

MANX LAW NEWSLETTER

ISSUE 1

OCTOBER - DECEMBER 2008

© Isle of Man Government 2009

MANX LAW NEWSLETTER

ISSUE 1

OCTOBER - DECEMBER 2008

The Manx Law Newsletter is an information and recording service for lawyers and others who may need to be aware of developments in the law of the Island. The material in the Newsletter is not intended to be exhaustive or authoritative but should be regarded as an index and a record of material which may be of use in legal work.

The entries are in parts - Part I - Case Headers 2008, Part II - Bills and Acts 2008 (including Tables of Acts of Tynwald and Statutory Documents Amending Acts), Part III - Subordinate Legislation and Part IV - Reports.

While reasonable care is taken in the preparation of material for publication in the Newsletter, the Attorney General's Chambers accepts no responsibility in law for the accuracy of the contents of this issue, nor do views expressed necessarily reflect the opinions of the Attorney General's Chambers.

This edition of the Newsletter should be cited as 1 MLN

Edited by HM Attorney General
Sub-editor - Jane Turley

Editorial Address -
Attorney General's Chambers
3rd Floor, St Mary's Court
Hill Street
Douglas
Isle of Man
IM1 1EU

Disclaimer –

Whilst every effort has been made to ensure the accuracy of the information in the Newsletter, the Chambers of the Attorney General and its officers can assume no responsibility for, and give no guarantees, undertakings or warranties concerning the accuracy, completeness or currency of the information provided, and accept no liability whatsoever arising from any errors or omissions.

COPIES OF ACTS, BILLS, REPORTS AND STATUTORY DOCUMENTS ARE AVAILABLE FOR INSPECTION OR PURCHASE FROM THE TYNWALD LIBRARY, LEGISLATIVE BUILDINGS, FINCH ROAD, DOUGLAS, ISLE OF MAN, IM1 3PW [Tel: 01624 685516 / Fax: 01624 685522 / email: www.tynwald.org.im]

CONTENTS

INDEX OF HEADINGS

PART I	–	Case Notes 2008	5
PART II	–	Bills and Acts 2008	32
		Appointed Day Orders	36
		Tables of Acts of Tynwald	38
		Statutory Documents Amending Acts	44
PART III	–	Subordinate Legislation	45
		Index of Statutory Documents by number	54
		Government Circulars	56
PART IV	–	Reports	57

INDEX OF HEADINGS

[Page references are bracketed]

ADVOCATES [9]
AGRICULTURE [56]
APPOINTED DAY ORDERS [36]
CIVIL PROCEDURE [9]
COMMERCIAL LAW [9]
COMPANIES [9]
CONTRACT LAW [11]
COURTS [11, 45]
CUSTODY [45]
CUSTOMS & EXCISE [44, 45, 56]
DAMAGES [18]
DEPOSITORS COMPENSATION [46]
DOGS [44, 48]
DRUGS [18]
ECCLESIASTICAL [48]
ELECTRONIC TRANSACTIONS [48]
EMPLOYMENT [20]
EMPLOYMENT PENSIONS [46]
EUROPE/FINANCIAL SERVICES [49]
EVIDENCE [20]
EXECUTIVE GOVERNMENT [49]
FAMILY LAW [21]
FINANCIAL SERVICES [22]
FORESTRY [56]
GAMBLING [23]
HARBOURS [23]
INSOLVENCY [24]
LAND LAW [25]
MARITIME [26]
MARITIME SECURITY [46]
MEDICINES [26]
MONEY LAUNDERING [49]
PLANNING [28]
PROCEEDS OF CRIME [46]
ROAD TRAFFIC [29]
SENTENCING [29]
SOCIAL SECURITY [47]
SUCCESSION [30]
TAXATION [48, 50]
TELECOMMUNICATIONS [44]
TERRORISM [50]
TRUSTS [31]
VALUE ADDED TAX [44, 47, 48]

PART I

CASE NOTES

ALPHABETICAL INDEX TO CASES 2008

Full copies of Manx judgments are obtainable on written application to the Chief Registrar, Isle of Man Courts of Justice, Deemsters Walk, Douglas, Isle of Man IM1 3AR.

[The citation of cases is as found in the original judgment of the court]

A -v- A [family law]	21
ABRAHAM'S -v- BENTHAM [Health & Safety Officer] [courts]	11
ABRAHAM'S -v- DEPARTMENT OF LOCAL GOVERNMENT & OR [courts]	11
ADJAR SHIPPING CP LTD, re [insolvency]	24
ARRAGON PROPERTIES LTD, Petition of Doleance [31.7.08 & 20.11.08] [evidence]	20
ARTHUR -v- DHSS [damages]	18
ATTORNEY GENERAL'S REFERENCE re HATCHER PHARMACEUTICALS LTD & APELBE BRANDS SUPPLY LTD [medicines]	26
ATTORNEY GENERAL'S REFERENCE re TAYLOR [drugs]	18
ATTORNEY GENERAL'S REFERENCE re VOLANTE [sentencing]	29
ATTORNEY GENERAL'S REFERENCE re WATTERSON [drugs]	19
B -v- B [family law]	21
BACCARAT LTD, Petition [27.5.08 & 26.8.08] [planning]	28
BAINES, Petition [courts]	12
C -v- C [family law]	21
C -v- M [family law]	21
CTM MANAGEMENT LTD -v- GOODWIN & ORS [courts]	12
CARRUTHERS & OR -v- MORRIS [land law]	25
CHOHAN & KHAN -v- DHSS [employment]	20
CHRISTIAN -v- R [sentencing]	30
CLINTON, R v [sentencing]	30
COLLISTER, ESTATE OF [succession]	30

COLQUITT & OR -v- BELL [land law]	25
CORNEELJTE DOTOLO, re [insolvency]	24
DHSS -v- SIMS [see CTM Management Ltd v Goodwin]	12
DEV PROPERTY DEVELOPMENT PLC, re [companies]	9
DEVO & RIEDEL -v- R [medicines]	27
DOMINATOR LTD -v- GILBERSON SL & ORS [maritime]	26
DONNELL, Petition re Siboney Ltd [companies]	10
EPICURE QATAR EQUITY OPPORTUNITIES PLC, re see Dev Property Development PLC [companies]	9
FSC, re MOLYNEUX ROCHE CORPORATION LTD [financial services]	22
FSC -v- CANTY & BANNISTER [companies]	10
FSC -v- JORDAN [companies]	10
FSC -v- YATES [companies]	10
FEDERAL REPUBLIC OF NIGERIA, Cross Petition [courts]	12
FEDERAL REPUBLIC OF NIGERIA re ABACHA [courts]	13
FRIENDS & HEROES LTD, re [insolvency]	24
GARDINER -v- AIRLINE CARGO AGENTS (IOM) LTD [contract law]	11
GOLFRATE AFRICA LTD & ORS -v- AZIZ & ORS [courts]	13
GREEN & OR -v- PW LTD & OR [courts]	13
GURRY -v- MIDGHALL [land law]	25
HARBEN -v- PENN [09.01.08] [courts]	14
HARBEN -v- PENN [29.09.08] [courts]	14
HARBEN JAMES v [1] DICKINSON CRUICKSHANK [2] PENN [courts]	14
HAWTHORNE -v- JONES [damages]	18
INTEGRITY FINANCIAL SOLUTIONS LTD v UTOPIA TLP FUND PLC [commercial law]	9
INTERNATIONAL ASSET RECOVERY LTD, re Broadsheet LLC [companies]	10
J -v- J [family law]	21
J.G. KELLY LTD & JACKSON HOMES (SOUTHERN) LTD, Petition of Doleance [planning]	28

JOHNSON -v- R [drugs]	19
JONES -v- MONTPELIER TAX PLANNING (ISLE OF MAN) LTD & OR [17.06.08] [courts]	14
KAKAY -v- FREARSON & DUNKELD FOUNDATION [financial services]	23
KEWLEY & OR -v- MEGSON [civil procedure]	9
KNOX D'ARCY-v- CORLETT [28.2.08] [courts]	15
KNOX D'ARCY-v- CORLETT [24.4.08] [courts]	15
KYRGYZ MOBIL TEL LTD & ORS -v- FELLOWES INT HOLDINGS LTD & ORS [18.07.08] [courts]	15
KYRGYZ MOBIL TEL LTD & ORS -v- FELLOWES INT HOLDINGS LTD & ORS [28.11.08] [courts]	16
L -v- C [family law]	22
LANGDON -v- ATKINSON [road traffic]	29
LASALA & ZEIDMAN -v- MAINSTREET LTD & BAINES [courts]	16
M -v- M [family law]	22
McBURNEY & OR, Petition [re Betsam Trust] [TRUSTS]	31
McCLUSKEY & ORS, R v [re Winsland] [evidence]	21
MACFARLANE -v- BRITISH AIRWAYS CITIEXPRESS (IOM) LTD [damages]	18
McLEOD, ESTATE OF [succession]	30
MK INVESTMENTS LTD & MK AIRCRAFT LEASING LTD, re [insolvency]	24
MOUNT MURRAY COUNTRY CLUB LTD & OR -v- DoT [advocates]	9
MYERS -v- R [drugs]	19
PILLING -v- QUINN KNEALE [courts]	16
QUILLEASH, Petition [land law]	26
S -v- O [family law]	22
SALT, ESTATE OF [succession]	31
SEASIDE SHIPPING LTD, Petition of Doleance [harbours]	23
TELTSCHER -v- RATIONAL ENTERTAINMENT ENTERPRISES LTD [gambling]	23
TILLEARD & OR, Petition of Doleance [courts]	16

WILLERS, Petition of Doleance [planning]	29
WINE -v- WINE [two judgments same date] [courts]	17
WORLD DUTY FREE CO LTD (in receivership) re {PETITION PATTNI} [courts]	17
WORLD DUTY FREE CO LTD (in receivership) re {PETITIONS OF ALI, DINKY INT SA & PATTNI} [courts]	17
Y -v- Y [family law]	22

ADVOCATES

Leave to appeal out of time against assessment of costs of government department refused - two weeks allowed for appeal exceeded by twenty weeks

MOUNT MURRAY COUNTRY CLUB LTD & OR -v- DEPARTMENT OF TRANSPORT

[Ref: TXA 2007/03, Chancery Division, Acting Deemster Montgomerie

Judgment: 3 March 2008

Counsel - Ms L.C. Byrne for the petitioners: Mrs K.L. Clough for the respondent]

CIVIL PROCEDURE

Imprisonment for civil debt - s.2 Imprisonment for Debt Act 1928 - s.17 Bankruptcy Procedure Act 1892 - necessary to show that the person had the means to meet the full instalment owing see *Jancar Holdings Ltd and Shillito v Potter [1987-89] MLR 426* [transcript]

KEWLEY & OR -v- MEGSON

[Ref: 0600820, CLD, Deemster Doyle

Judgment: 3 April 2008

Counsel - Plaintiffs in person: S.F. Caine for the defendant (pro bono publico)]

COMMERCIAL LAW

Construction of commercial document correct approach see *Rank Enterprises v Gerard [2001] 1 All ER {commercial law} 449* - traded life policies - continued use [6 months] of offering document wherein plaintiff described as policy advisor did not amount to a waiver of earlier termination notice or give rise to a new contract - offering document was not the document that governed employment of the adviser [transcript]

INTEGRITY FINANCIAL SOLUTIONS LTD v UTOPIA TLP FUND PLC

[Ref: CLA 2008/8, CLD, Acting Deemster J.H. Allen

Judgment: 18 December 2008

Counsel - K.M. Goldie for the plaintiff: P.D. Morris for the defendant]

COMPANIES

Scheme of arrangement and reduction in share capital agreed - relationship of the court with the finance sector reviewed [transcript]

re DEV PROPERTY DEVELOPMENT PLC

[Ref: CP 2008/24, Chancery Division, Deemster Doyle

Judgment: 7 May 2008

Counsel - K.E. O'Riordan for the petitioner

Cited *Petition Epicure Qatar Equity Opportunities PLC* - share premium account

cancellation confirmed under section 57 Companies Act 1931- CP 2008/115 Chancery

Division Deemster Doyle 04/12/08 Counsel Miss C.V.J. Hyde for the petitioner {transcript}]

Winding up petition by minority shareholder rejected - totally disproportionate to the complaints of petitioner - need to advertise petition dispensed with - costs awarded against petitioner - considered *CVC/Opportunity Equity Partners Ltd v Almeida PC 21/03/02* [transcript]

DONNELL, PETITION *re* SIBONEY LTD

[Ref: CP 2008/118, Chancery Division, Deemster Doyle

Judgment: 10 December 2008

Counsel - J.P. Conti for the petitioner: A.L. Gough for the defendant company]

[classification : companies]

Companies Act 1992 s.26 disqualification from acting as a company director etc - case law on recusal reviewed - false declarations of solvency - credit for assisting regulatory authorities [transcript]

FSC -v- CANTY & BANNISTER

[Ref: CP 2007/121, Chancery Division, Deemster Doyle

Judgment: 17 July 2008

Counsel - C.M. Brooks for the Commission]

Referred to *FSC v Brunswick* CP 2009/003 Deemster Kerruish 13 March 2009 -

D.P. Molyneux for the Commission

[classification : companies]

Companies Act 1992 s.26 disqualification from acting as a company director etc - unqualified person acting as liquidator

FSC -v- JORDAN

[Ref: CP 2007/121, Chancery Division, Deemster Kerruish

Judgment: 20 June 2008

Counsel - J.T. Aycock for the Commission: Miss A.L. Hannan for the respondent]

[classification : companies]

Companies Act 1992 s.26 disqualification from acting as a company director etc - disqualification orders already made in England [approved transcript]

FSC -v- YATES

[Ref: CP 2008/3, Chancery Division, Deemster Kerruish

Judgment: 16 April 2008

Counsel - K.J. Murray for the Commission]

[classification : companies]

Limited liability - restoration of company - quasi-plaintiff can seek security for costs against other party - judge to look at the substance of the matter see *Dain Rauscher Inc v Cranleigh Invest Ltd 1999-01 MLR 561* - nominee company so security not limited to the additional cost of enforcement see "*Nasser*" [2002] *All ER* 401- in the absence of contingency fee type arrangements reasonable for non-resident claimant without assets to provide security for costs - general discretion to order cross examination of persons making affidavits should not be restricted by case law dealing with judicial review - test here whether application for cross

examination was *bona fide* - not necessary for a detailed list of questions to be attached to application as that would defeat the object of cross examination to a large extent - persons who make affidavits must be prepared to come to court to be cross examined [transcript]

PETITION OF INTERNATIONAL ASSET RECOVERY LTD
[matter of Broadsheet LLC]

[Ref: CP 2008/07, Chancery Division, Deputy Deemster Corlett
Judgment Approved: 25 September 2008
Counsel - C.J. Murphy for the petitioner: C.M.H. Coleman for the noticed party]
[Appeal against security for costs order unsuccessful 2DS 2008/25 Deemster
Kerruish/ G.F. Tattersall, J.A. 26/01/09]
[classification : companies]

