

**MANX LEGISLATION NEWSLETTER**

**ISSUE 1**

**JANUARY - JULY 2011**

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## ISSUE 1

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The Manx Legislation Newsletter is an information and recording service for lawyers and others who may need to be aware of developments in Manx legislation. 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 - Bills and Acts (including Tables of Acts of Tynwald and Statutory Documents Amending Acts), Part II - Subordinate Legislation, Part III - UK Legislation Extended to the Island, Part IV - Reports, Part V - International Sanctions and Part VI - International Taxation Agreements.

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This edition of the Legislation Newsletter should be cited as 2 MLEGN.

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## **PART I**

### **BILLS AND ACTS JANUARY - JULY 2011**

BROADWAY BAPTIST CHURCH [Royal Assent awaited]

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ELECTORAL REFORM [introduced in the Legislative Council]

FLOOD RISK MANAGEMENT [fell on the dissolution of the House of Keys]

FREEDOM OF INFORMATION [fell on the dissolution of the House of Keys]

HOUSING (RESTRICTION ON OWNERSHIP AND OCCUPATION) [fell in Keys - 2<sup>nd</sup> Reading]

MANX MUSEUM AND NATIONAL TRUST (AMENDMENT) [Royal Assent awaited]

OPTIONS OVER LAND [fell on the dissolution of the House of Keys]

REPRESENTATION OF THE PEOPLE (AMENDMENT) [fell on the dissolution of the House of Keys]

ROAD TRAFFIC AND HIGHWAYS (MISCELLANEOUS AMENDMENTS) [Royal Assent awaited]

TOWN AND COUNTRY (AMENDMENT) [fell on the dissolution of the House of Keys]

#### **BROADWAY BAPTIST CHURCH BILL 2011**

This is a private Bill promoted by the Trustees of Broadway Baptist Church, the Alpha Centre and Well Trusts. The Act will come into operation on such date as the Attorney-General, after consultation with the Trustees, may by order appoint.

The Bill allows for streamlining of administrative and accountancy costs, the formation of a body corporate limited by guarantee to be known as Broadway Baptist Church, the termination of the Church Trust, Alpha Centre Trust and Well Trust and the transfer of the assets of the three trusts to Broadway Baptist Church.

Clause 4 sets out the constitution of a body corporate to be known as Broadway Baptist Church (but referred to in the Bill as “BBC”). The combination of the Memorandum and Articles of BBC and a Members’ Guide containing the basis of faith adopted by BBC provide for the documents forming the constitution of BBC.

Clause 5 serves to convey the real property (land & buildings) from the Church Trust and the Alpha Centre Trust to BBC. Clause 6 transfers all other property not otherwise transferred by clause 5 to BBC and terminates the three existing trusts.

Clause 7 provides an indemnity for the existing trustees. [Clause 7(1) amended Legislative Council - the words “or prosecuted” deleted.]

Clause 8 provides for the transfer of responsibility for the property and assets of BBC to the Baptist Union Corporation (in the United Kingdom) in the event of Broadway Baptist Church being dissolved. The Baptist Union Corporation shall in consultation with the North Western

Baptist Association and Spurgeon's College use the remaining assets either to support an existing evangelical Christian church or organisation in the Isle of Man or the establishment of an evangelical Christian church or similar establishment in the Isle of Man, but in the event that none exists which the Baptist Union Corporation wishes to support and the establishment of one is not practical, remaining property or assets shall pass to Spurgeon's College to hold on trust to apply for the advancement of the Christian faith in such manner as its Governors shall in their absolute discretion determine. {Petition for Leave to Introduce granted Keys 21 December 2010.} [Keys Agreement to Legislative Council amendment 19 April 2011 - Royal Assent awaited]

#### **CRIMINAL JUSTICE ACTS AMENDMENT ACT 2011 [c.7]**

This Act was promoted by the Department of Home Affairs. Section 1 states the short title. Section 2 amends the Criminal Justice Act 1990 by changing references to read "evidence or information" in ss 24 and 25, amending s 25 to permit disclosure for an Attorney General's investigation under s 24 and to allow the Attorney General to disclose evidence or information obtained by or for the Attorney General under the Police Powers and Procedures Act 1998. Section 3 amends the Criminal Justice Act 1991 by inserting s 19A, changing references to read "evidence or information", amending definitions in s 21(11) consequent on s 19A and to amend section 22(1) so that an application to a Deemster for a search warrant can be made if, in a country or territory outside the Island, criminal proceeding have been instituted or a criminal investigation is being carried out against that person. [Not amended in the Legislature - Legislative Council 3<sup>rd</sup> Reading 10 May 2011 - Royal Assent Announced 12 July 2011]

#### **ELECTORAL REFORM BILL 2011**

This Private Member's Bill introduced in the Legislative Council by David Callister MLC provides for the election of members of the Legislative Council by public franchise on a constituency basis and for new constituencies to be drawn up to elect both Branches of Tynwald.

Clause 1 states the short title. Clause 2 amends the Representation of the People Act 1995. In addition to minor amendments applying the provisions of the 1995 Act concerning Keys elections to elections of the Legislative Council and a provision which prevents current members of the Council standing for the Keys, some new sections are inserted into the 1995 Act as follows.

A new Part 1A concerned with the Legislative Council is inserted. Section 10A provides for the term of office of elected members of the Council and for members to go out of office on the same days as members of the Keys but in different years. The members standing in a "designated constituency" (see paragraph 6 below) are to serve until 2 years after the last general election of the Keys and members standing in other constituencies until 4 years after that election. Section 10B provides for the President of Tynwald to report a casual vacancy in the Legislative Council to the Governor and mirrors section 5 of the 1995 Act which covers casual vacancies in the Keys. Section 10C applies provisions on sitting and voting in Tynwald to elected members of the Council.

Section 11 is substituted to make new provision about constituencies. In particular, a "Boundary Committee" appointed by the Governor in Council has to draw up 8 constituencies, subject to the approval of Tynwald and each of these constituencies is to return 3 members of the Keys and 1 member of the Council.

A new paragraph is inserted into Schedule 6, making provision prior to the 2016 general election. The President of Tynwald is required, within one month of the constituencies first

being approved by Tynwald under section 11(1), to designate 4 constituencies that together represent a reasonable representation of the whole Island in geographical terms, these being the ones elected first in accordance with section 10A(1). There is also provision to extend the office of Council members due to go out of office in February 2013 and 2015 to continue in office until the normal time for going out of office before an election (being a date in August).

Provision is also made for interim casual vacancies in both the Council and the Keys to be filled under the current electoral system; but if the constituencies have not been agreed within 3 months of the Council elections that would otherwise take place in 2013 and 2015 or the general election of the Keys in 2016, the existing systems will continue to apply here too. If there has been no approval by the date of the 2016 general election, this Bill is deemed never to have been enacted.

Clause 3 makes consequential amendments to other legislation and in particular provides that a current member of the Keys may not stand for the Council. *Clause 4* introduces the Schedule which sets out the consequential repeals. [Legislative Council 1<sup>st</sup> Reading 14 June 2011]

### **FLOOD RISK MANAGEMENT BILL 2011[fell]**

This Bill is promoted by the Isle of Man Water and Sewerage Authority. Part 1- Clause 1 states the short title and clause 2 deals with commencement. Clauses 3 to 7 provide for the interpretation of words and expressions.

Part 2 - Flood Risk Management Functions of the Authority. Clause 8 appoints the Authority as the authority for flood risk management. Clause 9 sets out the general flood risk management functions of the Authority. Clause 10 requires the Authority to analyse costs and benefits when exercising certain powers. Clause 11 imposes an obligation on the Authority to consider conservation and recreation when exercising its functions.

Part 3 - Facilities. Clause 12 gives the Authority power to designate facilities which it considers to be of general significance for the purposes of flood risk management including flood risk management works and watercourses. Clause 13 requires the Authority to maintain a map or record of every designated facility. Clause 14 sets out the consequences of a designation under clause 12. Clause 15 controls the activities which may be carried out in respect of designated facilities. Clause 16 imposes similar controls in respect of non-designated watercourses. Clause 17 specifies the procedure for obtaining consent to carry on an activity controlled under clause 15 or 16.

Part 4 - Powers in Respect of Facilities. Clause 18 requires the Authority to give notice of its intention to exercise a power under clauses 19 to 21 (with certain specified exceptions). Clause 19 sets out the Authority's works powers. Clause 20 enables the Authority to deposit spoil (subject to certain controls). Clause 21 provides for the Authority's powers of entry. Clause 22 sets out the powers the Authority may exercise in an emergency flooding situation. Clause 23 requires the Authority to compensate a person who sustains damage in consequence of the exercise of power under clauses 19 to 21.

Part 5 - Enforcement. Clause 24 enables the Authority to give an enforcement notice in certain circumstances. The notice requires the person to whom it is given to take the steps specified in the notice and the Authority may take the steps if the person fails to comply with the notice. Clause 25 allows the Authority, in an emergency flooding situation, to take steps analogous to those it could specify in an enforcement notice, without giving the notice.

Part 6 - Other Powers of the Authority. Clause 26 gives the Authority power to acquire land, by agreement with the owner or by compulsory purchase in accordance with the Acquisition of Land Act 1984. Clause 27 enables the Authority to carry out works and provide services for others and to engage contractors to do so on its behalf. Clause 28 allows the Authority to adopt private flood risk management works. Clause 29 provides that the Authority may apply to the High Court for an injunction to enforce compliance with or restrain contravention of the Bill. Clause 30 enables the Authority to make bye-laws. Clause 31 provides that the Authority may set and publish fees and forms. Clause 32 allows the Authority to appoint authorised persons to carry out functions on its behalf.

