneyval review produces a favourable result.

Part 1 of the Bill deals with its short title, its commencement and the fact that it expires once all of the amendments it makes are in place.

Part 2 contains the amendments of the Customs and Excise Act 1993.

430 Part 3 of the Bill concerns amendments to the Customs and Excise Management Act 1986 and this is the main piece of legislation governing Customs and Excise matters in the Island.

Part 4 of the Bill makes a small technical, but important, amendment to the Terrorism and Other Crime (Financial Restrictions) Act 2014.

Eaghtyrane, I beg to move the Third Reading of the Customs and Excise Bill.

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The President: Mr Coleman.

Mr Coleman: Thank you, Mr President, I beg to second.

440 **The President:** Mr Anderson.

Mr Anderson: Thank you, Mr President.

Obviously this legislation has been a little while in gestation and we are looking at a fast-moving area as far as UK agreements are concerned.

445 Can we expect more legislation, amending legislation, in the near future? Is there anything else in the pipeline that we should be aware of?

The President: Mr Henderson.

450 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I thank the Hon. Member for his pertinent question. I am not aware currently of anything that is about to hit the decks of the Legislative Council scrutiny process in the next few weeks. However, that is not to say that there may not be anything progressed through the Keys at a greater pace than was first anticipated. Certainly, as the Hon. Member quite rightly identified, 455 the fast-moving pace of the political environment away from our shores currently may well produce legislation that may be required to have a speedier legislative passage than we are normally used to.

It is only this morning that in the House of Commons Dame Margaret Hodge is yet again moving an emergency debate on what she terms as 'tax havens' – offshore jurisdictions in tax evasion and tax avoidance, and so on. 460

So I think the political pressure and build-up on the international front and in special reference to the EU as well, may well produce other legislation that we were not anticipating at the pace it may well come across, Eaghtyrane – is the honest answer to that.

465 **The President:** Mr Cretney.

Mr Cretney: Just in response to a point the Hon. Member has just made about proceedings in another place in another country. Would he agree with me that it is unfortunate that there appears to be much more of a blurring of the terms of 'avoidance' and 'evasion'? 470

Mr Corkish: Hear, hear.

Mr Henderson: Gura mie eu, Eaghtyrane.

I couldn't agree with the Hon. Member more than what he has said, and for the purposes of public record I think it is a great shame that the Hon. Members in another place do not take up 475 our invite and visit our Island shores and look at the regimes that we have in place here and the transparency and openness with which we operate in general terms, and try and aspire to the best international standards that we can.

It is also unfortunate in the terms of referencing when in reality we are an international finance centre, which is the best description of our Island operation, and other jurisdictions. I also find it deplorable that the Island can be subject to such negative criticism when in fact we are doing all we can to raise the standards and in fact are leaders, in many cases, in doing this. It is a common fact, Eaghtyrane, that however much you raise the standards and however much 480 legislation you put in to drive out criminality there are always those in the future who will, through inventive genius, find a way to subvert the laws of any particular jurisdiction, not just our own. 485

And just because we are an international finance centre does not mean that we have low financial standards – far from it, Eaghtyrane.

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The President: Mr Corkish.

Mr Corkish: Thank you, Mr President.

495 Just to build on that really and for the benefit of *Hansard*, and especially in the current political climate, this is another illustration of our Island's efforts in promoting openness, transparency and good housekeeping in our Island and as such I heartily support the Bill and its effects, and going forward to meet international obligations.

I heartily support the Bill.

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The President: Mr Henderson, you may reply.

Mr Henderson: Gura mie eu, Eaghtyrane.

505 I couldn't agree with the Hon. Member, Mr Corkish's comments more and I hope they are picked up in another place's reporting strategies. And indeed the very legislation we are moving this morning and at the pace that Council has recognised it should be moved at is a clear example to the Isle of Man's commitment for openness and transparency and high international standards for our business here in the Isle of Man, and that we wish to tick all the boxes, as it were, Eaghtyrane.

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A Member: Hear, hear.

The President: Thank you, Mr Henderson.

515 The motion is that the Customs and Excise Bill 2017 be read for the third time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That concludes the business before us this morning. Council will now stand adjourned until the next sitting in Tynwald Court 10.30 a.m. Tuesday 21st November.

The Council adjourned at 11.07 a.m.