CONTRACT LAW

Nature of agency - on the facts no contract found

GARDINER -v- AIRLINE CARGO AGENTS (IOM) LTD

[Ref: CA 2003/9, Chancery Division, Deemster Doyle
Judgment: 5 February 2008
Counsel - Ms J. Holt for the plaintiff: R.I.Colquitt for the defendant]

COURTS

Alleged harassment - reasonable cause for action found - law on res judicata and abuse of process summarised - meaning of frivolous and vexatious - mere fact that a case was weak and not likely to succeed at trial not a ground for striking out - issue of harassment not raised in previous proceedings - plaintiff awarded costs [transcript]

ABRAHAMS -v- BENTHAM [Health & Safety Officer]

[Ref: CLA 2008/57, CLD, Deemster Doyle
Judgment: 17 December 2008
Counsel - J.P.B. Carter for the plaintiff: C.N.I. Webb for the Defendant]

Prohibition notice building site - health and safety - civil case should be heard notwithstanding developer facing criminal prosecution - plaintiff awarded costs

ABRAHAMS -v- DEPARTMENT OF LOCAL GOVERNMENT & OR

[Ref: CLA 2006/85, CLD, Deemster Doyle
Judgment: 19 March 2008
Counsel - J.P.B. Carter for the plaintiff: C.J. Arrowsmith for the Department:
K.J. Murray for Douglas Corporation]

[10 September 2008 application by DLGE to strike out succeeded [Counsel C.N.I. Webb] - plaintiff should have used with expedition the statutory appeal mechanism under health and safety law rather than a petition of dolence. Case law reviewed importance of proper and precise pleadings. Cited rarity of the remedy *Bahamas Telecommunications Co Ltd v Public Utilities Commission & Or* 12/02/08. Cited limited power of the court to intervene in

regulatory functions given to a government department or like body *MTM (Isle of Man) Ltd 2003-05 MLR 41*. Approved *Harris v Evans [1998] 3 All ER 522* owners adversely affected by decision of health and safety inspector had no right to damages for negligence.]
[classification : courts]

Vienna Convention on Consular Relations 1963 - ex honorary consul to the Isle of Man for St Vincent and the Grenadines applying for diplomatic privileges etc under the convention - court declined to construe the convention or to make an order - no jurisdiction under Rules of the High Court of Justice 1952 Order 40, Rule 1 or inherently - meaning of written instrument under above rule - precondition for declaration under above rule that the court must have construed a document the meaning of which was ambiguous/vague - no inherent jurisdiction to grant declaratory relief in the absence of consequential relief see *Guaranty Trust Co New York v Hannay & Co [1915] 2 KB 536* - cited *re Impex Services Worldwide Ltd CP [2004] 96* on inherent jurisdiction - court refused to treat the petition as a petition of dolence under Order 13, Rule 29 as no technical objection or want of form - chaotic administration of justice if after the start of a criminal prosecution a declaration of innocence could be obtained from a civil court *Imperial Tobacco Ltd & Or v AG [1980] 1 All ER 866* applied but distinguished

PETITION OF BAINES

[Ref: CP2007/113, CLD, Acting Deemster J.H. Allen
Judgment: 1 October 2008
Counsel -M. Hubbard/Ms J. Holt for the petitioner: Mr Farrer QC/Mrs L.J. Bermingham for HM Attorney General]
[classification : courts]

Timeshare - striking out for want of prosecution - prejudice caused by impairment of memory had to be considered where elderly witness giving oral evidence - *Pilling v Quinn Kneale (a firm) CLA 2002/123 -13/5/08* applied

CTM MANAGEMENT LTD -v- GOODWIN & ORS

[Ref: 2DS 2007/21, Staff of Government Division Civil Jurisdiction,
Deemster Kerruish/ G.F. Tattersall,J.A.
Judgment: 11 February 2008
Counsel - Ms J. Holt for the appellant: C.J. Murphy for the respondents]
[Cited *DHSS v Sims* - expiry of limitation period - matter had to be determined on all the available evidence - refusal to strike out for want of plea - date of knowledge - 2DS2008/24 Deemster Kerruish/ G.F. Tattersall,J.A. 06/02/09 Counsel - D. P. Molyneux for the DHSS: Mrs H. Hammonds for the respondent
Sims v DHSS [transcript] CLA 2007/39 Deemster Doyle 17 March 2009 - action not dismissed for want of prosecution]
[classification : courts]

Disputed ownership of monies in bank account - financial interest insufficient to justify participation both as an individual and as company director/beneficial owner - because allegations of impropriety made personally and Article 6 European Convention engaged entitled to continue as an individual

CROSS PETITION FEDERAL REPUBLIC OF NIGERIA

[Ref : CP 2004/149, Chancery Division, Deemster Kerruish

Judgment: 4 July 2008

Counsel - P.D. Morris for the Federal Republic of Nigeria: C.J. Arrowsmith for Mr Abacha:
R.A.K. Halsall for Rosewood]

[classification : courts]

Distinction between submission to the jurisdiction and taking a step in the proceedings see *the Messiniaka Tomi [1984] 1 Lloyd's Rep 270* - criteria for applications as to forum conveniens - important factor was that no reciprocal arrangement with Nigeria on recognition of judgments by registration existed and so enforcement proceedings would be needed on the Island – similar facts case *Pakistan v Zardari & Ors [2006] 2CLC 667*

CROSS PETITION FEDERAL REPUBLIC OF NIGERIA *re* ABACHA

[Ref: CP 2004/149, Chancery Division, Acting Deemster L.E. Sullivan

Judgment: 22 August 2008

Counsel - P.D. Morris for the Federal Republic of Nigeria: C.J. Arrowsmith for Mr Abacha:
R.A.K. Halsall for Rosewood]

[classification : courts]

Disclosure - *Norwich Pharmacal* principle - right of company to have possession of its own records: s.1 Companies Act 1982 - *relied on P v T [1997] 1 WLR 1309* relief will only be granted if information cannot be obtained elsewhere - assistance in foreign proceedings s.56B High Court Act 1991 - *relied on D v NSPCC [1977] 1 All ER 618* confidentiality not a complete defence

GOLFRATE AFRICA LTD & ORS -v- AZIZ & ORS

Ref: CP 2008/19, Chancery Division, Acting Deemster L.E. Sullivan

Judgment: 22 August 2008

Counsel - R.A. Long for the petitioners: P.B. Clucas for the respondents]

[classification : courts]

Nigerian oil industry shares - striking out for abuse of process - starting point *Davis v Radcliffe [1987-88] MLR 34-* court will act with great caution and only in plain and obvious cases - striking out not justified merely because the story in the pleadings is highly improbable - recent judgments *re Neville (petition of FSC company director disqualification) Ch.D Deemster Kerruish 12/03/03 and Lasala v Mainstreet Ltd and Baines Deemster Kerruish 23/10/07* [transcript]

The respondents *relied on English Welsh and Scottish Railway Ltd v Goodman 09/05.07 para 19* - impossible for defence to know case it had to meet - level where litigation intimidates

GREEN & OR -v- PW LTD & OR

[Ref: 0401064, CLD, Deputy Deemster Corlett

Judgment: 8 February 2008

Counsel - C.N.I. Webb for the plaintiffs: Mrs K.L. Clough for the defendants]

[classification : courts]

Distinction between “summary business” and “superior business”

HARBEN -v- PENN

[Ref: 2DS 2007/13, Staff of Government Division Civil Jurisdiction,
G.F. Tattersall,J.A. /Acting Deemster Storey
Judgment: 9 January 2008
Counsel - Mr Harben in person: P.B. Clucas for the respondent]
[classification : courts]

Rules of the High Court of Justice 1952 Order 2 Rule 14(2) proper construction was that a defence must be filed within normal time limits even if the acknowledgement of service had been filed late - numerous applications before the court should be addressed in the round and not necessarily in chronological order see *Castellow v Somerset CC [1993] 1 All ER 952 CA*

HARBEN -v- PENN

[Ref: CLA 2007/49, CLD, Deemster Kerruish
Judgment: 29 September 2008
Counsel - Mr Harben in person: P.B. Clucas for the respondent
Cited *R v King Crim2008/58 GGD Acting Deemster Sullivan 02/04/09* purposive
interpretation of “shall” in statutes]
[classification : courts]

No legitimate basis for judge of appeal to be recused - adjournment and applications to alter or stay refused because in reality appellant was seeking to re-argue the issue of costs which the same court had already decided

HARBEN JAMES -v -[1] DICKINSONCRUICKSHANK [2] PENN

[Ref: 2DS 2004/33, 2 DS 2005/20, 2DS 2007/13, Staff of Government Division
Civil Jurisdiction,
G.F. Tattersall,J.A. /Acting Deemster Newey
Judgment: 29 September 2008
Counsel - Mr Harben in person: K.J. Murray for 1st respondent, P.B. Clucas for the 2nd
respondent]
[classification : courts]

Adjournment of trial date - serious mental illness of plaintiff - to avoid delay appeal court ruled on all aspects of the application and revised timetable rather than remitting back to original judge

JONES -v- MONTPELIER TAX PLANNING (ISLE OF MAN) LTD & OR

[Ref: 2DS 2008/12, Staff of Government Division Civil Jurisdiction,
Deemster Kerruish/ G.F. Tattersall,J.A.
Judgment: 17 June 2008
Counsel - Mr Jones in person: J. Ramsden for Montpelier]
{Further Judgments - Montpelier Tax Planning (Isle of Man) Ltd v Jones & Morris CLA
2001/103, CLD, Deemster Doyle, 21 November 2008 - noted (1) *Louise Arthur v DHSS*
19/12/07 reasonable opportunity to prepare case (2) *Fulcher & Shaw v Culverhouse* 27/01/06
position of litigants in person. [transcript]

Jones v Montpelier Tax Planning (Isle of Man) Ltd & Or 2DS 2008/30, Staff of Government Division Civil Jurisdiction, Deemster Kerruish/G.F. Tattersall, J.A., Judgment: 17 December 2008
Counsel - Mr Jones in person: Ms J. Holt for Montpelier: C.M.H. Coleman for Mr Morris - enforcement of judgment benefiting Mr Jones stayed 04.11.08 - such order discharged on appeal finding that Acting Deemster L.E Sullivan had acted under a misapprehension of the facts.}
[classification : courts]

Decisions by small claims arbitrator including procedural decisions on discovery etc can be challenged in a higher court - decision characterised as interim award for the purposes of O.26A, r.7 Rules of the High Court - power to be used in very limited circumstances

KNOX D'ARCY-v- CORLETT

[Ref: DEF0701306, CLD, Deputy Deemster Corlett
Judgment: 28 February 2008
Counsel - D.P. Molyneux for the plaintiff: Mr. Corlett in person]
[classification : courts]

Wide discretion given to small claims arbitrator - discovery audited accounts - disclosure order allowed party not party to the proceedings given parties related

KNOX D'ARCY-v- CORLETT

[Ref: DEF0701306, CLD, Deputy Deemster Corlett
Judgment: 24 April 2008
Counsel - D.P. Molyneux for the plaintiff: Mr. Corlett in person]
[classification : courts]

Power of appeal court to order security for costs arising from earlier hearing rested on proper construction s.20(1) High Court Act 1991 but no such power existed under s.336 Companies Act 1931 - *Dar International FEF Co v Aon Ltd (practice note) [2004] 1 WLR 1395* distinguished [see Deemster Doyle CA 2006/07-30/11/07]

KYRGYZ MOBIL TEL LTD & ORS -v- FELLOWES INT HOLDINGS LTD & ORS

[Ref: 2DS 2007/24, Staff of Government Division Civil Jurisdiction, Deemster Kerruish/G.F. Tattersall, J.A.
Judgment: 18 July 2008
Counsel - N. Harrison/C.D.B. Cope for the appellants: S. Smith QC/R.I. Colquitt for the Affa parties: J.J. Wild for Fellowes: C.J. Arrowsmith for CP]
[classification : courts]

Forum conveniens - Island an appropriate forum finding against decision Deemster Doyle CA 2006/07-30/11/07 - cross-appeal on non-disclosure dismissed - appeal court entitled to substitute its own conclusion because of failure to adjudicate on highly unusual and complex factual background - to stop significant delay service out of jurisdiction decided by appeal court - applied in part *OJSC Oil Company Yugraneft (in liquidation) v Abramovich*

[2008] EWHC 2613 (Comm) - court concerned with big picture and not microscopic examination of detail - regard should be had to characterisation by foreign court of its own rule but this was not a final determination - power to disregard judgments based on fraud - natural forum - investment in Kyrgyzstan over-reliance on obiter dicta *Premium Nafta Products Ltd v Fiji Shipping Co Ltd* [2007] UKHL 40

Case law reviewed: service out of the jurisdiction, good arguable case, proper party, serious issue to be tried in its merits { *Carvill America Incorporated v Camperdone UK Ltd* [2005] 2 Lloyd's Rep 465}, forum non conveniens, overlapping issues, vexatious invocation of court abroad { *Alghussein Establishment v Eton College* [1988] 1 WLR 591}, obstacles faced in obtaining redress abroad { approved dicta para. 252 *Cherney v Deripaska* [2008] EWHC 1530 (Comm)}, corruption issues, non-disclosure in complex cases

Interlocutory proceedings not the place to decide whether *Abouloff v Oppenheimer & Co* [1882] 10 QBD 295 was part of Manx law - judge must give his reasons for judgment

KYRGYZ MOBIL TEL LTD & ORS -v- FELLOWES INT HOLDINGS LTD & ORS

[Ref: 2DS 2007/24, Staff of Government Division Civil Jurisdiction, G.F.Tattersall, J.A./Acting Deemster C. Otton-Goulder
Judgment: 28 November 2008

Counsel [see judgment - para. 9]

[Leave to appeal to the Privy Council refused 19 January 2009 - stay ordered to give time to apply for special leave to appeal to the Privy Council]

[classification : courts]

Application to strike-out statement of case against defendants - definition "abuse of process"
[approved transcript]

LASALA & ZEIDMAN -v- MAINSTREET LTD & BAINES

[Ref: CLA 2005/117, CLD, Deemster Kerruish

Judgment: 23 October 2007

Counsel - A.L. Gough for the plaintiffs co-trustees AremisSoft Liquidating Trust:

Miss J. Holt for the defendants]

[classification : courts]

Striking out for substantial risk that inordinate delay would make a fair trial impossible - principles for establishing post-writ prejudice *Rowe v L.O.Glenister & Sons Ltd & Ors* Appeal Court 25/7/95 unreported

PILLING -v- QUINN KNEALE (a firm)

[Ref: CLA 2002/123, CLD, Deemster Kerruish

Judgment: 13 May 2008

Counsel - Mrs H. Hammond for the plaintiff: S.F. Caine for the defendant]

[classification : courts]