Part 7 - General Provisions. Clause 33 establishes the Flood Risk Management Tribunal and provides for appeals to it against certain decisions of the Authority.

Clause 34 allows a justice of the peace to issue a warrant authorising the Authority to enter land (this is additional to the Authority's power under clause 21).

Clause 35 creates certain offences for interference with the operations of the Authority.

Clause 36 makes it an offence to provide false or misleading information or documentation.

Clause 37 specifies the penalties for offences.

Clause 38 requires the Department of Infrastructure to consider flood risk management when considering applications for planning approval under section 9 of the Town and Country Planning Act 1999.

Clause 39 confirms that nothing in the Bill releases obligations already existing when the Bill is enacted.

Clause 40 requires the Authority not to interfere with the works or property of statutory undertakers (except in specified circumstances).

Clause 41 restricts the Authority from exercising functions under the Bill in a harbour (except in specified circumstances).

Clause 42 gives effect to Schedule 1 (transitional and saving provisions). Clause 43 gives effects to Schedule 2 (amendments) and Schedule 3 (repeals). [Keys 2<sup>nd</sup> Reading 2 March 2011 - Fell on the dissolution of the House of Keys]

### **FREEDOM OF INFORMATION BILL 2011 [fell]**

This Bill promoted by the Council of Ministers makes provision for access to public information. Part 1 contains the opening provisions. Clause 1 states the short title and clause 2 provides the appointed day provisions except for sections 1, 2, 46, 70 and 71 which are operative on announcement of Royal Assent. Clause 3 contains defined terms and clauses 4 to 6 expand definitions of some significant terms.

Part 2 is about access to information held by public authorities. Clause 7 sets out a general right of access to information. A person who makes a request for information held by a public authority (defined in clause 5 to cover the bodies listed in Schedule 1 and publicly-owned companies) has a right to be informed in writing by the authority whether it holds the information and if this is the case, to be supplied with it. This right is subject to exemptions and qualified exemptions (dealt with in Parts 3 and 4), the latter justifying refusal only where the balance of public interest is in not complying with the request. A public authority also need not comply with a request if the cost of so doing exceeds an amount (to be prescribed under clause 42) or if the request is vexatious (see clause 43) or repeated (see clause 44). A public authority may refuse to inform the person whether it holds the information, where the public interest in informing the person is outweighed by the public interest in refusing.

Clause 8 requires a public authority to make every reasonable effort to ensure that the person making or wishing to make the request is provided with sufficient advice and assistance. Under clause 9 a public authority may refuse a request if it reasonably requires further details

to identify and locate the information requested and the applicant has failed to supply the details within the time provided for complying with the request.

Clause 10 requires the request for information to be accompanied by any prescribed fee. There is also provision for a public authority to request an additional fee. The public authority need not comply with the request until any fees are paid, though there is power to waive fees as considered appropriate. Regulations may make it an offence to provide false or misleading information in connection with a request for information.

Clause 11 gives public authorities 20 working days to comply with a request unless another period is prescribed, subject to fees being paid and further details being provided. A failure to comply within the given time amounts to a refusal. Under clause 12 any reasonable means of compliance with a request for information is acceptable, but if reasonably practical and the applicant expresses a preference for receiving the information by any of the means in subsection (3), the authority should give effect to that preference. Failure to comply with a request gives no right of action in civil proceedings see clause 13.

Clause 14 enables a public authority to adopt and maintain a publication scheme relating to its publication of information and for the Council of Ministers by order to require it to do so. Further provision is made as to what a publication scheme must specify or must not do. The scheme must be published and a copy sent to the Information Commissioner.

Clause 15 deals with the giving of refusal notices where a request is refused and clause 16 governs the contents of a refusal notice.

Part 3 covers absolutely exempt information. Clause 17 introduces the Part, which is subject to Part 7, and clauses 18 to 25 set out the various types of absolutely exempt information as follows: information accessible to the applicant by other means (clause 18); information provided by or relating to bodies dealing with security matters (clause 19); court information (clause 20); information covered by the privileges of Tynwald or its Branches (clause 21); information likely to prejudice the effective conduct of public affairs (clause 22); certain information relating to personal data (clause 23); information provided in confidence (clause 24); and information the disclosure of which is prohibited by or under any statutory provision, incompatible with a Community obligation applicable to the Island or would be a contempt of court (clause 25).

Part 4 covers qualified exempt information. Clause 26 introduces the concept and when it may justify refusal and makes the Part subject to Part 7. *Clauses 27 to 41* provides for the various types of qualified exempt information as follows: information required to safeguard national security (clause 27); information likely to prejudice defence or the armed forces (clause 28); or international relations (clause 29); or the economic interests of the Island (clause 30); information relating to investigations and legal proceedings (clause 31); or law enforcement (clause 32); or audit functions (clause 33); or the formulation of policy (clause 34); or the conduct of public business (clause 35); or Crown communications (clause 36); information likely to endanger health and safety (clause 37); certain information relating to personal data (clause 38); legally privileged information (clause 39); information concerning commercial interests (clause 40); and information for future publication (clause 41).

Part 5 covers other exemptions. Clause 42 enables a public authority to refuse to comply on the ground of excessive cost, being over the amount prescribed by regulations. Clause 43 states that a public authority need not comply with a request it considers to be vexatious and

clause 44 prevents the need to comply with repeated requests from the applicant unless a reasonable time has passed.

Part 6 sets out the advisory and enforcement functions. Clause 45 requires the Council of Ministers to issue a code of practice giving guidance to public authorities as to the practice to be followed in the exercise of their functions under the Bill.

Clause 46 provides for the Isle of Man Information Commissioner and clause 47 sets out the Commissioner's general functions. A person may apply to the Commissioner under clause 48 for a decision on whether a request for information has been complied with or if a refusal to comply was justified. There are specified circumstances in which the Commissioner need not make a decision, otherwise the Commissioner has to issue a decision notice. Clause 49 provides for the Commissioner to make recommendations to a public authority where its practice does not comply with the Bill or the code of practice.

Under clause 50 the Information Commissioner may give a public authority an information notice requiring it to give information relating to an application for information or in relation to conformity with the Bill or the code of practice. If a public authority fails to comply with the Bill the Commissioner may issue an enforcement notice under clause 51 requiring it to take specified steps. Clause 52 enables the Commissioner to certify in writing to the High Court that a public authority has failed to comply with a decision notice, an information notice or an enforcement notice and the Court has to enquire into the matter and may deal with the authority as if it had committed a contempt of court. Clause 53 introduces Schedule 3 which concerns powers of entry and inspection. Clause 54 requires the Information Commissioner to lay an annual report before Tynwald.

Clause 55 continues the Isle of Man Data Protection Tribunal under the name of the Isle of Man Information Tribunal. Clause 56 confers a right of appeal by the applicant or public authority against a decision notice and by an authority against an information notice or an enforcement notice. Clause 57 provides for the determination of appeals and clause 58 applies Schedule 6 to the Data Protection Act 2002 concerning appeals and references to appeals under Part 6.

Part 7 is concerned with public records. Clause 59 provides for a record to become an historical record after 30 years and clause 60 qualifies some of the exemptions in the case of historical records. Clause 61 makes further provision in respect of historical records in the Record Office. Clause 62 enables the designation of public records as open information. Clause 63 makes the Chief Registrar a public authority under the Bill in relation to information contained in public records but requires the Chief Registrar to consult an appropriate person or body before deciding to refuse a request for information. Clause 64 covers the exercise of functions by repositories other than the Record Office.

Part 8 contains supplemental provisions. Clause 65 enables the amendment or repeal by order of enactments prohibiting the disclosure of information. Clause 66 creates an offence of record tampering carrying a penalty of a £5,000 fine. Clause 67 states that the Bill does not limit the powers of a public authority to disclose information it holds. Under clause 68 the publication of information supplied to an applicant, which the public authority had received from a third person containing defamatory matter is privileged unless the publication is shown to have been made with malice. Clause 69 states that notices must be in writing, which includes by electronic means if legible and capable of being used for subsequent reference.

Clause 70 contains a standard provision about subordinate legislation and provides that in default of another destination being specified, fees are to be paid into and form part of the General Revenue. Clause 71 provides for a Tynwald procedure in respect of all the powers to make subordinate legislation. Clause 72 introduces Schedule 4 which concerns the amendment and repeal of enactments.