Report of planning inspector sufficed and so no reliance placed on further affidavit - party seeking to strike-out a petition of doleance because of delay had to show prejudice to succeed

- Malew litigation distinguished {[2002-03] MLR 129} no public interest to counter-balance delay - delay in issuing proceedings - no statutory time limits for petitions of doleance but English judicial review time limits commonly used - petition struck-out on finding five months delay excessive - unsuccessful applicant had only to pay one set of costs *Corner House Research [2005] EWCA Civ 192*

TILLEARD & OR, PETITION OF DOLEANCE

[Ref: CLA 2007/63, CLD transferred to Chancery Division, Deputy Deemster Corlett
Judgment: 10 January 2008
Counsel - J.P.B. Carter for the petitioners: S.F. Caine for the noticed parties
(Allinson): O.H. Helfrich for DLGE]
[classification : courts]

(1) Extension of time for filing affidavits [transcript] (2) Stay of proceedings to obtain further information and documents - substantive dispute before the courts in Israel
[transcript - two judgments same date]

WINE -v- WINE

[Ref: CP 2007/10, Chancery Division, Deemster Doyle
Judgment: 31 January 2008
Counsel - C.N.I. Webb for the petitioner: R.A. Long for the defendant]
[classification : courts]

Security for costs order that stifled a claim only in exceptional circumstances - engagement of Article 6 European Convention - payments into court when procedures regularly flouted or litigation not done expeditiously *Mealey Horgan plc v Horgan Times 6/7/9 9* -claimant to demonstrate probability that claim would be stifled - *Al-Koronky & Or v Time Life Entertainment Group Ltd [2005] EWHC 1688 (QB) para31-3 3-* assests of third parties eg family, friends, associated companies and financial institutions can be taken into account *Brimko Holdings Ltd v Eastman Kodak Co [2004] EWHC 1343(Ch)*

re WORLD DUTY FREE CO LTD (in receivership) PETITIONS OF ALI, DINKY INT SA & PATTNI

[Ref: CP2001/52,121 & CP2003/122, Chancery Division, Deemster Kerruish
Judgment: 4 July 2008
Counsel - C.J. Arrowsmith for Mr Pattni: S.F. Caine for Mr Ali and Dinky]
[classification : courts]

Definition“abuse of process” - no conflict between Manx case *Lasala and Zeidman v Mainstreet Ltd /para 31[this newsletter] and Hunter v Chief Constable of the West Midlands Police [1982] AC 529* on definition - modern approach to abuse of process see *Johnson v Gore Wood & Co [2002] 2 AC 1* - on the issue of no reasonable defence the word “embarrassing” should be given a liberal interpretation - previous order of First Deemster for security of costs not complied with so to allow case to be pursued would render nugatory his order and thwart its purpose [transcript]

re WORLD DUTY FREE CO LTD (in receivership) PETITION PATTNI

[Ref: CP2003/122, Chancery Division, Acting Deemster J.H. Allen
Judgment: 11 December 2008
Counsel - C.J. Arrowsmith for Mr Pattni: S.F. Caine for Mr Ali and Dinky]
[classification : courts]

DAMAGES

Intramedullary nailing operation leg fracture - negligence not found - American case law on informed consent reviewed - respective expertise of medical experts *Bahamas Telecommunications Co Ltd v Public Utilities Commission & Or 12/02/08*

ARTHUR -v- DEPT OF HEALTH AND SOCIAL SECURITY

[Ref: CA 2005/05, CLD, Deemster Doyle
Judgment: 26 February 2008
Counsel - Ms N.L. Kane for the plaintiff: J.T. Aycock for the defendant]

Road traffic accident medium severity multiple injuries - plumber and central heating engineer - unemployed at time of accident - award based on overall disability and genuine impact - defendant must take victim as found both physically and psychologically however where a injury itself pre-existed no responsibility followed - early onset of disability can be awarded damages - interest on general and special damages 4%

HAWTHORNE -v- JONES

[Ref: CLA 2006/86, CLD, Deemster Doyle
Judgment: 8 April 2008
Counsel - Miss V. Oates the plaintiff: N.M. Cordwell for the defendant]
[classification : damages]

Aircraft fitter - back injury when removing sticky security sticker from aircraft door - common law duty to provide a safe system of work - adequate training for this simple task provided - adequacy of equipment *Teare v Manx Petroleum 18/06/04 para 92* - employee entirely to blame for own injury *ibid para 85* duty of experienced employee for own health and safety - assessment of contributory negligence *ibid paras 111/112*

MACFARLANE -v- BRITISH AIRWAYS CITIEXPRESS (IOM) LTD

Ref: CLA 2005/106, CLD, Deputy Deemster Corlett
Judgment: 7 May 2008
Counsel - Ms P. Butterworth for the plaintiff: K.E. O'Riordan for the defendant]
[classification : damages]

DRUGS

Ecstasy 84 tablets - starting point 6 years custody *Caldwell-Camp* guidelines - dicta *Goodman v R* sentencing judge should expressly identify starting point for sentence heeded - starting point will reflect not only the quantity of drugs but also the totality of the offences - sophistication in avoiding detection aggravating feature - lack of financial motive not substantially important - *Watterson v R* refined on accepting admissions of guilt in mitigation [2DS 2007/14: 25/09/07] -18 months custody increased to 33 months

ATTORNEY GENERAL'S REFERENCE *re* TAYLOR

[Ref: 2DS 2008/4, Staff of Government Division Criminal Jurisdiction,
Deemster Kerruish/G. F. Tattersall,J.A.

Judgment: 4 April 2008

Counsel - Miss M.A. Norman for the Crown: Miss A.L. Hannan for the respondent]

Heroin valued at £4000 - production applied to simple possession and so whilst *Caldwell-Camp* guidelines did not automatically apply where there was no element of supply the starting points for sentence should be adopted: personal use only was a mitigating factor - Attorney General should apply for reference with all convenient speed - *Shahnowaz v Attorney General [2007] JLR 221* considered - personal use as mitigation reduced in value as quantity of drugs increased *Attorney General v Frazer [2003] JRC 215* - sentence increased to 4 years

ATTORNEY GENERAL'S REFERENCE *re* WATTERSON

[Ref: 2DS 2008/02, Staff of Government Division Criminal Jurisdiction,
Deemster Kerruish/G. F. Tattersall,J.A.

Judgment: 25 April 2008

Counsel - Miss M.A. Norman for the Crown: Miss A.L. Hannan for the respondent]

[classification : drugs]

Arithmetical approach to *Caldwell-Camp* guidelines flawed - 6 years custody possession intend to supply heroin 8.38 gms upheld - principles of totality do not apply where offence committed whilst released on licence

JOHNSON -v- R

[Ref: 2DS 2008/09, Staff of Government Division Criminal Jurisdiction,
Deemster Kerruish/G. F. Tattersall,J.A.

Judgment: 12 June 2008

Counsel - P.P. O'Neill for the appellant: Miss R.L. Braidwood for the Crown]

[classification : drugs]

Prison inmate attempted possession of cocaine and cannabis thrown over prison wall - element of pre-planning - trial judge {Deemster Doyle} observed " those caught with drugs in a prison will be dealt with even more severely than those outside" - given value of drugs £125 manifestly excessive sentences reduced from 6 to 2 ½ years and 2 years to 12 months - maximum sentence appropriate if there was an intent to supply and large quantity of drugs - judge entitled to expect assistance from defence counsel on appropriate sentence

MYERS -v- R

[Ref: 2DS 2008/22, Staff of Government Division Criminal Jurisdiction,
Deemster Kerruish/G. F. Tattersall,J.A.

Judgment: 26 November 2008

Counsel - P.P. O'Neill for the appellant: Miss M.A. Norman for the Crown]

[classification : drugs]

EMPLOYMENT

Contract of employment - enforcement by injunction rare - exclusion from place of work and hence private practise at hospital - not accepted that disciplinary investigation lasting 4 weeks contractually time-barred - word "shall" in a contract or legislation [1] not always mandatory *Garbutt v Edwards* [27/10/05] EWCA Civ 1206 [2] discretion of court retained - court intervention in disciplinary or regulatory proceedings rare *D'Sa v University Hosp Coventry & Warwickshire NHS Trust* [2001] EWCA 983 [transcript]

CHOHAN & KHAN -v- DEPARTMENT OF HEALTH & SOCIAL SECURITY

[Ref: CP 2008/090, Chancery Division, Deemster Doyle

Judgment: 8 October 2008

Counsel - C.M. Brooks for the plaintiffs : J.B.S. Quinn for the defendant

Further hearings -

4/11/08 [first transcript finding for the petitioners] W.H. Wannenburg for the DHSS - nature of the employment contract with medical profession - matters must be viewed objectively and with a proper sense of proportion *para 13 Michalak v Mid Yorkshire Hospitals NHS Trust* [2007] EWHC 2469 [QB]

4/11/08 [second transcript] - stay granted to the Department pending appeal - considered Bermuda Broadcasting PC 11/7/07 - exceptional for court to grant relief permitting excluded employees to return to work

11/12/08 [transcript - DHSS to pay 70 % of petitioners' costs forthwith]

EVIDENCE

Case law on doleance proceedings reviewed - order for cross-examination of witness exceptional - on the facts minister would not be called - whether decision of government minister was (1) policy (2) binds the department or a future minister (3) could be succeeded by adopted or draft policy [approved ex tempore judgment]

ARRAGON PROPERTIES LTD, PETITION OF DOLEANCE

[Decision of the Minister of Local Government and the Environment]

[Ref: CP 2007/116, Chancery Division, Deemster Kerruish

Judgment: 31 July 2008

Counsel - J.B.S. Quinn for the petitioner: O.H. Helfrich for J.P. Shimmin MHK]

Planning protection of the countryside - case law reviewed [1] delay of 5 months in filing excessive but case to continue in the public interest [2] minister makes policy and was not bound by policy decisions of predecessor - although such policy should be considered (Act s.10(4)) - later policy supersedes earlier policy unless unlawful - Construction Town and Country Planning (Development Procedure) Order 2005 - open to minister to refer back to inspector if material information missing [para 37] - non-expert minister had to rely on findings of expert on planning inspector as to the local situation - adopted Petition of Willers judgment 5/12/08

ARRAGON PROPERTIES LTD, PETITION OF DOLEANCE [Judgment 20 November 2008]

Voluntary witness statement - question of mental capacity whether Code C* applied not decided - prosecution delay - court orders and directions contested trials to be strictly complied with *R v Glover & Ors Crim 2004/37 GGD 25/08/06 para. 121* - reliability of evidence to be tested by the jury [*Code of Practice for the detention, treatment and questioning of persons by police officers] [transcript]

R -v- McCLUSKEY & ORS [witness statement of Winsland]

[Ref: Crim 2007/18, 27 & 31, General Gaol Delivery, Deemster Doyle

Judgment: 2 April 2008

Counsel -Miss R.L. Braidwood for the Crown: Miss A.L. Hannan for the defendant]

[classification : evidence]

FAMILY LAW

A v A January 2008 Deputy Deemster Corlett - following principles must apply to advocates as best practice - “Solicitors should advise clients that it will not assist them to produce statements or letters written by their children, nor to bring their children to speak with solicitors acting for one or other parent, and solicitors should firmly discourage such conduct. Solicitors should not see the children who are the subject of any case in which they are advising unless they are acting for the child.” [see para. 3.9.12 Family Law Protocol (2nd Edition) English Law Society]. On the issue of interim contact orders the judgment of *Wall J. re D (Contact: Interim Order) [1995] 1 FLR 495* was found to provide useful guidance.

B v B April 2008 Deputy Deemster Corlett followed the guidance of *Anelay R L v L [2008] 1 FLR 142 para 15* sharing of assets on divorce – “It is only if the result of the application of the [equal] sharing principle fails to meet the needs [generously interpreted] of the parties that those needs will dictate a greater share of the property than that produced by the application of the sharing principle. If the needs of the parties are less than the sum produced by the application of the sharing principle, that will not lead to a reduction of that sum.”. The Deemster also observed that the value of the parties pensions should be included in the overall balance sheet whilst recognising that pension rights are no more than actuarial calculations and not money in the bank or realisable in the near future *Vaughan v Vaughan [2007] EWCA Civ1085 para 25*. The Deemster approved *Rossi v Rossi [2006] EWHC 1482 (Fam)* assets should be valued at the date of trial. This case applied *M v M 4 November 2008* Deputy Deemster Corlett matrimonial home should be valued at date of trial see also *Cowan v Cowan [2001] EWCA Civ 679*.

C v C December 2008 Deputy Deemster Corlett considered *Leadbeater [1985] FLR 789* on whether legal costs which had already been paid should be added back into the capital assets. Applied *P v P (illiquid assets) [2005] 1FLR 548* court should be slow to permit each party their own expert to value a company.

C v M June 2008 Deputy Deemster Corlett followed *re G [2006] EWCA Civ 348* on the obligation of the court to pursue all possible avenues that might lead to a resumption of direct contact between parent and child: on the facts this included examination by a child psychologist.

J v J August 2008 Deputy Deemster Corlett preferred *S v S [2006] EWHC* on the considerable gravity and seriousness of behaviour that had to be reached before it constituted conduct that had to be taken into account on an application for maintenance. The Deemster observed [1] that that the amount of documentation supplied [1000 pages] was wholly

disproportionate when the issue was periodical payments - the court was only interested in relevant documents and if documents were unnecessarily copied the cost may be disallowed and [2] if a matter was considered relevant it should be brought to the attention of the court in the proper form and not by letters.

L v C October 2008 Deemster Doyle followed *Egan v Motor Services (Bath) Ltd* [2007] EWCA Civ 1002/49,56,57 and *R (Edwards) v Environment Agency* [2008] UKHL 22/66,73 on Court Directive X 23 handed down judgments. The supply to counsel of an advance copy of a judgment to highlight typographical errors or minor corrections was not an additional opportunity to reargue the case; two bites of the cherry not allowed. Only in exceptional circumstances eg lack of jurisdiction, no reasons for decision given, case relied on not argued, should a Deemster be asked to reconsider. Also followed *A v A (A Minor: Financial Provision)* [1994] 1 FLR 657 - the court could order C to make ongoing contributions to the mortgage, repairs and external decoration of the matrimonial home given that as Judge Ward J said “the fathers primary responsibility was to provide and pay for a suitable roof over the head of his children”. [transcript]

[costs judgment] Deemster Doyle had regard to the principle that in contested family division proceedings costs do not always follow the event see Rules of the High Court of Justice 1952 Order 48A Rule 3(5). The court had to consider all the circumstances and not just the outcome of the various applications albeit the outcome could be an important factor to consider. [transcript]

M v M March 2008 Deputy Deemster Corlett followed *re Y* [2004] 2 FLR 330 on the removal of a child from the Island where parents were equal carers. In such circumstances the court should simply refer back to the welfare of the child check-list in s.1(4) Children and Young Persons Act 2001. On the weight to be given to the wishes and feelings of a child *C v Finland* [2006] 2 FCR 195 decision of the ECHR distinguished. On the making of a shared residence order *A v A* [1995] 1 FCR 91 (reduction of bitterness between the parties) considered and the Deemster observed that shared residence orders may be made where the parties are separated by a considerable distance or living in different jurisdictions.

S v O January 2008 Deemster Kerruish/G. F.Tattersall, J.A.- Manx court must accept legitimacy and extent of arrears of child support assessed by Child Support Agency in England and had no power to stop payment of such arrears - court should establish if arrears were a justifiable income liability.

Y v Y August 2008 Deputy Deemster Corlett interpreted s.52 Matrimonial Proceedings Act 1952 that there was no implication that the court had to freeze a spouse’s freely disposal assets. Cited on the drawing of inferences of intention *Kemmis v Kemmis* [1988] 1 WLR 1326. The test for the judge was “whether he was satisfied” without any qualifying words *K v K* [1883] FLR 31. Under s.42(1) High Court Act 1991 and s.52 above freezing order only to be made if there was a real risk of imminent disposal. By inherent jurisdiction freezing order for liquid assets may be made pending application for ancillary relief - *Khreino v Khreino* words of Thorpe, L.J. approved “family assets must be carefully preserved pending ultimate judicial determination” [*Roche v Roche* [1981], *Shipman v Shipman* [1991] and *Khreino v Khreino* [2000] 1 FCR 80, discussed at length]. [transcript]

FINANCIAL SERVICES

Financial Services Review Committee decision quashed: extension of time granted without conditions to Molyneux Roche to file a statement of case - FSC not notified of meeting - Committee had acted unreasonably *Wednesbury* sense - no tribunal or court should

hear/determine an application to file a pleading without the benefit of representations from other parties - it was inconceivable that a power to extend a time limit should be used to grant an indefinite or extremely long extension of time - faulty decision could be cured using reg.26 (irregularities) Financial Services Review Regulations 2001

PETITION OF FSC re MOLYNEUX ROCHE CORPORATION LTD

[Ref: CP 2008/49, CLD, Deemster Kerruish

Judgment: 15 September 2008

Counsel - S.F. Caine for the Commission: other parties took a neutral stance]

Foreign parties - trial continued in absence of first defendant - independent financial adviser -fraudulent deprivation of money - gift of properties to charitable Dunkeld Foundation to avoid business creditors - piercing the corporate veil head note Trustor AB v Smallbone & Ors (No.2) [2001] 3All ER 987 - domestic law applied to Panamanian trust

KAKAY -v- FREARSON & DUNKELD FOUNDATION

[Ref: CLA 2004/28 & CA 2004/8, CLD, Acting Deemster L.E. Sullivan

Judgment: 20 June 2008 {signed 19 June 2008}

Counsel - J.P.B. Carter for the plaintiff]

[classification : financial services]

GAMBLING

Online poker tournament- game played by agent - para 44 *Crossley v Crossley* [2007] EWCA Civ 1491 applied on case management

TELTSCHER -v- RATIONAL ENTERTAINMENT ENTERPRISES LTD

[Ref: CA 2007/08, Chancery Division, Deemster Doyle

Judgment: 10 June 2008

Counsel - C.M.H. Coleman for the plaintiff: P.B. Clucas for the defendant]

HARBOURS

Douglas Sea Terminal - linkspan agreement between Department of Transport and Steam Packet - unlawful hindrance under European law amounting to a quantitative restriction on imports - challenge too late given that knowledge of the agreement had existed for 13 years - case law on petitions of doleance reviewed - domestic limitation periods in the European context [para 73-88] - jurisdiction to strike out not to be “exercised except with great circumspection” Deemster Kerruish *Lasala and Zeidman v Mainstreet Ltd and Baines* 23 October 2007[para 37]23/10/07- corporate personality *Beckett Investment Management Group v Hall* [2007] EWCA Civ 613 - motions found to be time-barred

SEASIDE SHIPPING LTD, PETITION OF DOLEANCE

[Ref: CP 2007/99, Chancery Division, Deemster Doyle

Judgment: 10 July 2008

2DS 2008/20, Staff of Government Division, G. F. Tattersall,J.A./Acting Deemster M.E. Mann 31 March 2009

Appeal on European law issue successful and in particular subordinate harbours legislation floated in and out of legality and so impossible to conclude that the petition should have been issued earlier see *r v Sec. of State for Employment ex.p Seymour-Smith* [2000] 1 WLR 435 and *Passmore v Morland PLC* [1999] 3 All ER1005

Counsel - M. Beloff QC, J.Segan {on appeal K.E. O’Riordan} for the petitioner: C. Vajda QC, I. Rogers, S.M. Harding (Government Advocate) for DoT: R. Thompson QC, J.J. Wild for Isle of Man Steam Packet Co]

INSOLVENCY

Companies Act 1931 s.272 power of court to declare dissolution of company void - the two year period that had to be complied with was the period between dissolution and the date of application to the court followed *Scad Ltd* [1941] 1 Ch 286 [transcript]

re ADJAR SHIPPING CP LTD [Petition of Quayle (Liquidator)]

[Ref: CPL 2004/7, Chancery Division, Deemster Doyle

Judgment: 27 August 2008

Counsel - Ms C. Park for the petitioner]

Under general principles of private internal law one country will usually recognise the status of a trustee in bankruptcy (or similar officer) appointed by another country see *Walker v Lundborg Privy Council Appeal No 79 of 2006 delivered 6 March 2008 from the Court of Appeal Bahamas*

re CORNEELJTE DOTOLO [Petition of Menchise (Trustee in Bankruptcy USA)]

[Ref: CP 2008/51, Chancery Division, Deemster Kerruish

Judgment: 24 September 2008

Counsel - R.I. Colquitt for the petitioner]

[classification : insolvency]

Transfer of company’s intellectual property rights classified as an arrangement under s.184(1)(e) Companies Act 1931 with a secured creditor to reduce indebtedness - *re Greenhaven Motors (Ltd) in Liquidation* [1999] 1 BCLC 635 AC applied

re FRIENDS & HEROES LTD [Petition of Shimmin (Liquidator)]

[Ref: CPL 2006/1, Chancery Division, Deemster Kerruish

Judgment: 3 April 2008

Counsel - K.J. Murray for the petitioner]

[classification : insolvency]

Recognition of insolvency officer appointed under UK Insolvency Act 1986 - *Walker v Lundborg Privy Council Appeal No 79 of 2006 delivered 6 March 2008 from the Court of Appeal Bahamas* applied [transcript]

re MK INVESTMENTS LTD & MK AIRCRAFT LEASING LTD [Petition Bradney and Ors (Administrators)]

[Ref: CP 2008/60, Chancery Division, Deemster Doyle
Judgment: 21 August 2008
Counsel - Mrs G.C. Christian for the administrators]
[classification : insolvency]

LAND LAW

Lease of flats Peveril Court - relief from forfeiture granted - section 11(1) notice served
Conveyancing (Leases and Tenancies) Act 1954 - no breach of covenant found - waiver of
forfeiture because of inordinate delay - estopped by reason of earlier statements made in
court - *Foxdale Properties v Booth Deputy Deemster Williamson 02/11/07* considered on
frustration of lease - section 11(2) compensation awarded by the court was payable to the
landlord and not the tenant and only in the event that relief from forfeiture was necessary –
costs awarded on indemnity basis

[upheld on appeal - *Woodrow v Pogue 31/05/06, Fourie v Le Roue [2007] UKHL and Reid
Minty v Taylor [2001] EWCA Civ 1723* applied on broad range of cases where costs awarded
on an indemnity basis - no longer necessary to show a lack of moral probity - useful checklist
Clucas Food Services Ltd v Ice Mann Ltd 15/12/05 did not limit the court's discretion on
indemnity costs]

{Previous cases: *re Carruthers 2DS2005/16 judgment 20/06/06: Morris & Rushbrook
(Petition) Chancery CP2002/124 Deemster Kerruish judgments 21/07/05,13/01/05 {2003-05
MLR N[39]} & 30/04/04 and Deemster Cain 2001-03 N[14]}*.

CARRUTHERS & OR-v- MORRIS

[Ref: CP 2007/118, Chancery Division, Deputy Deemster Corlett
Judgment: 17 July 2008
Counsel - J.B.T. Stanley for the petitioners: Mr Morris in person]
{Upheld on appeal *Morris v Carruthers & Or 2DS2008/21 Deemster Doyle/
G.F. Tattersall,J.A. Judgment 5 January 2009*}

Boundary dispute - small triangle of land in driveway of semi-detached house - physical
features can mark boundary - boundary was the mid-line of party veronica hedge cut down
years earlier - *Dowty v Willman CA Deemster Cain 21/12/02* reviewed and applied - extrinsic
evidence to be considered if plans were vague see *Wilson v Grieve [1971] 1 All ER 1098*

COLQUITT & OR -v- BELL

[Ref: CA 2005/5, Chancery Division, Deputy Deemster Corlett
Judgment: 11 March 2008
Counsel - Mrs P.J. Pringle for the plaintiffs: J.B.S. Quinn for the defendant]
[classification : land law]

Legal validity of common bond - guidance *AALL Trust and Banking Corporation Ltd -v-
McCormick [17/4/98 penultimate para]* on nature of deeds followed - whether consent order
under Partition Act 1931 dealt with bank overdraft in addition to transfer of house

GURRY -v- MIDGHALL

[Ref: 0800089, CLD, Deputy Deemster Corlett

Judgment: 8 August 2008

Counsel - K.E. O’Riordan for the plaintiff: Miss A.L. Hannan for the defendant]

[classification : land law]

Sale of property by public auction under s.5 Partition Act 1931 - s.4 of that Act allowed the court to distribute sale profit in any ratio - coroner claiming enhanced beneficial interest in the property - distress to family who are tenants not good reason for not ordering sale - deciding against the presumption that a joint tenancy means the house was owned in equal shares *re Rango CP 2006/107 Deemster Doyle 19/7/07 & Stack v Dowden [2007] HL 17* considered - beneficial ownership differed from legal ownership *Stack v Dowden* assisted

PETITION OF QUILLEASH (Coroner for the Sheading of Ayre and Garff)

[re Barlow Clowes Int Ltd]

[Ref: CLA 1993/41&120, CLD, Deemster Kerruish

Judgment: 15 February 2008

Counsel - S.F. Caine for the coroner: P.D. Morris for Mrs Henwood]

[classification : land law]

MARITIME

Fire motor yacht XTC – pre-emptive limitation action reasoning in *Western Regent & the Olympia* accepted as correct - damages limitation pursuant Convention on the Limitation of Liability for Maritime Claims 1976 - Tynwald decision not to implement the Brussels Convention - case law language of conventions reviewed - wreck removal costs covered by limitation fund in Island but not in Spain or England such difference might be relevant in deciding forum conveniens but not for granting service out of jurisdiction - in principle Order 6, Rule 1(h) Rules of the High Court of Justice 1952 {service out of jurisdiction} applied - shipowner entitled to bring limitation action in court of own domicile see *Saipem SPA v Dredging VO2 BV & Geosite Surveys Ltd 2 Lloyd’s Rep [1988] 362 [Volvox]*

DOMINATOR LTD -v- GILBERSON SL & ORS

[Ref: CLA 2008/12, CLD (Admiralty), Acting Deemster L.E. Sullivan

Judgment: 6 November 2008

Counsel: Miss G. Andrews QC/ P.B. Clucas for the plaintiff: N. Jacobs QC/

Mrs K.L. Clough for the 1st & 3rd defendant]

{Upheld on appeal 2DS2008/37, Deemster Kerruish/G. F. Tattersall, J.A., Hearing 3 March 2009 - Judgment: 1 May 2009}

MEDICINES

Class C drug somatropin human growth hormone - importation into UK and France – offence under s.20 Misuse of Drugs Act 1976 cannot be committed by a person acting alone as it was a prerequisite that the offender had assisted or induced another party outside the Island - correct approach to the construction of a penal statute - construction must be consistent with Article 7(1) European Convention - reference to Tynwald material - problems in allowing

access to parliamentary material see *Flora v Wakom (Heathrow) Ltd* [2007] 1 WLR 487 - meaning of words “assists” and “induces”

ATTORNEY GENERAL’S REFERENCE *re* HATCHER PHARMACEUTICALS LTD
& APELBE BRANDS SUPPLY LTD

[Ref: 2DS 2008/1, Staff of Government Division Criminal Jurisdiction, Deemster
Kerruish/G. F. Tattersall,J.A.

Judgment: 16 April 2008

Counsel - S. Patel/ W.H. Wannenburgh for the Crown: C.M. Brooks *amicus curiae*]

Convictions quashed because [1] of the cumulative effect of minor misdirections in the case of the first defendant and a fundamental misdirection on the value of the unchallenged evidence to the case of the second defendant [2] the inadequate structure of the summing up - counterfeit medicines - commission of offences outside the Island under Misuse of Drugs and Customs Acts - advice of witness of fact sought on the furtherance of the prosecution in role of inspector of medicine - certificate of foreign law proper construction of s 37(2) Misuse of Drugs Act 1976 was that evidence of foreign law on hypothetical facts can be given by certificate but such certificate cannot prove the relevant facts - entrapment used in the ordinary sense of the word - unauthorised use of a trade mark standard of proof resting on the defence - interpretation s.20 Misuse of Drugs Act 1976 - prosecution should challenge evidence in the witness box otherwise the fact that it was not challenged is a material fact that the jury can consider see *R v Hart* [1932] 23 CrAppR 302

Case law on alleged failure to disclose documents - jurisdiction to stay criminal proceedings *Derby Crown Court ex p Brooks* [1985] 80 CrAppR 168/[1992] 95 CrAppR 302 - serious prosecution misconduct *R v Looseley* [2002] 1 CrAppR 369 - improprieties like late disclosure can be dealt with by the court *R v Togher & Ors* [2001] 1 CrAppR 46 - stay not a disciplinary measure *R v Horseferry Road Magistrates Court ex p Bennett* [1994] 1 AC 74

Cases considered on the summing up - summing up had to be taken as a whole *Ibrahim v R* [1914] AC 615 - misdirection *R v Stoddart* 2 CrAppR 245 - new issues introduced in summing-up *R v Cristini (Luigi)* [1987] Crim LR 504 & *R v Winn-Pope* [1996] CLR 521 - structural inadequacy of summing up see *R v Lawrence* [1982] AC 510 – judge should marshal the evidence and arrange it issue by issue see *R v Amado-Taylor* [2000] 2 Cr AppR 192 & *Berry v R* [1992] 2 AC 364

Cases considered on the question of no case to answer second defendant - *R v Galbraith* [1981] 73 CrAppR 124 : judge should ask if a reasonable jury would be entitled to draw the inference *R v Jabber* [2006] 10 Archbold News 3

DEVO & RIEDEL -v- R

[Ref: 2DS 2007/26-27, Staff of Government Division Criminal Jurisdiction,
Deemster Kerruish/ G. F. Tattersall,J.A.