Schedule 1 is a list of public authorities for the purposes of the Bill. Schedule 2 makes provision for the terms of service, staffing and resources of the Information Commissioner and his or her office. Schedule 3 deals with powers of entry and inspection. [Keys 1<sup>st</sup> Reading 28 June 2011 - Fell on the dissolution of the House of Keys]

#### **HOUSING (RESTRICTIONS ON OWNERSHIP AND OCCUPATION) BILL 2011**

Private Member's Bill [Mr Karran] was to enable restrictions to be placed on the ownership and occupation of land to be developed as domestic premises so that they are kept for the ownership and occupation of Isle of Man workers and their families. [Fell at 2<sup>nd</sup> Reading Keys 19 April 2011]

#### **MANX MUSEUM AND NATIONAL TRUST (AMENDMENT) BILL 2011**

The Bill promoted by the Department of Community, Culture and Leisure. Clause 1 states the short title. Clause 2 provides that the Bill amends the Manx Museum and National Trust Act 1959. Clause 3 repeals the long title of the 1959 Act, which is no longer consistent with the purposes of the Act. Clause 4 inserts s 1A which provides for the main purposes of the Act. Clause 5 [amended keys] provides for definitions. Clause 6 [inserted s 3E amended Keys] replaces section 3 which concerns the constitution of the Manx Museum and National Trust with clauses 3 and 3A to 3L. Clause 7 makes a consequential amendment to s 21A. Clause 8 inserts s 26A imposing a duty on the trustees to consult with persons or organisations they consider appropriate in their performance of the Trust's functions relating to heritage. Clause 9 [amended Legislative Council] inserts s 29 which provides for meetings between the Minister and the Trust's key stakeholders. Clause 10 inserts transitional ss 32 to 34 that provide that a new chairperson and other trustees must be appointed within a certain period after the amending Act commences and also provides that the incumbents (including Tynwald members) continue in office until those appointments take effect. [Keys agreement to Legislative Council amendments 24 May 2011 - Royal Assent awaited]

#### **OPTIONS OVER LAND BILL 2011 [fell]**

Private Member's Bill [Mr Gawne]. Clause 1 states the short title, clause 2 deals with commencement and clause 3 with interpretation. Clause 4 requires the holder of an option over land in the Island to register the agreement containing the option with the Chief Registrar within one month of making the agreement. The Chief Registrar must maintain a register of options over land and make the register available for public inspection. Clause 5 stipulates that registration ceases to have effect when the option finishes.

Clause 6 provides that it is an offence to fail to register the option as required by clause 4 or to provide false or misleading information to the Registrar. The range of penalties for the offence is also set out. Clause 7 provides that officers of bodies corporate can also be liable for offences under clause 4. Clause 8 enables the Chief Registrar to make regulations. In particular, regulations may extend the application of the Bill to agreements containing provisions which are substantially similar, analogous or of equivalent effect to options over land. Clause 9 enables the Chief Registrar to set fees (and penalties for their non-payment) and to specify forms for use under the Bill. The fees, penalties and forms must be published.

Clause 10 provides that the provisions of this Bill are additional to and do not affect the operation of the Registration of Deeds Act 1961 or the Land Registration Act 1982. However, it does clarify that an option over land is (a) a contract affecting land for the purposes of section 29 of the Registration of Deeds Act 1961 and (b) a matter which can be entered as a burden on the title register for the purposes of section 36 of the Land Registration Act 1982.

Clause 11 amends the Land Registration Act 1982 to add options over land to the list of burdens to which section 36 of that Act applies.

Clause 12 applies certain provisions of the Fair Trading Act 1996 to issues concerning the supply or acquisition of land in the Island (and the securing of such supply or acquisition). The provisions applied are modified for the purposes of their application as they currently refer only to the production, supply or acquisition of goods in the Island or the supply or securing of services in the Island. The provisions applied are sections 8 to 18 (anti-competitive practices) and Part 3 (general) and the modifications are specified.

Clause 13 deals with options over land granted before clause 4 comes into operation which are still extant when that clause comes into operation. Such options must be registered under the Bill but a grace period of one year is given to enable such registration to be made. Accordingly, no offence will be committed until a year has passed after clause 4 comes into operation. [Keys 2<sup>nd</sup> Reading 14 June 2011 - Fell on the dissolution of the House of Keys]

#### **REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL 2011 [fell]**

This Bill promoted by the Council of Ministers amends the Representation of the People Act 1995 to include provisions as to donations made to, and the expenses of, candidates at elections. Clause 1 states the short title and clause 2 introduces the amendment of the 1995 Act. Clause 3 inserts sections 20A to 20F.

Section 20A requires a candidate, not later than 5 working days before the day of the poll to deliver to the Chief Registrar a written declaration of the donations received over the past 5 years including the name of the donor and value and nature of the donation. There is a disregard of donations below the minimum amount of £50 (which figure may be varied by regulations) but donations from the same person or related persons, connected companies, etc are aggregated.

Section 20B requires anonymous donations to be given to the Manx Lottery Trust, with powers for a different charity to be prescribed.

Section 20C imposes a limit on a candidate's expenses to £2,000 plus 50p for each registered elector (variable by regulations). If a complaint is made within 3 months of election that a candidate has exceeded this maximum amount, the candidate has to provide the Chief Registrar with a written declaration of his or her election expenses.

Section 20D makes further provision about the written declarations required by section 20A and 20C and section 20E provides for the Chief Registrar to require the production of invoices, receipts, etc of expenses incurred. Section 20F requires a person who pays or incurs a candidate's election expenses to provide the candidates with the information and documents required for the purposes of sections 20D and 20E.

Clause 4 inserts new section 44A creating offences in connection with funding. Clause 6 inserts new definitions in to the general definitions in section 77. The new definitions of "donation" and "election expenses" cross refer to a new Schedule, inserted by clause 8 which

sets out their meaning in detail. Clause 5 is consequential on a definition of “candidate” being inserted into section 77.

Clause 7 adds a new regulation-making power to vary the references to time periods occurring in sections 20A to 20E. [Keys 2<sup>nd</sup> Reading 19 April 2011 - Fell on the dissolution of the House of Keys]

## **ROAD TRAFFIC AND HIGHWAYS (MISCELLANEOUS AMENDMENTS) BILL 2011**

*[Clause numbering amended to reflect clauses originally numbered 38, 41, 45, 52 and 56 not moved in the Keys]*

This Bill, promoted by the Department of Infrastructure, makes amendments to legislation concerned with road traffic and highways. Part 1 (clauses 1 and 2) states the short title and provides for commencement by appointed day orders. Part 2 (introduced by clause 3) makes amendments to the Road Traffic Act 1985. Clause 4 inserts s 1A creating the offence of causing serious bodily harm by dangerous driving and clause 5 applies the existing definition of “dangerous driving” to the new offence. Clause 6 inserts 2 new offences of causing death and causing serious bodily harm respectively by careless or inconsiderate driving. Clause 7 inserts a section defining careless or inconsiderate driving. Clause 8 inserts the offence of causing death by driving when the person is unlicensed, disqualified for driving or uninsured.

Clauses 9 and 10 extend the exception to the ban on motor racing and cycle racing respectively to occasions where it is permitted by or under any other enactment instead of just under the Road Races Act 1982.

Clause 11 makes specific provision to enable the Manx Highway Code to be adapted from that having effect in Great Britain.

Clause 12 inserts 4 new sections concerned with the seizure, retention and disposal of vehicles and related matters. Section 47A gives power to a constable to seize a motor vehicle if he or she believes that it was being driven without insurance, has had no tax disc for at least a month or was being driven by a person who was disqualified for holding a driving licence, otherwise held no driving licence, was driving unaccompanied when he or she should have been accompanied or who was at the time committing a serious driving offence connected with drink or drugs. There is power for the constable to immobilise the vehicle concerned. Section 47B gives power for the Department to make further provision by regulations as to the removal, retention or storage of seized vehicles and for their release, forfeiture or disposal. Section 47C creates offences in connection with the new provisions and section 47D provides definitions of terms there used.

Clause 13 inserts a new provision into s 53 enabling the punishments set out in Schedule 6 to be varied by order. Clause 16 adds the new provision inserted by clause 13 to s 74 so that orders made under that provision require Tynwald approval. Clause 14 amends s 55 to take account of substitution of the provisions in Part IV of Schedule 6 about alternative verdicts.

Clause 15 amends s 63 about inquiries so that they are conducted by a person independent of the Department.

Clause 17 amends the provisions in Schedule 2 to empower an examiner appointed by the Department to stop vehicles on roads when a constable in uniform is present. It becomes an offence to fail to stop as required.

Clause 18 revises the disqualification provisions in Schedule 3 so as to increase the minimum period of disqualification for the more serious offences to 2 years. In the case of certain offences where the person is intoxicated or fails to provide a specimen when required to do so, the minimum disqualification period is increased to up to 5 years.

Clause 19 amends Schedule 4 so as to enable various provisions relating to paid driving instruction to extend to classes of motor vehicle other than motor cars and so as to cater for instruction to learner drivers given by car dealers to be treated as paid instruction. The exemption that applies to police instructors is extended to members of the fire brigade who provide driving instruction. In particular it introduces a new procedure whereby the Registrar may serve a “stop notice” on a person if he or she considers that the person is giving instruction unlawfully and certain conditions are satisfied. If the person gives instruction to a person other than a close relative in contravention of a stop notice it is an offence. The provisions with respect to appeals against a decision of the Registrar are revised to include appeals against service of stop notices and to provide for the appeal to be conducted by an independent adjudicator appointed by the Appointments Commission. The provisions about examinations and tests of ability to give driving instruction are slightly revised so as to reflect the current tests used. There is also some revision of the provisions about the time period that must elapse before another examination or part of it may be attempted and about examinations or parts of them that were not properly conducted.

Clause 20 amends Schedule 5 so as to require a person to be insured against third-party risks by an insurance company authorised to carry on motor insurance business anywhere in the British Islands or the European Union, whereas at present the insurer must be so authorised with respect to the Island or the United Kingdom.

Clause 21[amended Keys] makes a number of amendments to the table in Part I of Schedule 6 which lists offences, prescribes their respective penalties and provides for endorsements and disqualification and other relevant matters. The table in Part II is amended to vary the penalty points that attach to the offence of speeding. Part IV is replaced with more comprehensive provision with respect to alternative verdicts.

Part 3 (introduced by clause 22) amends the Road Traffic Regulation Act 1985. Clause 23 makes new provision prohibiting double parking and parking adjacent to a dropped footway, cycle-path, cycle track or verge. These provisions are made enforceable as if imposed by an order under section 1 of the 1985 Act.

Clauses 24 and 25 amend ss 3 and 3A to enable provision for road closures to be effected by notice instead of by order. In respect of closing of roads for filming it will be permissible to suspend the parking of vehicles and to allow the parking of up to 6 vehicles by the film participants. The prohibition on the use of a road by through traffic is extended from 24 to 48 hours. Clauses 26 and 30 are consequential on the changes to ss 3 and 3A and clause 27 removes a redundant provision in s 7 that is covered by the Interpretation Act 1976.

Clause 28 amends and clarifies the provisions in s 15 regarding the placing of traffic signs. In the case of portable light signals the consent of the Department is always needed. It is an offence to place traffic signs contrary to the provisions, the penalty for which is provided by the amendment to Schedule 4 in clause 36. Clause 29 amends s 17 so as to extend the power to place traffic signs in an emergency to a constable or person acting under the instructions of the Chief Constable.

Clause 31 amends s 28 so that it is the Department of Social Care that is to issue disabled person's badges in the form it considers appropriate.

Clause 32 inserts a new provision into s 31 to enable the maximum levels of fines in Schedule 4 to be varied by order. Clause 34 amends s 39 so that these orders, and those under s 33 require Tynwald approval.

Clause 33 substitutes s 33 providing for traffic wardens to be appointed by the Department of Infrastructure to carry out the functions conferred by or under that section under the direction of the Chief Executive of the Department.

Clause 35 makes consequential amendments to Schedule 1 about the notification of temporary traffic restrictions and clause 37 amends Schedule 5A in respect of the amount of fixed penalties to enable an order to prescribe the penalty for offences under ss 11(3) and 14B(1).

Part 4 (introduced by clause 38) amends the Highways Act 1986. Clause 39 inserts s 7A providing for the recovery of expenses where the Department has incurred excess costs due to heavy traffic on a highway.

Clause 40 inserts s 32B enabling a local authority, after consultation with the Department, to enter into an agreement with a building owner for the provision of walkways subject to the detailed regulation-making powers that are included.

Clause 41 substitutes s 38 providing for the temporary closure of highways for the purposes of entertainment by public notice.

Clause 42 amends s 51 to enable the Department to cut, lop or fell vegetation that is overhanging or is likely to fall on to a highway, road or footpath if there is immediate danger or the owner or occupier otherwise fails to do so within 14 days of being served a notice. There is provision to recover the cost of the works from the owner or occupier.

Clause 43 is consequential on other changes with respect to regulation-making powers.

Clause 44 inserts s 109A about agreements as to the execution of works made between the Department and a third party whereby that other party pays some or all of the cost of the works, including in particular the costs incurred by the Department.

Clause 45 amends s 110 in order to widen the ability of the Department to recover expenses beyond recovery from the owners of premises and modifies the interest-charging provisions to match those in s 109A(5).

Clause 46 amends s 115 so as to increase the maximum penalty for most of the offences under the Act from £1,000 to £2,500. It also enables the Department to vary the levels of fines specified in the section by order requiring the approval of Tynwald. Clause 47 enables the Department to specify the form of documents.

Clause 48 amends Schedule 1A so as to remove the requirement for the Department to have to make regulations setting out what it must do when constructing traffic restraint works.

Clause 49 makes a consequential amendment as a result of the removal of regulation-making powers.

Clause 50 makes changes to the provisions dealing with the Road Works Code in Schedule 4. In particular these provisions enable the Department to step in and make good or repair a highway or bridge, including objects or equipment installed there, after undertakers have executed works and make further provision with respect to the service of default notices.

Part 5 makes miscellaneous amendments and repeals. Clause 51 amends the Petty Sessions and Summary Jurisdiction Act 1927. The penalty for the offence of furious driving is made the same as that for careless or inconsiderate driving under the Road Traffic Act 1985.

Clause 52 makes amendments to the Road Transport Act 2001. The limitation on the weight that may be prescribed in respect of the definition of “goods vehicle” under section 7 is removed and the definition expanded to include not just motor vehicles and trailers constructed or adapted for use for the carriage of goods but any combination of them. A provision is added to s 10 to enable the Road Transport Licensing Committee to refuse an application for registration or an operator’s licence under the Act unless prescribed requirements are met. The Department is also given a power to make regulations authorising the Committee to refuse, suspend or revoke any registration or licence on health grounds. The opportunity is also taken to update references to UK and EU legislation.

Clause 53 corrects a minor error in the Road Traffic (Amendment) Act 2006 and clause 54 repeals redundant provisions. [Amended in the Keys - Throughout in the expression “causing grievous bodily harm” the word “serious” substituted for “grievous”.] [Legislative Council 3<sup>rd</sup> Reading 14 June 2011 - Royal Assent awaited]

#### **TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2011 [fell]**

Private Member’s Bill [Mr Crookall]. Clause 1 states the short title. Clause 2 amends the Town and Country Planning Act 1999 by inserting section 14A which enables the Department of Infrastructure to refer a decision on placing a building on the Protected Buildings Register to the Council of Ministers. [Keys 1<sup>st</sup> Reading 24 May 2011 - Fell on the dissolution of the House of Keys]

## APPOINTED DAY ORDERS

### ANTI-TERRORISM AND CRIME (AMENDMENT) ACT 2011 (APPOINTED DAY) ORDER 2011

[SD 515/11 : Issuing Authority - DHA]

The Order brought the whole Act except section 16 {interviewing of terrorist suspects} into operation on 13 July 2011.

### CIVIL PARTNERSHIP ACT 2011 (APPOINTED DAY) (No.1) ORDER 2011

[SD 151/11 : Issuing Authority - Treasury]

The Order brought the Act into operation on 15 March 2011 for the making of secondary legislation and 6 April 2011 for all other purposes. Except that the following provisions not operative - [1] section 7(1)(b) to (d) and (2) to (6) {alternative venues} and [2] Schedule 14 consequential amendments to other Acts that are themselves not yet operative\* and paragraphs 66 to 70 which amend the Marriage Act 1984 and interact with amendments made by the Marriage and Civil Registration (Amendment) Act 2011.

\*[Schedule 14 - paragraphs 112 Residence Act 2001, 121 Disability Discrimination Act 2006 and 125 Endangered Species Act 2010.]

### CIVIL PARTNERSHIP ACT 2011 (APPOINTED DAY) (No.2) ORDER 2011

[SD 346/11 : Issuing Authority - Treasury]

The Order brought the remaining provisions of section 7 fully into operation on 1 August 2011 [operative for applications 1 July 2011]. Also Schedule 14 paragraphs 66, 67 and 70 operative 17 May 2011 and paragraph 68 and 69 operative 1 July 2011.

[See also:

SD 347/11 - Civil Partnership Act 2011 (Amendment) Order 2011

Amends section 7 so as to assimilate the treatment of civil partnership registration, so far as is possible, to that for a ceremony of marriage where the marriage is not in accordance with the rites of the Church of England.

SD 342/11 - Civil Partnership (Fees) (No.2) Order 2011 *{operative 1 July 2011}*

SD 344/11 - Marriage and Civil Partnership (Appeals about Venue) Fees Order 2011  
*{operative 1 July 2011}*

SD 260/11 - Miscellaneous Pension Schemes (Amendment) Scheme 2011 *{operative 12 July 2011}* [Pension Schemes managed by the Civil Service Commission]

SD 159/11 - Registration of Civil Partnerships Regulations 2011 *{Clerk of the Rolls}*

[Amended by SD 555/11 - minor amendment prescribed forms for entries in marriage register]

SD214/11 - Rules of the High Court (Civil Partnership) 2011

SD 213/11 - Summary Jurisdiction (Civil Partnership) Rules 2011

SD 557/11 - Summary Jurisdiction (Civil Partnership) (Amendment) Rules 2011 *{operative 1 July 2011}* [consequent on SD347/11 above - appeals to the High Bailiff]

GC 26/11 - Guidance for Chief Registrar on the approval or consent to venues - issued by the Clerk of the Rolls under ss 19(3) and 55 Marriage Act 1984 and s 7(3) and (9) Civil Partnership Act 2011]

ENDANGERED SPECIES ACT 2010 (APPOINTED DAY) ORDER 2011

[SD 390/11 : Issuing Authority - DEFA]

The Order brought the Act into operation as it applied to the Wildlife Committee on 8 July 2011 [ss 1, 3, 41 (in pt) and 42, Schedules 1, 3 (paras 1 & 2) 4 (paras 1, 2 & 4) and 5 entry for s 24(1) Wildlife Act 1990] and otherwise on 1 January 2012.

INCORPORATED CELL COMPANIES ACT 2010 (APPOINTED DAY) ORDER 2011

[SD 233/11 : Issuing Authority - Treasury]

The Order brought the whole Act into operation on 1 June 2011.

[See also:

SD 228/11 - Incorporated Cell Companies Act 2010 (Transfer of Functions) Order 2011

[Commencement : 02/06/11 : Issuing Authority - CSO]

The Order transferred the functions under the Act to the Department of Economic Development.

SD 387/11 - Incorporated Cells Regulations 2011

[Commencement : 22/06/11 : Issuing Authority - Treasury]

The Regulations made further provision for incorporated cells under the 2010 Act.