Hearing: 28-30 May 2008 Judgment: 29 October 2008

Counsel - P. Hackett QC/Ms L.C. Byrne for the 1st defendant: S. Lawson-Rogers QC/
R.A. Halsall for the 2nd defendant: S. Patel/W.H. Wannenburgh for the Crown]

[classification : medicines]

PLANNING

Strategic Plan challenge - meaning of person aggrieved s.5 Town and Country Planning 1999 - no requirement for Attorney General to exercise his fiat - person aggrieved to be given broad interpretation

PETITION OF BACCARAT LTD

[Ref: CP 2007/94, Chancery Division, Deemster Kerruish

Judgment: 27 May 2008

Counsel - K.J. Murray for the petitioner: S.M. Harding (Government Advocate) for the Minister DLGE]

Strategic Plan a national plan for the development and use of land in general not detailed terms - ss.2, 5(2) and Sched 1 Town and Country Planning Act 1999 - notwithstanding no statutory requirement existed substantial prejudice had to be shown see *Bersted PC v Arun DC [2003] EWHC 3149 (Admin)* - procedural impropriety - department acting outside statutory modification power: reasonable amendments to a draft plan pre public inquiry allowed but not without limit - failure to prepare plan with all convenient speed: court will decline to make declarations divorced from the facts of an individual case of the time within which a public authority must fulfil its duties - adequate opportunity to respond - treatment of whether a further public inquiry should be held - not justified for court to use its discretion to quash the Strategic Plan - court not assisted by English case law on the formula "not within the powers"

PETITION OF BACCARAT LTD

[Ref: CP2007/94, Chancery Division, Deemster Kerruish

Hearing: 6 May 2008 - Judgment: 26 August 2008

Counsel - K.J. Murray for the petitioner: S.M. Harding (Government Advocate) for the Department of Local Government]

{Upheld at appeal 2DS2008/27, Deemster Doyle/ G. F. Tattersall, J.A., Hearing 5 January 2009 - Judgment: 28 May 2009}

[classification : planning]

Crossag Farm housing development - decision of Council of Ministers upheld - no statutory authority required CoM to give reasons for accepting report of planning inspector but good practice see *South Bucks C v Porter (No.2) (HL) [2004] 1 WLR 1953/36* - prematurity was a justified reason for refusing planning permission and not an unusual issue - promise to make a village plan was a moral not legal promise - *Petition of Manx National Heritage [12/02/07]* distinguished and CoM not bound by this case - CoM correctly did not look at the written evidence before the inspector for the reasons advanced in *Petition of Manx National Heritage* - considered *J De Mulder & Or v the First Secretary of State Solihull BC [2005] EWHC 2640 (Admin)* secretary of state disagreeing with inspector - applied *Bolton MBC v the Secretary of State for the Environment & Greater Manchester Waste Disposal Authority [1991] 61 P & CR 352* status of matters not taken into account by decision maker - observation interpretation section 11(1) Town and Country Planning Act 1999 whether an application by DLGE could be called in CoM relied on [1] *R (on the application of St James Homes Ltd) v the Secretary of State [2001] EWHC 75 to 77 Admin* [2] *Westminster Renslade Ltd v the Secretary of State [1984] 48P & CR 262-3*

J. G. KELLY LTD & JACKSON HOMES (SOUTHERN) LTD, PETITION OF DOLEANCE

[Ref: CP 2008/13, Chancery Division, Acting Deemster L.E. Sullivan

Judgment: 16 December 2008

Counsel - Coleman for the petitioners: O.H. Helfrich for the Council of Ministers: S.F. Caine for DLGE: W.D. Taylor for Malew Parish Commissioners: Ms N. Pitts for third parties]

[classification : planning]

Construction Town and Country Planning (Development Procedure) Order 2005 - planning inspector could consider the commercial viability of proposed agricultural building

WILLERS, PETITION OF DOLEANCE

[Decision of the Minister of Local Government and the Environment upheld]

[Ref: CP 2008/57, Chancery Division, Deemster Doyle

Judgment: 5 December 2008

Counsel - petitioner in person: O.H. Helfrich for J.P. Shimmin MHK

{2DS2009/1, Deputy Deemster Corlett/Acting Deemster L.E. Sullivan 1 May 2009 –

Deemster acting as adjudicator under Advocates Act 1995 not as judge of the High Court meant that remedy of petition of doleance still available - chance of success at ECHR so minimal as not to merit a stay of the appeal}

[classification : planning]

ROAD TRAFFIC

Dangerous driving - on the facts not permitted to withdraw guilty plea - defendant appreciated the elements of the offence but not the sentencing consequences as in *R v South Tameside Magistrates Court ex p Rowland [1983] 3 All ER 689* - words in *Fleming v R 2005-06 MLR N5* “open to the court to reject a guilty plea tendered on the basis of facts it believes untrue” related to *R v Beswick [1996] 1 CrAppR(S) 343* - case law on circumstances where changes in plea allowed reviewed

LANGDON -v- ATKINSON

[Court of Summary Jurisdiction, Deputy High Bailiff Montgomerie

Judgment: 24 October 2008

Counsel - N.M. Cordwell for the defendant: Mrs R. Burnett for the Chief Constable]

SENTENCING

Indecent assault children - nine months custody substituted for suspended sentence - sexual offences prevention order restrictive conditions reviewed

ATTORNEY GENERAL'S REFERENCE *re* VOLANTE

[Ref: 2DS 2008/15-16, Staff of Government Division Criminal Jurisdiction,

Deemster Kerruish/G. F. Tattersall,J.A.

Judgment: 5 September 2008

Counsel - I.Unsworth for the Crown: J.B.S. Quinn for the respondent]

Sexual abuse by father twenty years earlier - 4 years custody upheld - dicta of Newman J gravity of the breach of trust endorsed *R v JW [2000] 1 CrAppR (S) 234/235* - severe sentence to deter others

CHRISTIAN -v- R

[Ref: 2DS 2008/5, Staff of Government Division Criminal Jurisdiction, Deemster Doyle/G. F.Tattersall, J.A.

Judgment: 4 June 2008

Counsel - Mrs D.H. Jones for the appellant: H. Baisden/ Miss M.A. Norman for the Crown
[classification : sentencing]

Production of cocaine by postal packet - 980 grams street value £78,000 - similar past convictions - distress of family members was an inevitable consequence of crime and so not a substantial mitigating factor - *Goodman v R [2DS 2007/10]* adopted so that a starting point of 16 years stipulated - sentence of 15 years reflected a strong deterrent element [transcript]

R -v- CLINTON

[Ref: Crim 2007/64, General Gaol Delivery, Deemster Doyle

Judgment: 17 October 2008

Counsel - H. Baisden for the Crown: R Wigglesworth QC for the defendant]
[classification : sentencing]

SUCCESSION

Doctrine of *cy pres* - re *Costain [1961-71]* MLR 1 liberal interpretation of “charity”
[approved transcript]

ESTATE OF COLLISTER [PETITION OF KERMODE (executor)]

[Ref: CLA 2008/11, CLD (Testamentary), Deemster Kerruish

Judgment: 14 July 2008

Counsel: Miss S Still for the executor]

Conflict with co-receiver re stance in other proceedings - see *Bonham v Blake Linell Laphorn [2006] All ER (D) 164* costs of dismissed application unlikely to be met from the estate if act lacked approval of co-receiver [transcript]

ESTATE OF McLEOD [PETITION OF McLEOD & GAMES (receivers)]

[Ref: CP 2003/109A, Chancery Division, Deemster Doyle

Judgment: 18 December 2008

Counsel: C.N.I. Webb for Mr Games: A.L. Vaughan-Williams for Mr McLeod]
[classification : succession]

Charitable gift allowed although names etc of charity mis-described in will - such mis-described charities to pay costs out of residuary estate due to them

ESTATE OF SALT [PETITION OF BARRY & ORS (executors)]

[Ref: CLA 2008/43, CLD (Testamentary), Deemster Kerruish

Judgment: 29 October 2008

Counsel: K.M. Goldie for the executors]

[classification : succession]

TRUSTS

Trust set aside - mistake as to law ie ignorance of s.267 Inheritance Tax 1984[UK] - serious mistake of fact arising during a voluntary transaction was capable of bringing into play power on equitable jurisdiction *Ogilvie v Littleboy* {1897} 13 TLR 399, *Ogden v Griffiths* [25/01/08] EWHC 118 CH and *Clarkson & Or v Barclays Private Bank & Trust (IOM) Ltd* 17/08/06 CLA 2005/42 CLD - *Gibbon v Mitchell* [1990] 1 WLR 1304 unworkable test: distinction between the effect of a transaction and its consequences or advantages - relief may be granted whether it is a mistake of fact or law *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2AC 349

PETITION OF McBURNEY & OR [in the matter Betsam Trust]

[Ref: CP 2007/115, Chancery Division, Deputy Deemster Corlett

Judgment: 5 June 2008

Counsel: S.D.A. Bridson for the petitioners]

PART II

BILLS AND ACTS 2008

ADVOCATES (AMENDMENT) BILL 2008

ANIMAL HEALTH (AMENDMENT) BILL 2008

COMPANY OFFICERS (DISQUALIFICATION) ACT 2009 [C.4]

COMPANIES (AMENDMENT) BILL 2008 - See 2 MLN

EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2009 [C.3]

FEES AND DUTIES (AMENDMENT) ACT 2009 [c.6]

INCOME TAX ACT 2009 [c.2]

SOCIAL SECURITY (AMENDMENT) BILL 2008

VALUE ADDED TAX (AMENDMENT) ACT 2009 [c.1]

ADVOCATES (AMENDMENT) BILL 2008

This Bill, promoted by the Attorney General on behalf of the Isle of Man Law Society, confers additional powers on the Society in relation to the investigation of professional misconduct, breaches of practice rules and other contraventions. Clause 1 and the Schedule enable the Council of the Society to require information to be provided or documents to be produced for the purpose of such an investigation. Clause 2 provides the short title. [Not amended Legislature - Royal Assent awaited]

ANIMAL HEALTH (AMENDMENT) BILL 2008

This Bill promoted by the Department of Agriculture, Fisheries and Forestry amends the Animal Health Act 1996. Clause 1 enables the Department to issue guidance on measures to prevent the spread of foot-and-mouth and other animal diseases. Clause 2 enables the Department to declare an area a “controlled area” in which it may take steps to prevent the introduction or spread of disease. Clause 3 makes it an offence deliberately to infect an animal with a specified disease, and enables a person convicted of such an offence to be banned from keeping animals.

Clause 4 gives the Department power to slaughter animals to prevent the spread of an epidemic disease. Clause 5 and Schedule 1 enable steps to be taken to prevent breeding from animals of a genotype which is particularly susceptible to a disease. Clause 6 and Schedule 2 give additional powers of entry for purposes of slaughter, marking and movement, taking tests and samples, treating disease and preventing breeding from specified genotypes. Clause 7 provides the short title and for commencement by appointed day order. [Amended Legislative Council Schedule 1 para. 8] [Royal Assent awaited]

COMPANY OFFICERS (DISQUALIFICATION) ACT 2009 [c.4]

The Act was promoted by the Treasury on behalf of the Financial Supervision Commission. Its primary purpose is to restate the law relating to the disqualification of directors and other company officers in a more coherent way.

Sections 1 and 2 introduce the main concepts in the Act: disqualification orders made by the courts and disqualification undertakings given by a company officer after agreement with the Commission.

Section 3 provides that an application for a disqualification order may only be made by a defined class of persons, and requires the proposed applicant to give notice to the person proposed to be disqualified.

Section 4 gives the Court the power, and section 5 imposes upon the Court the duty, to make a disqualification order against a company officer in certain circumstances.

Section 6 specifies the circumstances in which a disqualification undertaking may be accepted by the Commission.

Section 7 imposes requirements that an office-holder (the liquidator, official receiver or receiver) report to the Commission if it appears to the office-holder that the conditions of either section 4(1)(a) or 5(1) are met.

Section 8 and Schedule 1 together specify matters to which a Court is to have regard in determining an application for a disqualification order, or which the Commission is to have regard to in considering the offer of a disqualification undertaking.

Section 9 provides that where a company officer is liable to contribute personally by reason of a company's fraudulent trading, the court shall consider making a disqualification order against the officer.

Section 10 deals with undischarged bankrupts. Section 11 specifies the penalties for breach of disqualification orders and undertakings.

Section 12 makes a person who contravenes a disqualification order or undertaking, or acts on the instructions of an undischarged bankrupt, personally for the relevant debts of the company.

Section 13 empowers the Commission to require information about disqualification orders and undertakings, and requires it to maintain the disqualification register.

Section 14 deals with the admissibility of statements made to the Commission in the course of an investigation in subsequent proceedings.

Section 15 and Schedule 2 provide the Commission's powers of inspection and investigation.

Section 16 and Schedule 3 impose restrictions on the disclosure of information obtained during an investigation.

Sections 17 and 18 create offences in relation respectively to the concealment of information and the provision of false or misleading documents or information. Section 19 specifies the penalties for offences under the Act.

Section 20 provides that if a company's commission of an offence was with the consent or connivance of an officer, or is attributable to the officer's neglect, the officer is also guilty of an offence and liable to the penalty to which the company would have been subject had it been an individual.

Section 21 provides for interpretation. Section 22 provides for Schedules 4 and 5 (consequential amendments and repeals) to have effect. Section 23 provides for the Tynwald procedure for statutory documents made under the resulting Act.

Section 24 provides the short title and for commencement - sections 23 and 24 on passing 21 April 2009 - remaining section ADO 18 June 2009 with savings [See S.D. 325/09].

[Not amended Legislature]

EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2009 [c.3]

This Act promoted by the Department of Education abolished the Isle of Man Board of Education [section 1 and Schedule 1] and amended the Education Act 2001 in regard to the state education system, school attendance and school discipline.

Section 2 and Schedule 2 establish an Education Council which the Department may consult on education matters, and from which members of governing bodies of schools and colleges are to be drawn. Section 3 enables the Department to give directions to schools and colleges. Section 4 amends the provisions of the 2001 Act relating to the education of children with special educational needs. Section 5 [substituted Keys] requires the parent of a child of compulsory school age who is not a registered pupil at a state school to notify the Department of the arrangements for the child's education. Section 6 enables a court to order a parent guilty of a truancy offence to attend for counselling, enables a fixed penalty to be imposed and allows the police to remove a truant child to school or designated premises. Section 7 authorises the detention of pupils for misbehaviour, subject to restrictions. Section 8 makes it an offence for a suspended pupil to be on school premises after being required to leave. Section 9 gives teachers express powers to deal with misbehaviour - to restrain unruly pupils, to confiscate prohibited items and to search pupils and their belongings for weapons. Section 10 makes it unlawful to administer corporal punishment to a minor at any school or other place of education. Section 11 enables regulations to require employers of children to notify the Department of such employment. Section 12 validates the closure and establishment of schools in Ramsey. Section 13 is the short title and commencement. Section 1 operative 1 June 2009 if not earlier and the other provisions require an appointed day order.