SD 362/11 - Incorporated Cell Companies (Fees) Regulations 2011

[Commencement : 01/07/11 : Issuing Authority - Treasury]

SD 374/11 - Insurance (Incorporated Cell Companies) Regulations 2011

[Commencement : Same date as SD 387/11/22/06/11 : Issuing Authority - IPA].

MARRIAGE AND CIVIL REGISTRATION (AMENDMENT) ACT 2011 (APPOINTED DAY) (No.1) ORDER 2011

[SD 345/11 : Issuing Authority - Treasury]

The Order brought the Act into operation for all purposes except for certain amendments and repeals of the Adoption Act 1984 [Schedule 3 paras 3(b) and 4 and Schedule 5 repeal in part of Schedule 2 para 2(3)] on 1 August 2011. For the situation 17 May 2011 to 31 July 2011 and for transitional provisions between those dates see the Order.

[See also: {operative 1 July 2011}

SD 344/11- Marriage and Civil Partnership (Appeals about Venue) Fees Order 2011

SD 343/11- Marriage (Fees) Regulations 2011

SD 554/11- Registration of Marriages Regulations 2011

The Regulations made by the First Deemster provide forms for the registration of marriages and deal with the completion of the register and correction of errors in such register.

SD 556/11- Summary Jurisdiction (Matrimonial Proceedings) (Amendment) Rules 2011

*[venue appeals]*

GC 26/11 - Guidance for Chief Registrar on the approval or consent to venues - issued by the Clerk of the Rolls under ss 19(3) and 55 Marriage Act 1984 and s 7(3) and (9) Civil Partnership Act 2011]

PROHIBITION OF FEMALE GENITAL MUTILATION ACT 2010 (APPOINTED DAY) ORDER 2011

[SD 339/11 : Issuing Authority - CoM]

The Order brought the whole Act into operation on 1 July 2011.

## ACTS OF TYNWALD

### TABLE I

#### Acts or parts of Acts operative January 2011 - July 2011

Anti-Terrorism and Crime (Amendment) Act 2011(c.6)

Whole Act operative 13 July 2011 except s 16.

[See SD 515/11]

Civil Partnership Act 2011 (c.2)

Whole Act operative 6 April 2011 except s 7(1)(b) and (c) and (2) to (6) and Sch 14 certain consequential amendments.

Remaining provisions of s 7 fully operative 1 August 2011 [applications 1 July 2011].

Schedule 14 paras 66, 67 and 70 operative 17 May 2011 and para 68 and 69 operative 1 July 2011.

[See SD151/11 and SD346/11]

Criminal Justice Acts Amendment Act 2011 (c.7)

Whole Act operative on passing 12 July 2011.

Criminal Justice (Witness Anonymity) Act 2011 (c.1)

Whole Act operative on passing 18 January 2011.

Endangered Species Act 2010 (c.7)

Sections 1, 3, 41(in pt) and 42, Schedules 1, 3 (paras 1 & 2) 4 (paras 1, 2 & 4) and 5 entry for s 24(1) Wildlife Act 1990 operative 8 July 2011 and remaining provisions 1 January 2012.

[See SD 390/11]

Incorporated Cell Companies Act 2010 (c.13)

Whole Act operative 1 June 2011.

[See SD 233/11]

Marriage and Civil Registration (Amendment) Act 2011 (c.3)

Whole Act operative except for certain amendments of the Adoption Act 1984 on 1 August 2011. *[For the situation 17 May 2011 to 31 July 2011 and for transitional provisions between those dates see the Order.]*

[See SD 345/11]

Prohibition of Female Genital Mutilation Act 2010 (c.2)

Whole Act operative 1 July 2011.

[See SD 339/11]

Sewerage (Amendment) Act 2011 (c.5)

Whole Act operative on passing 12 July 2011.

### TABLE II

#### Acts passed January 2011 - July 2011 but not wholly operative

Anti-Terrorism and Crime (Amendment) Act 2011(c.6)

Section 16 [interviewing of terrorist suspects]

Children and Young Persons (Amendment) Act 2011 (c.4)

Civil Partnership Act 2011 (c.2)

Schedule 14 - paragraphs 112 Residence Act 2001, 121 Disability Discrimination Act 2006 and 125 Endangered Species Act 2010.

Marriage and Civil Registration (Amendment) Act 2011 (c.3)

Schedule 3 paras 3(b) and 4 and Schedule 5 repeal in part of Schedule 2 para 2(3) amendments Adoption Act 1984.

### **TABLE III**

#### **Acts passed before January 2011 but not wholly operative 31 July 2011**

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)

Section 9 not operative.

[See S.D.836/01 and 225/10]

Civil Service (Amendment) Act 2007 (c.2)

Section 4 not operative [membership of departments and statutory boards].

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 not operative.

[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 and 31.

[See S.D.317/01, 367/01, 595/01, 596/01, 734/01, 27/04, 155/05, 92/05 and 450/09]

Criminal Justice, Police and Courts Act 2007 (c.3)  
Section 24 [confiscation of uninsured vehicles] not operative.  
*[s.24 prospectively repealed Road Traffic and Highways (Miscellaneous Amendments) Bill 2011]*  
[See S.D.723/0, 974/07 & 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 except Schedule 5 para. 2.  
*[name Tynwald Advisory Council for Disabilities]*  
[See S.D.116/09]

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

Fair Trading (Amendment) Act 2001 (c.26)  
Sections 4 to 7 and Schedule 1 not operative.  
[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, Schs. 5, 6 & 8. Sch. 5 paras. 1(b), 2(c) and 3(c). Sch. 6 Part I. Sch. 8. para 8. Sch. 10 in rel. to Factories & Workshops Act 1909 s.35(b); Fire Escapes Act 1950.  
[See GC38/76, GC248/82 & S.D.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 6 to 11.  
[See S.D.555/07, SD604/08 and Gambling Supervision Act 2010 Sch 5 partial rep of Sch 2.]

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

Harbours Act 2010 (c.9)  
Whole Act operative except Part 5 and Schedule 2 (restrictions on alcohol and drugs)  
1 August 2011  
[See S.D.646/11]

Housing (Multi-Occupancy) Act 2005 (c.4)  
*[Whole Act prospectively repealed Housing (Miscellaneous Provisions) Bill 2010]*  
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.

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 Act 2008 (c.16)  
Section 25(3)(d)(i) operative 01/12/08 subject to Art 5(1) S.D.922/08.  
[See S.D.422/10]

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]

Lloyds TSB Offshore Limited Banking Business Act 2010 (c.4)  
Operative on passing 16/3/10 but ADO required to be published in a local newspaper as a public notice regarding the date for the purpose of the transfer of the undertakings.

Local Government Act 2006 (c.18)  
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.

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

Retirement Benefits Schemes Act 2000 (c.14)  
Sections 7 to 10, 13, 14 and 39 not operative.  
[See S.D.588/04]

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

Road Traffic (Amendment) Act 2001 (c.32)  
Not operative sections 16, 19, 26, 28, 30. Sch. 3 Highways Act 1986 am. of ss. 55(1).  
[See S.D.683/01, 359/02, 834/02, 205/05 and 137/10]

Road Traffic (Amendment) Act 2006 (c.24)  
Not operative sections 5, 9 and 10.  
*[s.10 prospectively rep Road Traffic and Highways (Miscellaneous Amendments) Bill 2011]*  
[See S.D.241/07, 242/07, 244/07, 533/07,708/08 and 156/10]

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**

### **January 2011**

#### **CINEMATOGRAPH LICENCES**

SD 963/10 - Cinematograph (Licence Fees) (No.2) Order 2010

### **February 2011**

#### **CUSTOMS & EXCISE**

SD 1052/10 - Tobacco Products Duty Act 1986 (Amendment) Order 2010

#### **TAXATION**

SD 25/11 - Income Tax (Personal Allowance Credit) (Amendment) Regulations 2011

SD 27/11 - Income Tax (Reduction of Class 4 Contributions) Order 2011

### **March 2011**

#### **ELECTRICITY**

SD 69/11 - Manx Electricity Authority (Constitution) Order 2011

#### **GAME ACTS**

SD 119/11 - Transfer of Functions (Game Acts) Order 2011

### **April 2011**

#### **RIDING ESTABLISHMENTS**

SD 153/11 - Boarding Breeding and Riding Establishments (Licence Fees) Order 2011

#### **TRAFFIC WARDENS**

SD 171/11 - Transfer of Functions (Traffic Wardens) Order 2011

#### **WILDLIFE**

SD 135/11 - Wildlife Act 1990 (Amendment) Order 2011

### **May 2011**

#### **COMPANIES**

SD 228/11 - Incorporated Cell Companies Act 2010 (Transfer of Functions) Order 2011

#### **CUSTOMS & EXCISE**

SD 185/11 - Customs and Excise Management Act 1986 (Amendment) Order 2011

SD 188/11 - Excise Duties Order 2011

#### **REPRESENTATION OF THE PEOPLE**

SD 297/11 - Election Rules (Amendment) Order 2011

### **June 2011**

#### **CIVIL PARTNERSHIPS**

SD 347/11 - Civil Partnership Act 2011 (Amendment) Order 2011

#### **CUSTOMS & EXCISE**

SD 373/11 - Excise Duties (No.2) Order 2011

#### **GOVERNMENT**

SD 359/11 - Transfer of Functions Order 2011

## July 2011

### **CHARITIES**

SD 437/11 - Charities (Accounts) (Amendment of Amounts) Order 2011

### **GOVERNMENT**

SD 514/11 - Harbours Act 2010 (Transfer of Functions) Order 2011

### **VALUE ADDED TAX**

SD 7/11 - Value Added Tax (Exceptions Relating to Supplies not made to Relevant Business Person) Order 2011

SD 12/11 - Value Added Tax Act 1996 (Amendment) Order 2011

SD 14/11 - Value Added Tax Act 1996 (Amendment) (No.2) Order 2011

SD 45/11 - Value Added Tax (Buildings and Land) Order 2011

SD 189/11-Value Added Tax (Increase of Registration Limits) Order 2011

SD 190/11 -Value Added Tax (Consideration for Fuel Provided for Private Use) Order 2011

### **ECCLESIASTICAL**

SD 624/11 - Church Offices Measure (Isle of Man) 2011

[Paragraph 5 amends the Church Act 1895]

### **UK STATUTORY INSTRUMENTAMENDING AN ACT OF TYNWALD**

S.I. 2011 No. 749 - Terrorist Asset-Freezing etc. Act 2010 (Isle of Man) Order 2011

see the Schedule para 29(g) which repeals s 24(1)(a) of the Terrorism (Finance) Act 2009 (of Tynwald).