FEES AND DUTIES (AMENDMENT) ACT 2009 [c.6]

This Act was promoted by the Treasury. It extends the powers currently vested in the Treasury to prescribe fees under section 1(1) of the Fees and Duties Act 1989 and to make regulations about their collection under subsection (3), to the Departments other than the Treasury and to Statutory Boards. But the powers may only be exercised by a Department or a Statutory Board with the concurrence of the Treasury. Section 1 makes the amendments to the 1989 Act. Section 2 is the short title. Operative on passing 15 July 2009. [Not amended Legislature]

INCOME TAX ACT 2009 [c.2]

The Act promoted by the Treasury confirmed various temporary taxation orders and made miscellaneous amendments to the Income Tax Acts. Part 1 (section 1) concerns interpretation. Part 2 (sections 2 to 5 and Schedules 1 and 2) confirms various temporary taxation orders concerning (a) attributed profits (the new attribution regime for individuals); (b) age allowance and the abolition of training relief and life insurance premium relief; (c) implementation of agreements with Nordic territories; and (d) implementation of agreements with Ireland. Part 3 (sections 6 to 20) makes amendments to the Income Tax Acts dealing with benefits in kind cars and fuel, deductions in prescribed cases, international arrangements, personal allowance credit, time limits for default assessments and information gathering. Section 21 sets out the short title and commencement. Operative on passing see s.21 of the Act. [Not amended Legislature]

SOCIAL SECURITY (AMENDMENT) BILL 2008

This Bill is promoted by the Department for Health and Social Security. Its purpose is to regularise the position with respect to certain schemes of social security provision introduced by the Department and to place similar provision in the future on a statutory basis.

Clause 1 inserts a new section 1A into the Social Security Act 2000 enabling the Department to make orders providing for social security provision which does not correspond to the social security legislation of Great Britain (which is covered by section 1 of the 2000 Act). The new section 1A also allows orders made under it to apply existing social security legislation, which applies to the Island by means of orders under section 1 of that Act, for the purposes of the order, with or without modification. It also makes a necessary consequential amendment to section 2 of the 2000 Act to make orders under the new section 1A subject to the same procedure in Tynwald as orders under the present section 1. It also makes minor amendments to section 3 of the 2000 Act. These reflect the fact that not all social security provision in Great Britain is now the responsibility of the Secretary of State, following the transfer of child benefit and guardian's allowance to the Commissioners for Her Majesty's Revenue and Customs (formerly the Board of Inland Revenue) by Part 2 of the Tax Credits Act 2002, and the introduction of various tax credits by the Tax Credits Act 1999 and Part 1 of the Tax Credits Act 2002 (Acts of Parliament).

Clause 2 makes transitional provision in respect of a series of social security schemes previously approved by Tynwald but which were not within the scope of section 1 of the 2000 Act. The clause includes an express saving to prevent any person being prosecuted in relation to things done or omitted to be done in relation to any of these schemes before the Act resulting from this Bill comes into operation. Clause 3 provides for the short title. Operative on passing. [Not amended Legislature - Royal Assent awaited]

VALUE ADDED TAX (AMENDMENT) ACT 2009 [c.1]

This Act was promoted by the Treasury. It makes changes to the constitution and procedure of the Value Added Tax and Duties Tribunal on the Island as a consequence of the coming into force on 1 April 2009, in the United Kingdom, of the provisions of the Tribunals, Courts and Enforcement Act 2007 (of Parliament). That Act abolishes the VAT and Duties Tribunal there and replaces it (and other appellate bodies relating to tax) with the Tax Chamber of the Tribunal constituted under the 2007 Act.

Section 1 amends Schedule 13 to the 1996 Act. The amendments make it clear that section 4 of the Tribunals Act 2006 does not apply, despite the fact that the Tribunal is a Part 2 Tribunal for the purposes of that Act. Section 2 provides the short title and for commencement on passing 18 March 2009 and 1 April 2009. [Not amended Legislature]

APPOINTED DAY ORDERS

COMPANIES, ETC. (AMENDMENT) ACT 2003 (APPOINTED DAY) (No.5) ORDER 2008

[SD 725/08 : Issuing Authority - DHA]

The Order brought section 21 (substitution of s.8 Registration of Business Names Act 1918) into operation on 1 January 2009.

CORRUPTION ACT 2008 (APPOINTED DAY) ORDER 2008

[SD 689/08 : Issuing Authority - DHA]

The Order brought the whole Act into operation on 1 September 2008.

CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007 (APPOINTED DAY) ORDER 2008

[SD 609/08 : Issuing Authority - DHA]

The Order brought sections 20, 29 to 39 and 47 to 49 into operation on 21 July 2008. All provisions except section 24 now operative.

FINANCIAL SERVICES ACT 2008 (APPOINTED DAY) (AMENDMENT) ORDER 2008

[SD 590/08 : Issuing Authority - Treasury]

The Order, which was made on 23 July 2008, amended S.D. 366/08 by saving section 2(1)(c) Financial Supervision Act 1988 and inserted a transitional provision for mediation, investigation and adjudication.

GAMBLING (AMENDMENT) ACT 2006 (APPOINTED DAY) (No.2) ORDER 2008

[SD 604/08 : Issuing Authority - Treasury]

The Order brought Schedule 2 paragraphs 3(d), 6(c) and 13(c) and (d) (amendments) into operation on 17 July 2008.

INSURANCE ACT 2008 (APPOINTED DAY) (No.1) ORDER 2008

[SD 870/08 : Issuing Authority - IPA]

The Order brought Schedule 10 and section 58 (saving and transitional) into operation on 31 October 2008.

INSURANCE ACT 2008 (APPOINTED DAY) (No.2) ORDER 2008

[SD 922/08 : Issuing Authority - IPA]

The Order brought the whole Act into operation on 1 December 2008 except for Schedule 10 and section 58 already operative, s.25(3)(d)(i) operative but subject to an exception, and not operative: sections 42(1) and (2), Schedule 4, Schedule 8 paragraphs 20 and 21, and Schedule 9 the repeal of Schedule 3A and section 25A of the Insurance Act 1986 and the repeal of the Insurance (Amendment) Act 1995. The Order also contained saving and transitional provisions.

PROCEEDS OF CRIME ACT 2008 (APPOINTED DAY) (No.1) ORDER 2008
[SD 743/08 : Issuing Authority - Treasury]

PROCEEDS OF CRIME ACT 2008 (APPOINTED DAY) (No.2) ORDER 2008
[SD 744/08 : Issuing Authority - Treasury]

These Orders brought certain provisions into force as detailed - (ss 1 to 65, Sch 1, Sch 2) 22/10/08; (SD743/08) (ss 142,143,150(2) and Sch 4 for the purposes of these sections and s 153 but only for disclosures under ss 142 and 143) 22/10/08; (SD744/08) (ss 159 to 193, and 195 to 199 for civil recovery and detained cash investigations) 22/10/08; (SD743/08) (ss 200 fully operative and 208 and 209 for the purposes of Pt.1) 22/10/08; (SD743/08) (ss 210 to 224 [except s.213(1)(d)], 226, Sch 5 [except that in the inserted s. 76A the definition of “money laundering” not operative], Sch 6 [except s.21A(7) CJA 1991], Sch 7 (in part), Sch 8 (in part)) 22/10/08; (SD743/08).

The Orders contain transitional modifications to the Act and the provisions brought into operation by SD744/08 operate along side the existing money laundering legislation - see Para 2 of the explanatory note to the Order.

ROAD TRAFFIC (AMENDMENT) ACT 2006 (APPOINTED DAY) (No.3) ORDER 2008
[SD 708/08 : Issuing Authority - DoT]

The Order brought sections 8, 11 to 13 into operation on 1 September 2008.

ACTS OF TYNWALD

TABLE I

Acts or parts of Acts which came into force between 1 July 2008 and 31 December 2008

Agricultural (Miscellaneous Provisions) Act 2008 (c.11)
Whole Act operative 16 July 2008.

Agricultural Tenancies Act 2008 (c.15)
Whole Act operative 12 November 2008.

Collective Investment Schemes Act 2008 (c.7)
Whole Act operative 1 August 2008 with savings.
Sections 1(5) and 24 operative 19 June 2008.
[See S.D. 461/08]

Companies, etc. (Amendment) Act 2003 (c.16)
Section 21 operative 1 January 2009.
[See S.D. 725/08]

Corruption Act 2008 (c.10)
Whole Act operative 1 September 2008.
[See S.D. 689/08]

Criminal Justice, Police and Courts Act 2007 (c.3)
Section 1 - 14/09/07, section 2 - 01/10/07, section 3 - 14/09/07, sections 4 & 5 - 07/12/07,
section 6 - 14/09/07, sections 7 to 10 - 01/11/07, sections 11 to 19 -14/09/07, section 20 -
21/07/08, sections 21 to 23 - 14/09/07, section 24 not operative, sections 25 to 28 -14/09/07,
sections 29 to 39 - 21/07/08, sections 40 and 41 - 14/09/07, section 42 – 01/11/07, sections
43 to 46 - 14/09/07, sections 47 to 49 - 21/07/08, sections 50 to 52 - 14/09/07.
[See S.D.723/07, S.D.974/07 & S.D.609/08 - as of 21/07/08 whole Act operative except s.24]

Financial Services Act 2008 (c.8)
Whole Act operative 1 August 2008 with savings and subject to the exception set out below.
By S.D. 590/08 made 23 July 2008 s.2(1)(c) Financial Supervision Act 1988 not repealed]
[See S.D. 366/08]

Gambling (Amendment) Act 2006 (c.22)
Schedule 2 paras. 3(d), 6(c) and 13(c) and (d) of Schedule 2 operative 17 July 2008.
[See S.D. 604/08]

Income Tax (Pensions) Act 2008 (c.6)
Whole Act operative 15 July 2008 effective income tax year commencing 6 April 2008.
[See S.D. 432/08]

Insurance Act 2008 (c.16)
Whole Act operative 1 December 2008, except for the following provisions –
Schedule 10 and s.58 operative 31 October 2008 see S.D. 870/08.
Section 25(3)(d)(i) operative 01/12/08 subject to Art 5(1) S.D.922/08.

Not operative by SD922/08 - s.42(1) & (2) and Schedule 4: Schedule 8 paras 20 and 21
[companies transfer of domicile]: Schedule 9 repeal of s.25A and Schedule 3A Insurance
Act 1986 and Insurance (Amendment) Act 1995.
[S.D.922/08]

Proceeds of Crime Act 2008 (c.13)
For operative provisions see entry under Appointed Day Orders.

Road Traffic (Amendment) Act 2006 (c.24)
Sections 8, 11 to 13 operative 1 September 2008.
[See S.D. 708/08]

Town and Country Planning (Amendment) Act 2008 (c.12)
Whole Act operative 16 July 2008.

TABLE II

Acts passed October 2008 but not wholly in force on 31 December 2008

Administration of Justice Act 2008 (c.14)
Ss 25, 29, 30, 31 with saving, 32, 34 operative 1 January 2009. Remaining provisions
operative 1 September 2009.
[See S.D. 992/08]

Enterprise Act 2008 (c.17)
Whole Act operative 1 May 2009
[6/3/09 for making statutory documents]
[See S.D. 211/09]

Proceeds of Crime Act 2008 (c.13)
For operative provisions see entry under Appointed Day Orders.

TABLE III

Acts passed before October 2008 but not wholly in force on 31 December 2008

Agricultural Marketing (Amendment) Act 2006 (c.14)
The repeal of section 10 of the Agricultural Marketing Act 1934 found in Schedule 1
paragraph 6.
[See S.D.720/07]

Agriculture (Safety, Health and Welfare Provisions) Act 1974 (c.29)
Sections 2, 3 and 5 not operative.
[See Orders dtd. 5/2/75 and 4/2/76 & S.D. 155/98]

Chronically Sick and Disabled Persons (Amendment) Act 1992 (c.8)
Sections 1 to 3 not operative.

Civil Jurisdiction Act 2001 (c.28)
Sections 4 and 9 not operative.
[See S.D. 836/01]

Civil Service (Amendment) Act 2007 (c.2)
Section 4 not operative.

Companies, etc. (Amendment) Act 2003 (c.16)
Sections 7, 8 and 14 and Schedules 1 and 2 in part not operative.
[See S.D. 883/03, 177/04, 688/04, 171/07 and 725/08]

Companies Act 2006 (c.13)
Sections 13 and 17.
[See S.D. 745/06 and 713/07]

Contracts (Applicable Law) Act 1992 (c.2)
Sections 1, 2, 3 and 5 not operative.
[See S.D. 181/93]

Criminal Justice Act 2001 (c.4)
Sections 14, 15, 31, and 63 and Schedule 8 not operative.
[See S.D. 317/01, 367/01, 595/01, 596/01,
734/01, 27/04, 155/05 & 792/05]

Criminal Justice, Police and Courts Act 2007 (c.3)
Section 24 not operative.
[See S.D.723/07, S.D.974/07 & S.D.609/08]

Data Protection Act 2002 (c.2)
Section 51 not operative.
[See ss.64 & 67 Act, S.D. 15/03 and 701/03]

Disability Discrimination Act 2006 (c.17)
Whole Act not operative.

Estate Agents Act 1999 (c.7)
Whole Act not operative.

Fair Trading (Amendment) Act 2001 (c.26)
Sections 4 to 7 and Sch. 1.
[See S.D. 505/01]

Fees and Duties Act 1989 (c.12)
Schedules 2 and 3 in part.
[See S.D. 35/93]

Fire Precautions Act 1975 (c.18)
Not operative - sections 3, 4, 12(1)(b),(2)(b) and 25, s.33 (ext to Govt.) in relation to sections 3 and 4, Schedules 5, 6 & 8. Sch. 5 paras. 1(b), 2(c) and 3(c). Sch. 6 Part I. Sch. 8. para 8. Sch. 10 in relation to Factories & Workshops Act 1909 s.35(b); Fire Escapes Act 1950.
[See GC 38/76, GC 248/82 & SD 47/97 operative 1/3/76, 15/12/82 & 12/05/97]

Fire Precautions (Amendment) Act 1992 (c.7)
Improvement notices provisions not in force.
[See S.D. 491/93]

Gambling (Amendment) Act 2006 (c.22)
Sections 4 in part, 6 to 11.
[See S.D.555/07 and S.D. 604/08]

Gaming, Betting and Lotteries (Amendment) Act 2001 (c.22)
Section 10 not operative.
[See S.D. 382/01]

Gas and Electricity Act 2003 (c.12)
Section 6 insofar as it inserts a new section 3A(1) para (c) in Electricity Act 1996.
[See S.D. 871/03 and 215/04]

Housing (Multi-Occupancy) Act 2005 (c.4)
Whole Act not operative.

Income Tax (Amendment) Act 1986 (c.25)
Not operative section 4(2) to the extent that section 29 (reliefs for certain capital expenditure)
of the 1970 Act has not been repealed.
[See G.C. 123/90]

Income Tax Act 1989 (c.10)
s.55 (tax year) not operative.
[See SD 43/99]

Income Tax Act 1991 (c.17)
Sections 11 (subcontractors deductions: distraint) and 12 (exempt companies) not operative.

Income Tax (Corporate Taxpayers) Act 2006 (c.8)
Section 10(2) not operative.
[See S.D.523/06]

Insurance (Amendment) Act 2004 (c.3)
Section 20 and in Schedule 3 the entry repealing section 11 Insurance Act 1986.
[See S.D. 268/04 as am.161/05]

Licensing (Amendment) Act 2001 (c.17)
For the limited operation of section .4 (2) and (3) see S.D. 761/06
[See S.D. 366/01 and 761/06]

Local Government Act 2006 (c.18)
Section 12(d) repeal of s.4 Onchan District Act 1986 operative 1 April 2010. Not operative
sections 17 and 18 and Schedules 1 and 2 / Schedule 3 para.2 & Schedule 4 in part.
[See S.D.886/06]

Medicines Act 2003 (c.4)
Parts 3 and 5 not operative.
[See S.D. 761/04]

Merchant Shipping (Amendment) Act 2007 (c.4)
Whole Act not operative.

Moneylenders Act 1991 (c.6)
Sections 8 and 9 not operative.
[See G.C. 2/92]

National Health Service Act 2001 (c.14)
Sections 3 to 5 only in force for the purpose of making regulations and schemes.
[See S.D. 153/02, 818/02 and 26/04]

Performers' Protection Act 1996 (c.12)
Section 20 and Schedule 2 para 1.
[See S.D. 354/96]

Public Health Act 1990 (c.10)
Sections 88 to 91 not operative.

Race Relations Act 2004 (c.6)
Whole Act not operative.

Residence Act 2001 (c.7)
Whole Act not operative.

Retirement Benefits Schemes Act 2000 (c.14)
Sections 7 to 10, 13, 14, 39 and 40 not operative.
{s.40 due for repeal Financial Services Bill 2007}
[See S.D. 588/04]

Road Traffic Act 1985 (c.23)
Section 9 and associated entry in Schedule 6.
[See GC 341/85 281/90, 60/92 & S.D. 104/93 & 401/93]

Road Traffic (Amendment) Act 2001 (c.32)
Not operative ss.9, 12, 16, 19, 26, 28, 30. Sch. 3 Highways Act 1986 am. of ss.55(1).
[See S.D. 683/01, 359/02, 834/02 and 205/05]

Road Traffic (Amendment) Act 2006 (c.24)
Whole Act except sections 2, to 4, 6, 8, 11, 12, 13 and 14 not operative.
[See S.D. 241/07, 242/07, 244/07, 533/07 and 708/08]

Sewerage Act 1999 (c.2)
Section 11 [sewerage rates] not operative.
[See S.D. 182/01]

Statute Law Revision Act 1997 (c.4)
Schedule 1, para. 2(1), (2) & (4) (amendments to Evidence Act 1871) not operative.

Tourism (Registration and Grading) Act 1996 (c.21)
Whole Act not operative.

Wildlife Act 1990 (c.2)

As of 9/12/03 whole Act in force ex. ss.1 to 8 in regard to bird sanctuaries controlled by Wild Birds Protection Acts 1932 to 1975.

[See G.C. 9/91 and S.D. 824/03]

Wildlife Etc. (Amendment) Act 1994 (c.11)

Section 2 not operative.

[See S.D. 825/03]

Wills Act 1985 (c.11)

Sections 25 to 27 and Schedule 2 not operative.

[See s.32(3) operative 1/1/86]

STATUTORY DOCUMENTS AMENDING ACTS

October 2008

CUSTOMS & EXCISE

S.D. 637/08 - Customs and Excise Management Act 1986 (Amendment) Order 2008

S.D. 640/08 - Hydrocarbon Oil Duties Act 1986 (Amendment) (No.2) Order 2008

VALUE ADDED TAX

S.D. 501/08 - Value Added Tax (Reduced Rate) Order 2008

S.D. 638/08 - Customs and Excise Acts (Application) Order 2008

S.D. 639/08 - Value Added Tax Act 1996 (Amendment) (No.3) Order 2008

S.D. 676/08 - Value Added Tax (Finance) Order 2008

[Operative 01/10/08 revoked by SD822/08 with effect 01/12/08]

November 2008

CUSTOMS & EXCISE

S.D. 764/08 - Customs and Excise Management Act 1986 (Amendment) (No.2) Order 2008

[Operative 01/12/08]

VALUE ADDED TAX

S.D. 820/08 - Value Added Tax (Reduced Rate) (Supplies of Fuel for Private Pleasure-flying and Pleasure Craft) Order 2008

[Operative 01/11/08]

S.D. 822/08 - Value Added Tax (Finance) (No.2) Order 2008

[Operative 01/12/08]

December 2008

CUSTOMS & EXCISE

S.D. 904/08 - Customs and Excise Management Act 1986 (Amendment) (No.3) Order 2008

[Operative 01/01/09]

DOGS

S.D. 939/08 - Wild Animals (Restriction on Importation, Etc) Act 1980 (Amendment) Order 2008

[Operative 17/12/08]

TELECOMMUNICATIONS

S.D. 854/08 - Regulation of Surveillance (Prescription of Offices, Ranks and Positions) Order 2008

[Operative 22/12/08]

VALUE ADDED TAX

S.D. 932/08 - Value Added Tax Act 1996 (Change of Rate) Order 2008

[Operative 01/12/08 - temporary]

PART III

SUBORDINATE LEGISLATION

[Individual items appear once only in either list A or B]

LIST A

SUBORDINATE LEGISLATION WITH EXPLANATORY TEXT OCTOBER 2008

[Listed alphabetically by name under subject headings]

[Statutory documents etc for which it has not been found necessary to provide explanatory text in the newsletter are in list B]

OCTOBER 2008

COURTS

CRIMINAL JURISDICTION (LIVE TELEVISION LINK) RULES 2008

[SD 707/08 : Commencement 20/08/08 : Issuing Authority - First Deemster]

SUMMARY JURISDICTION (LIVE TELEVISION LINK) RULES 2008

[SD 691/08 : Commencement 15/08/08 : Issuing Authority - First Deemster]

The Rules concern the use of a live television link at a preliminary hearing in a Court of General Gaol Delivery or a summary court respectively.

CUSTODY

CUSTODY (DESIGNATION OF INSTITUTION) (REVOCAATION) ORDER 2008

[SD 753/08 : Commencement 22/09/08 : Issuing Authority - DHA]

The Order revoked the designation of 99 Victoria Road as an institution for detainees.

CUSTOMS & EXCISE

CUSTOMS AND EXCISE (CASH DECLARATION AND DISCLOSURE) ORDER 2008

[SD 745/08 : Commencement 01/11/08 : Issuing Authority - Treasury]

The Order set out the declaration form for taking or bringing 10,000 euros plus cash from or to the Island.

TRADE IN GOODS (CATEGORIES OF CONTROLLED GOODS) ORDER 2008 (APPLICATION) ORDER 2008

[SD 688/08 : Deemed Commencement 01/10/08 : Issuing Authority - Treasury]

The Order applied S.I. 2008 No. 1805 : Trade in Goods (Categories of Controlled Goods) Order 2008 to create a new regime for military and paramilitary goods being traded between two other countries by a person in the Island.

DEPOSITORS COMPENSATION

COMPENSATION OF DEPOSITORS REGULATIONS 2008

[SD 826/08 : Commencement 09/10/08 : Issuing Authority - Treasury]

COMPENSATION OF DEPOSITORS (AMENDMENT) REGULATIONS 2008

[SD 844/08 : Commencement 23/10/08 : Issuing Authority - Treasury]

The Regulations govern a compensation scheme for depositors in a licensed deposit taking business.

EMPLOYMENT - PENSIONS

PENSION SCHEMES LEGISLATION (APPLICATION) (No.3) ORDER 2008

[SD 763/08 : Commencement 01/10/08 : Issuing Authority - DHSS]

The Order provided that self-invested personal pensions can hold “protected rights”.

MARITIME SECURITY

[This document did not appear on the Tynwald Order Paper]

DOUGLAS HARBOUR AND ELEVATED WALKWAY (RESTRICTED ZONE) ORDER 2008

[SD 435/08 : Commencement 30/10/08 : Issuing Authority - DoT]

The Order concerned restricted areas under the Maritime Security Act 1995.

PROCEEDS OF CRIME

PROCEEDS OF CRIME ACT 2008 (CODE OF PRACTICE: CASH SEARCHES) ORDER 2008

[SD 746/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Code covered searches for cash by police and customs officers.

PROCEEDS OF CRIME ACT 2008 (CODE OF PRACTICE: PART 4 FUNCTIONS) ORDER 2008

[SD 752/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Code covered the exercise of functions by the Attorney General, police and customs officers. Replaced by SD455/09 operative 1 August 2009.

PROCEEDS OF CRIME ACT 2008 (DISCLOSURE OF INFORMATION) ORDER 2008

[SD 749/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Order concerned the disclosure of information to the Attorney General, police and customs officers and also designated the functions which are considered to be of a public nature.

PROCEEDS OF CRIME ACT 2008 (EXEMPTIONS FROM CIVIL RECOVERY) ORDER 2008

[SD 751/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Order provided that certain property is not recoverable property.

PROCEEDS OF CRIME ACT 2008 (FINANCIAL THRESHOLD FOR CIVIL RECOVERY) ORDER 2008

[SD 747/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Order set a property value of £10,000 for the Attorney General to start proceedings for a recovery order.

PROCEEDS OF CRIME ACT 2008 (LEGAL EXPENSES IN CIVIL RECOVERY PROCEEDINGS) REGULATIONS 2008

[SD 750/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Regulations allow the payment of legal expenses out of property subject to civil recovery proceedings.

PROCEEDS OF CRIME ACT 2008 (RECOVERY OF CASH IN SUMMARY PROCEEDINGS: MINIMUM AMOUNT) ORDER 2008

[SD 748/08 : Commencement 01/11/08 : Issuing Authority - DHA]

The Order set a minimum amount of £1,000 for the search, seizure and forfeiture of cash derived from or intended for use in unlawful conduct.

SOCIAL SECURITY

SOCIAL SECURITY ACT 1998 (APPLICATION) (AMENDMENT) (No.3) ORDER 2008

[SD 760/08 : Commencement 01/11/08 : Issuing Authority - DHSS]

By the Order disputed benefit claims must be formally reviewed by another adjudication officer before being considered at appeal by the independent tribunal.

VALUE ADDED TAX

VALUE ADDED TAX (CORRECTION OF ERRORS) REGULATIONS 2008

[SD 534/08 : Commencement : 01/07/08 : Issuing Authority - Treasury]

The Regulations set the maximum limit for a taxpayer to self-correct a net error at £50,000.

VALUE ADDED TAX (FINANCE) ORDER 2008

[SD 676/08] : Commencement : 01/10/08 : Issuing Authority - Treasury]

The Order amended the 1996 Act by varying Group 5 of Schedule 10 : exempt supplies of financial services. Revoked by SD822/08 with effect 01/12/08.

NOVEMBER 2008

ELECTRONIC TRANSACTIONS

ELECTRONIC TRANSACTIONS (AMENDMENT) REGULATIONS 2008

[SD 643/08 : Commencement : 30/11/08 : Issuing Authority - DTI]

The Regulations allow the specified public authorities to accept electronic transactions.

TAXATION

DOUBLE TAXATION RELIEF (UNITED KINGDOM) (AMENDMENT) ORDER 2008

[SD 824/08 : Commencement : 18/11/08 : Issuing Authority - CoM]

The Order amended the Double Taxation Agreement with the UK giving exclusive taxation rights over pension income, where the pension was not paid by the Government of either party, to the country of residence of the pensioner. It also updated the procedure in relation to transfer pricing for enterprises having operations in both countries.

INCOME TAX (UNITED KINGDOM) ORDER 2008

[SD 825/08 : Commencement : 18/11/08 : Issuing Authority - CoM - Amended by SD 459/09]

The Order concerned the mutual exchange of information in respect of tax.

VALUE ADDED TAX

VALUE ADDED TAX (FINANCE) (N0.2) ORDER 2008

[SD 822/08 : Commencement : 01/12/08 : Issuing Authority - Treasury]

The Order amended the 1996 Act by varying Group 5 of Schedule 10 : exempt supplies of financial services and revoked SD 676/08.

DECEMBER 2008

DOGS

WILD ANIMALS (RESTRICTION ON IMPORTATION, ETC.) ACT 1980 (AMENDMENT) ORDER 2008

[SD 939/08 : Commencement : 17/12/08 : Issuing Authority - DAFF]

The Order added two breeds of dangerous dogs, Dogo Argentino and Fila Brasileiro, to the banned list for importation.

ECCLESIASTICAL [These documents did not appear on the Tynwald Order Paper]

PAROCHIAL FEES (ISLE OF MAN) ORDER 2008

[SD 959/08 : Commencement : 01/01/09 : Issuing Authority - Diocesan Bd of Finance]

The Order specified the fees for occasional church services, monuments, searches, licences for marriage and visiting clergy.

SEQUESTRATION FEES ORDER 2008

[SD 960/08 : Commencement : 01/01/09 : Issuing Authority - Lord Bishop]

The Order specified the fees payable by sequestrators to clergy for performing services during a vacancy.

EUROPE/FINANCIAL SERVICES

ANTI-MONEY LAUNDERING (MONEY SERVICE BUSINESSES) (REVOCATION) REGULATIONS 2008

[SD 943/08 : Commencement : 01/01/09 : Issuing Authority - CoM]

EC WIRE TRANSFERS REGULATION (ENFORCEMENT) (AMENDMENT) REGULATIONS 2008

[SD 944/08 : Commencement : 01/01/09 : Issuing Authority - CoM]

EUROPEAN COMMUNITIES (MONEY LAUNDERING DIRECTIVE) (REVOCATION) ORDER 2008

[SD 1009/08 : Commencement : 01/01/09 : Issuing Authority - CoM]

The Regulations and Order needed on the Financial Supervision Commission acquiring responsibility for regulating money transmission services.

EXECUTIVE GOVERNMENT

PERSONAL LIABILITY (MINISTERS, MEMBERS AND OFFICERS) ACT 2007 (DESIGNATED PERSONS) (No.2) ORDER 2008

[SD 908/08 : Commencement : 19/12/08 : Issuing Authority - CoM]

The Order specified the designated persons under section 3(2)(l) Personal Liability (Ministers, Members and Officers) Act 2007.