### **GAME ACT 1927 – Modification**

SD 262/11 - Game Act 1927 (Modification) Order 2011 [May Tynwald]

Sections 3 and 4 of the Act modified as regards night shooting of rabbits.

## **PART II**

### **SUBORDINATE LEGISLATION**

*[Individual items appear once only in either list A or B]  
{Please note that “International Sanctions” and “International Taxation Agreements” are listed separately in Part V and Part VI respectively}*

#### **LIST A**

##### **SUBORDINATE LEGISLATION WITH EXPLANATORY TEXT**

*[Listed alphabetically by name under subject headings]*

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

#### **JANUARY 2011**

##### **COURTS**

##### **CRIMINAL JURISDICTION (EVIDENCE BY LIVE LINK OR VIDEO RECORDING) RULES 2010**

[SD 1023/10 : Commencement : 01/02/11 : Issuing Authority - Deemsters]

These Rules concern the procedure in the Court of General Gaol Delivery when a witness uses a live television link or when a video recording of a witness account is admitted as evidence in chief.

##### **SUMMARY JURISDICTION (EVIDENCE BY LIVE LINK OR VIDEO RECORDING) RULES 2010**

[SD 1024/10 : Commencement : 01/02/11 : Issuing Authority - Clerk of the Rolls]

The Rules concern the procedure in courts of summary jurisdiction when a witness uses a live television link or a video recording of a witness account is admitted as evidence in chief.

##### **REPRESENTATION OF THE PEOPLE**

##### **ELECTION RULES (AMENDMENT) ORDER 2010**

[SD 1082/10 : Commencement : 25/01/11 : Issuing Authority - CSO]

Rules amended on the computation of time and a 3cm border set for the ballot paper. See also SD 542/11 - Representation of the People (Amendment) (No.2) Regulations 2011 which amended election forms in consequence of the above.

##### **REPRESENTATION OF THE PEOPLE (AMENDMENT) REGULATIONS 2010**

[SD 1081/10 : Commencement : 25/01/11 : Issuing Authority - CSO]

The Regulations amend the application process for absentee and proxy voters.

#### **FEBRUARY 2011**

##### **SOCIAL SECURITY**

##### **SOCIAL SECURITY ADMINISTRATION ACT 1992 (APPLICATION) (AMENDMENT) (No.2) ORDER 2010**

[SD 1069/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

**SOCIAL SECURITY LEGISLATION (BENEFITS) (APPLICATION) (AMENDMENT)  
(No.5) ORDER 2010**

[SD 1070/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

**SOCIAL SECURITY ACT 1998 (APPLICATION) (AMENDMENT) (No.3) ORDER 2010**

[SD 1071/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

The first two Orders allow deductions from benefits to cover the cost of certain rents, loans and accommodation owned to the Department of Social Care. The final Order concerns appeals against such deductions.

**MARCH 2011**

**GAME ACTS**

**TRANSFER OF FUNCTIONS (GAME ACTS) ORDER 2011**

[SD 119/11 : Commencement : 01/04/11 : Issuing Authority - CSO]

The Order transferred the licensing of game and game dealing to the Department of Environment, Food and Agriculture instead of the Treasury.

**INSURANCE**

**INSURANCE (LIMITED PARTNERSHIPS) (SOLVENCY) (AMENDMENT)  
REGULATIONS 2011**

[SD 18/11 : Commencement : 01/02/11 : Issuing Authority - IPA]

The Regulations permit limited partnerships to make loans to their associates that are fully admissible for calculating their minimum margins of solvency.

**SOCIAL SECURITY**

**SOCIAL SECURITY LEGISLATION (BENEFITS) (APPLICATION) ORDER 2011**

[SD 74/11 : Commencement : 11/04/11 : Issuing Authority - DSC]

Amongst other things, the Order provided for when decisions take effect when made on the basis of an anticipated coming into force of legislation.

**APRIL 2011**

**LICENSING**

**LICENSING (AMENDMENT) REGULATIONS 2011**

[SD 160/11 : Commencement : 01/05/11 : Issuing Authority - DHA]

The Regulations amend the conditions for charitable and occasional function licences.

**TRAFFIC WARDENS**

**TRANSFER OF FUNCTIONS (TRAFFIC WARDENS) ORDER 2011**

[SD 171/11 : Commencement : 01/05/11 : Issuing Authority - CSO]

The Order transferred the power to appoint and employ traffic wardens to the Department of Infrastructure.

## **MAY 2011**

### **GAME ACTS**

#### **GAME ACTS 1927 (MODIFICATION) ORDER 2011**

[SD 262/11 : Commencement : 01/06/11 : Issuing Authority - DFA]

The Order modified sections 3 and 4 Game Act 1927 as regards the night shooting of rabbits.

## **JUNE 2011**

### **CHILD CUSTODY**

#### **CHILD ABDUCTION AND CUSTODY (PARTIES TO CONVENTION) ORDER 2011**

[SD 360/11 : Commencement 01/07/11 : Issuing Authority - CoM]

The Order specified the Contracting States and their territories to which the following Conventions extend for the purposes of the Child Custody Act 1987: the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. Also specified are the dates from which the Conventions apply between the Isle of Man and the Contracting States and their territories.

### **GOVERNMENT**

#### **TRANSFER OF FUNCTIONS ORDER 2011**

[SD 359/11 : Commencement : 01/07/11 : Issuing Authority - CSO]

The Order made further provision on the dissolution of the Department of Health and Social Security, on the formation of the Department of Infrastructure and in connection with civil partnerships and endangered species.

### **FINANCIAL SERVICES**

#### **COLLECTIVE INVESTMENT SCHEMES (EXPERIENCED INVESTOR FUND) (AMENDMENT) REGULATIONS 2011**

[SD 355/11 : Commencement 01/07/11 : Issuing Authority - FSC]

The Regulations clarified the requirements for closed experienced investor funds a type of international collective investment scheme.

#### **COLLECTIVE INVESTMENT SCHEMES (REGONISED SCHEMES) (IRELAND) ORDER 2011**

[SD 358/11 : Commencement 01/07/11 : Issuing Authority - FSC]

#### **COLLECTIVE INVESTMENT SCHEMES (REGONISED SCHEMES) (LUXEMBOURG) ORDER 2011**

[SD 357/11 : Commencement 01/07/11 : Issuing Authority - FSC]

The Orders designated the Republic of Ireland and Luxembourg respectively under para 1(1) Schedule 4 Collective Investment Schemes Act 2008 in respect of collective investment schemes authorised as UCITS by respectively the Central Bank of Ireland and the CSSF.

**COLLECTIVE INVESTMENT SCHEMES (REGONISED SCHEMES) (OFFERING DOCUMENTS) REGULATIONS 2011**

[SD 356/11 : Commencement 01/07/11 : Issuing Authority - FSC]

The Regulations set out the requirements for offering documents of recognised schemes.

**SUPERANNUATION**

**ISLE OF MAN GOVERNMENT UNIFIED SCHEME 2011**

[SD 389/11 : Commencement paras 1 & 2: 21/06/11 : Issuing Authority - CSO]

The Scheme amalgamates public service pension schemes into a single scheme. See Council of Ministers' report and response to the consultation on an Isle of Man Government Unified Pension Scheme [GD26/11].

**JULY 2011**

**ECCLESIASTICAL**

**CHURCH OFFICES MEASURE (ISLE OF MAN) 2011**

[SD 624/11 : Commencement : 01/08/11 & 15/10/11 : Issuing Authority - Lord Bishop]

The Order extended certain provisions of the Dioceses, Pastoral and Mission Measure 2007, Church of England (Miscellaneous Provisions) Measure 2010, Vacancies in Suffragan Sees and other Ecclesiastical Offices Measure 2010 and Crown Benefices (Parish Representatives) Measure 2010. The Order also preserved the office of the diocesan registrar and amended the Church Act 1895 in respect of the constitution of the cathedral chapter. Paragraph 7 (relinquishment of holy orders) not operative see SD 625/11 - Church Offices Measure (Isle of Man) 2011 (Appointed Day) (No.1) Order 2011.

**IMMIGRATION**

**IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 (DUTY TO SHARE INFORMATION) ORDER 2011**

[SD 561/11 : Commencement :29/06/11 : Issuing Authority - Lieutenant Governor/Treasury]

The Order provided for the sharing of information between the Lieutenant Governor, the Chief Constable and the Treasury.

**IMMIGRATION AND POLICE (PASSENGER, CREW AND SERVICE INFORMATION) ORDER 2011**

[SD 563/11 : Commencement : 29/06/11 : Issuing Authority - Lieutenant Governor]

The Order allowed for the collection of data in respect of passengers, crew and air and sea services entering and leaving the Island and for the powers of immigration officers and constables. See also SD 562/11 - Immigration (Form and Manner of Passenger Information) Direction 2011: electronic information to be compatible with the technology of the recipient.

**VALUE ADDED TAX**

**RULES OF THE HIGH COURT OF JUSTICE (AMENDMENT) 2011**

[SD 549/11 : Commencement : 01/07/11 : Issuing Authority - the Deemsters]

The Rules provide that leave to appeal is required for decisions from the VAT and Duties Tribunal. See ss 83, 84 and 89 Value Added Tax Act 1996 and SD 548/11 VAT and Duties Tribunal Rules 2011.

## **LIST B**

### **SUBORDINATE LEGISLATION WITHOUT EXPLANATORY TEXT**

*[Listed alphabetically by name]*

#### **JANUARY 2011**

Cinematograph (Licence Fees) (No.2) Order 2010

[SD 963/10 : Commencement : 01/02/11 : Issuing Authority - Treasury]

Immigration and Nationality (Fees) Order 2010

[SD 940/10 : Commencement : 02/12/10 : Issuing Authority - CSO]

Immigration and Nationality (Fees) (No.2) Regulations 2010

[SD 941/10 : Commencement : 20/12/10 : Issuing Authority - CSO]

Income Tax (Disclosure of Information) (Enforcing Authority) Order 2010

[SD1030/10 : Commencement : 21/01/11 : Issuing Authority - Treasury]

*[Dept of Education & Children/Dept of Home Affairs]*

Licensing Fees and Duties (No.2) Order 2010

[SD 964/10 : Commencement : 01/02/11 : Issuing Authority - Treasury]

Music and Dancing Fees and Duties (No.2) Order 2010

[SD 965/10 : Commencement : 01/02/11 : Issuing Authority - Treasury]

Tobacco Products (Description of Products) (Amendment) Order 2010

[SD 1032/10 : Commencement : 01/01/11 : Issuing Authority - Treasury]

Vehicle Duty (No.2) Order 2010

[SD 1037/10 : Commencement : 01/4/11 : Issuing Authority - DI]

#### **FEBRUARY 2011**

Architects (Amendment) Regulations 2011

[SD 1/11 : Commencement : 01/04/11 : Issuing Authority - IOMOFT]

*[fees]*

Building (Fees) Regulations 2011

[SD 22/11 : Commencement : 01/04/11 : Issuing Authority - DOI]

Custody (Designation of Institutions) Order 2010

[SD 1059/10 : Commencement : 01/01/11 & 01/02/11 : Issuing Authority - DHA]

*[secure care home White Hoe/Jurby Prison]*

Disability Working Allowance (General) (Amendment) Regulations 2010

[SD 1077/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Estate Agents (Amendment) Rules 2011  
[SD 2/11 : Commencement : 01/04/11 : Issuing Authority - IOMOFT]  
*[fees]*

Family Income Supplement (General) (Amendment) Regulations 2010  
[SD 1076/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Forestry (General) Byelaws (Amendment) Byelaws 2011  
[SD 20/11 : Commencement : 01/03/11 : Issuing Authority - DEFA]  
*[dogs]*

Hydrocarbon Oil Duties (Marine Voyages Reliefs) (Amendment) Regulations 2010  
[SD 1036/10 : Commencement : 01/01/11 : Issuing Authority - Treasury]

Immigration (Designation of Travel Bans) Order 2011  
[SD 4/11 : Commencement : 01/03/11 : Issuing Authority - CoM]

Income Support (General) (Isle of Man) (Amendment) (No.4) Regulations 2010  
[SD 1075/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Income Tax (Deductions) (Prescribed Cases) (Amendment) Order 2011  
[SD 24/11 : Commencement : 06/04/11 : Issuing Authority - Treasury]  
*[loan interest/educational covenants]*

Income Tax (Personal Allowance Credit) (Amendment) Regulations 2011  
[SD 25/11 : Commencement : 06/04/11 : Issuing Authority - Treasury]

Income Tax (Reduction of Class 4 Contributions) Order 2011  
[SD 27/11 : Commencement : 18/02/11 : Issuing Authority - Treasury]

National Health Service (Overseas Visitors) Regulations 2011  
[SD 44/11 : Commencement : 01/03/11 : Issuing Authority - DOH]

Pension Schemes Legislation (Application) (No.3) Order 2010  
[SD 1078/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Pension Schemes Legislation (Application) (Amendment) (No.2) Order 2010  
[SD 1079/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Proceeds of Crime (Money Laundering) (Amendment) Code 2010  
[SD 1034/10 : Commencement : 01/03/11 : Issuing Authority - DHA]  
*[Argentina]*

Proceeds of Crime (Money Laundering - Online Gambling) (Amendment) Code 2010  
[SD 1035/10 : Commencement : 01/03/11 : Issuing Authority - DHA]  
*[Argentina]*

Road Vehicles (Construction and Use) (Amendment) Regulations 2011  
[SD 28/11 : Commencement : 01/04/11 : Issuing Authority - DoI]

Social Security Legislation (Benefits) (Application) (No.6) Order 2010  
[SD 1073/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Social Security Legislation (Benefits) (Application) (Amendment) (No.6) Order 2010  
[SD 1074/10 : Commencement : 01/03/11 : Issuing Authority - DSC]

Social Security Legislation (Contributions) (Application) (Amendment) Order 2011  
[SD 26/11 : Commencement : 06/04/11 : Issuing Authority - Treasury]

Social Security Legislation (Credits) (Application) (Amendment) Order 2010  
[SD 1072/10 : Commencement : 01/03/11 : Issuing Authority - DSC]  
*[credits whilst receiving maternity allowance]*

Tobacco Products Duty Act 1986 (Amendment) Order 2010  
[SD 1052/10 : Deemed Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax Act 1996 (Amendment) Order 2011  
[SD 12/11 : Deemed Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax (Amendment) Regulations 2011  
[SD 13/11 : Deemed Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax (Buildings and Land) Order 2011  
[SD 45/11 : Commencement : 01/03/11 : Issuing Authority - Treasury]

Value Added Tax (Exceptions Relating to Supplies not made to Relevant Business Person)  
Order 2011  
[SD 7/11 : Deemed Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax (Gas Electricity Heat and Cooling) Order 2011  
[SD 6/11 : Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax (Payments on Account) (No.2) (Amendment) Order 2011  
[SD 21/11 : Commencement : 01/12/11 & 1/6/11 : Issuing Authority - Treasury]

Value Added Tax (Place of Supply of Goods) (Amendment) Order 2011  
[SD 5/11 : Commencement : 01/01/11 : Issuing Authority - Treasury]

Value Added Tax (Variation of Rate) Order 2010  
[SD 1060/10 : Commencement : 01/01/11 : Issuing Authority - Treasury]  
*[5% rate for certain types of building work]*

### **MARCH 2011**

Collective Investment Schemes (Fees) Order 2011  
[SD 89/11 : Commencement : 01/4/11 : Issuing Authority - FSC]

Depositors Compensation Scheme (Amendment) Regulations 2011  
[SD 104/11 : Commencement : 01/4/11 : Issuing Authority - Treasury]  
*[exemption RBS Coutts (Manx) Ltd]*

Financial Services (Fees) Order 2011  
[SD 88/11 : Commencement : 01/4/11 : Issuing Authority - FSC]

Harbour Dues (Fishing Vessels, Work Boats and Construction Barges) Regulations 2011

[SD 96/11 : Commencement : 01/4/11 : Issuing Authority - DTI]

Harbour Dues (Merchant Vessels) Regulations 2011

[SD 95/11 : Commencement : 01/4/11 : Issuing Authority - DTI]

Harbour Dues (Pleasure Vessels, House Boats, Large Commercial Yachts and Tall Ships) Regulations 2011

[SD 97/11 : Commencement : 01/4/11 : Issuing Authority - DTI]

Income Support (General) (Isle of Man) (Amendment) Regulations 2011

[SD 73/11 : Commencement : 11/04/11 : Issuing Authority - DSC]

Manx Electricity Authority (Constitution) Order 2011

[SD 69/11 : Commencement : 01/04/11 : Issuing Authority - CSO]

Maternity and Funeral Expenses (General) (Isle of Man) (Amendment) Regulations 2011

[SD 76/11 : Commencement : 01/04/11 : Issuing Authority - DSC]

[See also SD 77/11 - Social Security Legislation (Benefits) (Application) (Amendment) (No.2) Order 2011]

Merchant Shipping (Fees) Regulations 2011

[SD 68/11 : Commencement : 01/4/11 : Issuing Authority - DED]

Motor Cars (Driving Instructors) (Amendment) Regulations 2011

[SD 102/11 : Commencement : 01/4/11 : Issuing Authority - DTI]

*[driving instructors expanded theory test]*

Motor Cars (Driving Instructors) (Fees) Regulations 2011

[SD 103/11 : Commencement : 01/4/11 : Issuing Authority - DTI]

Nursing Care Contribution Scheme (Amendment) Order 2011

[SD 78/11 : Commencement : 01/04/11 : Issuing Authority - DSC]