MONEY LAUNDERING

CRIMINAL JUSTICE (MONEY LAUNDERING) CODE 2008

[SD 935/08 : Commencement 18/12/08 : Issuing Authority - DHA]

[Amended by SD128/09 - British Virgin Islands]

The Code contained anti-money laundering and terrorist financing provisions in line with recommendations of the Financial Action Task Force.

CRIMINAL JUSTICE (MONEY LAUNDERING - ONLINE GAMBLING) (No. 2) CODE 2008

[SD 945/08 : Commencement 18/12/08 : Issuing Authority - DHA]

The Code imposed requirements on the online gambling industry for establishing anti-money laundering procedures, training and record keeping. SD 693/08 repealed.

TAXATION

INCOME TAX (NON-CORPORATE TAXPAYERS) (CIVIL PENALTIES) ORDER 2008
[SD 888/08 : Commencement : 18/12/08 : Issuing Authority - Treasury]

The Order increased the civil penalty for non-return of a tax return, initial default £100 and on extended default £200.

TERRORISM

EUROPEAN COMMUNITIES (TERRORISM MEASURES) (ENFORCEMENT) REGULATIONS 2008

[SD 941/08 : Commencement : 28/11/08 : Issuing Authority - CoM]

The Regulations provide that breaches of Council Regulation (EC) No. 2580/2001 are offences.

LIST B

SUBORDINATE LEGISLATION WITHOUT EXPLANATORY TEXT

[Listed alphabetically by name]

OCTOBER 2008

Air Passenger Duty (Amendment) (Application) Order 2008

[SD 535/08 : Deemed Commencement : 01/07/08 : Issuing Authority - Treasury]

Beer, Cider and Perry and Wine and Made-wine (Amendment) Regulations 2008

[SD 642/08 : Commencement : 01/09/08 : Issuing Authority - Treasury]

Companies (Fees, Duties and Penalties) (Amendment) Regulations 2008

[SD 338/08 : Commencement : 01/07/08 : Issuing Authority - FSC

[qualifying members' clubs]

Companies (Fees, Duties and Penalties) (Amendment) (No.2) Regulations 2008

[SD 559/08 : Commencement : 01/11/08 : Issuing Authority - FSC]

Companies (Fees and Duties) (Amendment) (No.2) Order 2008

[SD 560/08 : Commencement : 01/11/08 : Issuing Authority - FSC]

[members clubs]

Customs and Excise Acts (Application) Order 2008

[SD 638/08 : Commencement : 21/10/08 am to VAT Act - 22/10/08 and various dates thereafter Schedule 1 to the Order : Issuing Authority - Treasury]

[UK Finance Acts]

Customs and Excise Management Act 1986 (Amendment) Order 2008

[SD 637/08 : Deemed Commencement : 07/08/08 : Issuing Authority - Treasury]

[UK Finance Act 2008]

Export Control (Democratic Republic of Congo) (Amendment) (No.2) Order 2008
(Application) Order 2008
[SD 677/08 : Deemed Commencement : 14/08/08 : Issuing Authority - Treasury]

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)
(Amendment) Order 2008 (Application) Order 2008
[SD 499/08 : Deemed Commencement : 12/06/08 : Issuing Authority - Treasury]

Hydrocarbon Oil Duties Act 1986 (Amendment) (No.2) Order 2008
[SD 640/08 : Deemed Commencement : 01/04/08 & 01/11/08 : Issuing Authority - Treasury]

National Health Service Pension Scheme 2008
[SD 782/08 : Commencement : 01/10/08 : Issuing Authority - Civil Service Commission]
[See also SD783/08 & SD784/08]

Online Gambling Duty Regulations 2008
[SD 641/08 : Commencement : 07/08/08 : Issuing Authority - Treasury]

Other Fuel Substitutes (Rates of Excise Duty Etc) Order 2008
[SD 556/08 : Commencement : 01/11/08 : Issuing Authority - Treasury]

Redomiciliation of Insurers (Liechtenstein) Regulations 2008
[SD 755/08 : Commencement : 01/11/08 : Issuing Authority - IPA]

Sea-Fisheries (Logbook) Bye-laws 2006 (Amendment) Bye-laws 2008
[SD 702/08 : Commencement : 01/09/08 : Issuing Authority - DAFF]

Social Security Administration Act 1992 (Application) (Amendment) (No.3) Order 2008
[SD 759/08 : Commencement 01/11/08 : Issuing Authority - DHSS]
[winter bonus]

Social Security Benefits Up-rating (Amendment) Order 2008
[SD 762/08 : Commencement 01/11/08 : Issuing Authority - DHSS]
[DHSS residential home fees]

Social Security Contributions and Benefits Act 1992 (Application) (Amendment) (No.2)
Order 2008
[SD 758/08 amended SD 897/08: Commencement 01/11/08 : Issuing Authority - DHSS]
[winter bonus]

Social Security Legislation (Benefits) (Application) (No.3) Order 2008
[SD 761/08 : Commencement 09/04/08 & 21/07/08 : Issuing Authority - DHSS]
[industrial injuries benefit]

Value Added Tax Act 1996 (Amendment) (No.3) Order 2008
[SD 639/08 : Deemed Commencement : 19/03/08 & 07/08/08 : Issuing Authority - Treasury]
[UK Finance Act 2008]

Value Added Tax (Reduced Rate) Order 2008
[SD 501/08 : Deemed Commencement : 01/07/07 : Issuing Authority - Treasury]
[Mobility aids/smoking cessation products]

NOVEMBER 2008

Civil Aviation (Subordinate Legislation) (Application) Order 2008
[SD 835/08 : Commencement : 01/12/08 : Issuing Authority - DTI]

Customs and Excise Acts (Application) (Amendment) (No.2) Order 2008
[SD 828/08 : Commencement : 01/12/08 - Treasury]
[drawback]

Customs and Excise Management Act 1986 (Amendment) (No.2) Order 2008
[SD 764/08 : Commencement : 01/12/08 : Issuing Authority - Treasury]
[drawback]

Financial Services (Fees) (Amendment) Order 2008
[SD 787/08 : Commencement : 01/11/08 - Treasury]

Hydrocarbon Oil and Bioblend (Private Pleasure-flying and Private Pleasure Craft) (Payment of Rebate etc.) Regulations 2008
[SD 823/08 : Commencement : 01/11/08 : Issuing Authority - Treasury]

Hydrocarbon Oil (Supply of Rebated Heavy Oil) (Payment of Rebate) Regulations 2008
[SD 836/08 : Commencement : 01/11/08 : Issuing Authority - Treasury]

Social Security Administration Act 1992 (Application) (Amendment) (No.4) Order 2008
[SD 847/08 : Commencement 01/12/08 : Issuing Authority - DHSS]
[winter bonus]

Social Security Legislation (Pensions) (Application) (No.2) Order 2008
[SD 848/08 : Deemed Commencement 06/04/08 : Issuing Authority - DHSS]
[home responsibilities protection - child benefit]

Value Added Tax (Reduced Rate) (Supplies of Fuel for Private Pleasure-flying and Pleasure Craft) Order 2008
[SD 820/08 : Deemed Commencement : 01/11/08 : Issuing Authority - Treasury]

DECEMBER 2008

Advocates Act (Exemption) (Amendment) Regulations 2008
[SD 871/08 : Commencement : 04/11/08: Issuing Authority - Deemsters]
[Attorney General's Chambers prosecuting officers]

Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008 (Application) Order 2008
[SD 891/08 : Commencement : 31/12/08: Issuing Authority - Treasury]

Customs and Excise Management Act 1986 (Amendment) (No.3) Order 2008
[SD 904/08 : Commencement : 01/01/09: Issuing Authority - Treasury]
[dangerous chemicals]

Employment Tribunal Rules 2008

[SD 887/08 : Commencement : 31/01/09: Issuing Authority - DTI]

European Communities (Al-Qaida and Taliban Sanctions (Enforcement) Regulations 2008

[SD 942/08 : Commencement : 28/11/08: Issuing Authority - CoM]

Excise Warehousing (Etc.) (Amendment) Regulations 2008

[SD 889/08 : Commencement : 01/12/08: Issuing Authority - Treasury]

Export and Import of Dangerous Chemicals Regulations 2008 (Application) Order 2008

[SD 903/08 : Commencement : 01/01/09: Issuing Authority - Treasury]

Food Supplements Regulations 2008

[SD 898/08 : Commencement : 01/01/09: Issuing Authority - DLGE]

National Lottery Legislation (Application) Order 2008

[SD 921/08 : Commencement : 01/01/09: Issuing Authority - Treasury]

Nutrition and Health Claims Regulations 2008

[SD 899/08 : Commencement : 01/01/09: Issuing Authority - DLGE]

Regulation of Surveillance (Prescription of Offices, Ranks and Positions) Order 2008

[SD 854/08 : Commencement : 22/12/08 : Issuing Authority - DHA]

Statistics of Trade (Customs and Excise) (Amendment) (No.2) Regulations 2008
(Application) Order 2008

[SD 895/08 : Commencement : 01/01/09 : Issuing Authority - Treasury]

Travellers' Allowances (Amendment) Order 2008

[SD 902/08 : Commencement : 01/12/08: Issuing Authority - Treasury]

Value Added Tax Act 1996 (Change of Rate) Order 2008

[SD 932/08 : Commencement : 01/12/08: Issuing Authority - Treasury]

Value Added Tax (Amendment) (No.2) Regulations 2008

[SD 934/08 : Commencement : 01/12/08: Issuing Authority - Treasury]

INDEX OF STATUTORY DOCUMENTS BY NUMBER

SD 338/08 [p.50]
SD 435/08 [p.46]
SD 499/08 [p.51]
SD 501/08 [p.44, 51]
SD 534/08 [p.47]
SD 535/08 [p.50]
SD 556/08 [p.51]
SD 559/08 [p.50]
SD 560/08 [p.50]
SD 590/08 [p.36]
SD 604/08 [p.36]
SD 609/08 [p.36]
SD 637/08 [p.44, 50]
SD 638/08 [p.44, 50]
SD 639/08 [p.44, 51]
SD 640/08 [p.44, 51]
SD 641/08 [p.51]
SD 642/08 [p.50]
SD 643/08 [p.48]
SD 676/08 [p.44, 47]
SD 677/08 [p.51]
SD 688/08 [p.45]
SD 689/08 [p.36]
SD 691/08 [p.45]
SD 702/08 [p.51]
SD 707/08 [p.45]
SD 708/08 [p.37]
SD 725/08 [p.36]
SD 743/08 [p.37]
SD 744/08 [p.37]
SD 745/08 [p.45]
SD 746/08 [p.46]
SD 747/08 [p.47]
SD 748/08 [p.47]
SD 749/08 [p.46]
SD 750/08 [p.47]
SD 751/08 [p.47]
SD 752/08 [p.46]
SD 753/08 [p.45]
SD 755/08 [p.51]
SD 758/08 [p.51]
SD 759/08 [p.51]
SD 760/08 [p.47]
SD 761/08 [p.51]
SD 762/08 [p.51]
SD 763/08 [p.46]
SD 764/08 [p.44, 52]
SD 782/08 [p.51]
SD 787/08 [p.52]

SD 820/08 [p.44, 52]
SD 822/08 [p.44, 48]
SD 823/08 [p.52]
SD 824/08 [p.48]
SD 825/08 [p.48]
SD 826/08 [p.46]
SD 828/08 [p.52]
SD 835/08 [p.52]
SD 836/08 [p.52]
SD 844/08 [p.46]
SD 847/08 [p.52]
SD 848/08 [p.52]
SD 854/08 [p.44, 53]
SD 870/08 [p.36]
SD 871/08 [p.52]
SD 887/08 [p.53]
SD 888/08 [p.50]
SD 889/08 [p.53]
SD 891/08 [p.52]
SD 895/08 [p.53]
SD 898/08 [p.53]
SD 899/08 [p.53]
SD 902/08 [p.53]
SD 903/08 [p.53]
SD 904/08 [p.44, 52]
SD 908/08 [p.49]
SD 921/08 [p.53]
SD 922/08 [p.36]
SD 932/08 [p.44, 53]
SD 934/08 [p.53]
SD 935/08 [p.49]
SD 939/08 [p.44, 48]
SD 941/08 [p.50]
SD 942/08 [p.53]
SD 943/08 [p.49]
SD 944/08 [p.49]
SD 945/08 [p.49]
SD 959/08 [p.48]
SD 960/08 [p.49]
SD 1009/08 [p.49]

GOVERNMENT CIRCULARS

AGRICULTURE

[December Tynwald]

Countryside Care Scheme 2009

[GC 59/08 : Commencement 01/04/09 : Issuing Authority - DAFF]

See also the associated countryside and agricultural management standards or Cross Compliance Standards G.C.s 61 to 65 of 2008.

Agricultural Schemes (Miscellaneous Amendments and Repeals) Scheme 2008

[GC 60/08 : Commencement 18/12/08 : Issuing Authority - DAFF]

CUSTOMS & EXCISE

[November Tynwald]

Hydrocarbon Oil Duties Act 1986 - Extra-Statutory Concession

GC 57/08 : Commencement 01/11/08 : Issuing Authority -Treasury]

The concession exempted waste oil from sea-going vessels or elsewhere burnt at the Braddan incinerator from excise duty.

FORESTRY

Delegation of Functions Conferred on the Department by the Trees and High Hedges Act 2005 (Rushen)

[GC 52/08, 50/08 & 51/08 : Commencement 10/10/08 : Issuing Authority - DLGE]

REPORTS - TYNWALD OCTOBER 2008

Isle of Man Government Annual Report 2008 on the Government Strategic Plan 2007-2011
[£5]

Isle of Man Government Accounts 31 March 2008 [GD29/08]

Tynwald Policy Decisions Report 2008 [Council of Ministers] [GR36/08 - £4.40]

Isle of Man Constabulary Annual Report 2007/08 [GR23/08 - £4.40]

Annual Report on the Activities of the Manx Industrial Relations Service for 2007 [GR34/08
- £1.20]

Report of the Council of Ministers into the Complaint of Mr and Mrs Spadoni [re Manx
Registered fishing vessel the Suzanna D] [GR37/08 - £10]

Code of Practice on Access to Government Information - Report of the Commissioner
[September 2007- August 2008]

REPORTS - TYNWALD NOVEMBER 2008

Select Committee Report on the Isle of Man Steam Packet Company
[PP120/08]

Second Report of the Select Committee on the Isle of Man Steam Packet Company
[PP93/09] [Tynwald July 2009]

Isle of Man Road Transport Licensing Committee Annual Report for the year ended
31 March 2008
[GR38/08]

REPORTS - TYNWALD DECEMBER 2008

Report of the Select Committee of Tynwald on Immigration [PP135/08]

Report of the Delegation on Langness [PP134/08]

Isle of Man Gambling Supervision Commission 2007/08 Annual Report

Annual Report of the Standing Committee on Public Accounts Session 2007-2008
[PP131/08]