Pension Schemes and Social Security (Benefits) Legislation (Application) (Amendment) Order 2011

[SD 79/11 : Commencement : 01/04/11 : Issuing Authority - DSC]

Social Security Benefits Up-rating Order 2011

[SD 72/11 : Commencement : 11/04/11 : Issuing Authority - DSC]

Social Security Legislation (Benefits) (Application) (Amendment) Order 2011

[SD 75/11 : Commencement : 11/04/11 : Issuing Authority - DSC]

*[hardship payments]*

Sulby Claddagh (Amendment) Byelaws 2011

[SD 92/11 : Commencement : 01/04/11 : Issuing Authority - DEFA]

Town and Country Planning (Fees for Applications) Order 2011

[SD 23/11 : Commencement : 11/04/11 : Issuing Authority - DTI]

Value Added Tax Act 1996 (Amendment) (No.2) Order 2011  
[SD 14/11 : Deemed Commencement : 15/03/11 : Issuing Authority - Treasury]  
*[non-business use of business assets]*

Value Added Tax (Amendment) (No.2) Regulations 2011  
[SD 118/11 : Commencement : 02/03/11 : Issuing Authority - Treasury]  
*[input tax capital items]*

#### **APRIL 2011**

Boarding Breeding and Riding Establishments (Licence Fees) Order 2011  
[SD 153/11 : Commencement : 01/05/11 : Issuing Authority - DEFA]

Civil Aviation (Charges) Scheme 2011  
[SD 129/11 : Commencement : 01/05/11 : Issuing Authority - DED]

Control of Employment (Amendment) Regulations 2011  
[SD 154/11 : Commencement : 18/04/11 : Issuing Authority - DED]  
*[civil partnerships]*

Teachers Superannuation Order 2011  
[SD 134/11 : Commencement : See Order : Issuing Authority - DEC]

Wildlife Act 1990 (Amendment) Order 2011  
[SD 135/11 : Commencement : 01/04/11 : Issuing Authority - DEFA]

#### **MAY 2011**

Customs and Excise Acts (Application) Order 2011  
[SD 186/11 : Deemed Commencement : 01/04/11 : Issuing Authority - Treasury]  
*[harmonised regime]*

Customs and Excise Management Act 1986 (Amendment) Order 2011  
[SD 185/11 : Deemed Commencement : 01/04/11 : Issuing Authority - Treasury]  
*[harmonised regime]*

Election Rules (Amendment) Order 2011  
[SD 297/11 : Commencement : 24/05/11 : Issuing Authority – CSO]  
*[timetable for delivery of nomination papers]*

Excise Duties Order 2011  
[SD 188/11 : Deemed Commencement : 23/28/03/11 : Issuing Authority - Treasury]

Immigration and Nationality (Fees) Regulations 2011  
[SD 274/11 : Commencement : 01/06/11 : Issuing Authority - CSO]

Motor Bicycles (Approved Training Courses for Drivers) (Amendment) Regulations 2011  
[SD 166/11 : Commencement : 01/06/11 : Issuing Authority - DoI]

Motor Bicycles (Approved Training Courses for Drivers) (Fees) Order 2011  
[SD 167/11 : Commencement : 01/06/11 : Issuing Authority - DoI]

Registration of Electors (Amendment) Regulations 2011  
[SD 298/11 : Commencement : 24/05/11 : Issuing Authority - CoM]  
*[Board of Education references]*

Representation of the People (Amendment) Regulations 2011  
[SD 296/11 : Commencement : 24/05/11 : Issuing Authority - CSO]  
*[forms]*

Value Added Tax (Consideration for Fuel Provided for Private Use) Order 2011  
[SD 190/11 : Commencement : 01/05/11 : Issuing Authority - Treasury]

Value Added Tax (Increase of Registration Limits) Order 2011  
[SD 189/11 : Commencement : 01/04/11 : Issuing Authority - Treasury]

Value Added Tax (Input Tax) (Amendment) Order 2011  
[SD 259/11 : Commencement : 01/05/11 : Issuing Authority - Treasury]  
*[business entertainment overseas customer]*

### **JUNE 2011**

Excise Duties (No.2) Order 2011  
[SD 373/11 : Deemed Commencement : 23/03/11 : Issuing Authority - Treasury]

Export Control (Amendment) (No.3) Order 2011 (Application) Order 2011  
[SD 299/11 : Deemed Commencement : 28/04/11 : Issuing Authority - Treasury]

Maternity and Funeral Expenses (General) (Isle of Man) (Amendment) (No.2) Regulations 2011  
[SD 246/11 : Commencement : 01/07/11 : Issuing Authority - DSC]  
*[maternity payment]*

Motor Vehicles (Speed Limits) (Amendment) Regulations 2011  
[SD 421/11 : Commencement : 01/06/11 : Issuing Authority - DoI]

Payment of Members' Expenses (Designation of Consultative Body) Order 2011  
[SD 423/11 : Commencement : 02/06/11 : Issuing Authority - CSO]  
*[Standing Committee of Tynwald on Emoluments]*

Pension Schemes Legislation (Application) Order 2011  
[SD 249/11 : Commencement : 01/07/11 : Issuing Authority - DSC]  
*[private pensions]*

Plant Health Order 2011  
[SD 385/11 : Commencement : 01/08/11 : Issuing Authority - DEFA]

Sea-Fisheries (Three-Mile Area) (Lobster and Crab) Bye-Laws 2911  
[SD 384/11 : Commencement : 01/06/11 & 01/19/11 : Issuing Authority - DEFA]

Social Security Legislation (Benefits) (Application) (No.2) Order 2011  
[SD 267/11 : Commencement : 01/07/11 : Issuing Authority - DSC]  
*[revaluation of earnings/state second pension]*

Social Security Legislation (Benefits) (Application) (Amendment) (No.3) Order 2011  
[SD 247/11 : Commencement : 01/07/11 : Issuing Authority - DSC]  
*[maternity payment]*

Social Security Legislation (Credits) (Application) Order 2011  
[SD 248/11 : Commencement : 01/07/11 : Issuing Authority - DSC]  
*[starter contribution credits discontinued/child care credits]*

Value Added Tax (Amendment) (No.3) Order 2011  
[SD 268/11 : Commencement : 16/05/11 : Issuing Authority - Treasury]  
*[registration]*

### **JULY 2011**

Casino Regulations 2011  
[SD 388/11 : Commencement : 01/08/11 : Issuing Authority - Isle of Man Gambling  
Supervision Commission]

Chapman's Licence Fee Order 2011  
[SD 70/11 : Commencement : 01/08/11 : Issuing Authority - IOM Office of Fair Trading]

Charities (Accounts) (Amendment of Amounts) Order 2011  
[SD 437/11 : Commencement : 01/08/11 : Issuing Authority - Treasury]

Data Protection (Fees) Regulations 2011  
[SD 426/11 : Commencement : 01/10/11 : Issuing Authority - Treasury]

Firearms (Amendment) Rules 2011  
[SD 496/11 : Commencement : 01/08/11 : Issuing Authority - DHA]  
*[temporary permits]*

Gaming, Betting and Lotteries (Society Lottery Advertisements) Regulations 2011  
[SD 354/11 : Commencement : 20/07/11 : Issuing Authority - IOM Gambling Supervision  
Commission]

Harbours Act 2010 (Transfer of Functions) Order 2011  
[SD 514/11 : Commencement : 01/08/11 : Issuing Authority - CSO]

Long or Heavy Vehicles (Designated Roads) Order 2011  
[SD 560/11 : Commencement : 01/11/11 : Issuing Authority - DOI]

Moneylenders (Registration Fees) Order 2011  
[SD 538/11 : Commencement : 01/08/11 : Issuing Authority - Isle of Man Office of Fair  
Trading]

Non-Resident Traders Licence Fees Regulations 2011  
[SD 58/11 : Commencement : 01/08/11 : Issuing Authority - Isle of Man Office of Fair  
Trading]

Online Gambling Regulations (Amendment) (Network Services) Regulations 2011  
[SD 3/11 : Commencement : 20/07/11 & 01/09/11 : Issuing Authority - Treasury]

Prevention of Terrorist Financing Code 2011

[SD 503/11 : Commencement : 01/09/11 : Issuing Authority - DHA]

Prevention of Terrorist Financing (Online Gambling) Code 2011

[SD 492/11 : Commencement : 01/09/11 : Issuing Authority - DHA]

Rules of the High Court (Matrimonial Proceedings) Amendment 2011

[SD 559/11 : Commencement : 01/07/11 : Issuing Authority - the Deemsters]

*[Gender Recognition Act 2009/ grounds for annulment of marriage]*

Social Security Legislation (Benefits) (Application) (No.3) Order 2011

[SD 435/11 : Commencement : 01/08/11 : Issuing Authority - DSC]

*[incapacity benefits - unpaid work on trial basis/ deferral of state pension when claiming income support]*

Social Security Legislation (Benefits) (Application) (No.4) Order 2011

[SD 436/11 : Commencement : 01/08/11 : Issuing Authority - DSC]

*[benefit rates]*

Statement of Changes in Immigration Rules 2011

[SD 518/11 : Commencement : 027/06/11 : Issuing Authority - CoM]

*[Tier 1 category closed]*

Weights and Measures (Testing Fees) Regulations 2011

[SD 59/11 : Commencement : 01/08/11 : Issuing Authority - Isle of Man Office of Fair Trading]

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### **GOVERNMENT CIRCULARS**

Trees and High Hedges Act 2005 - Delegation of Functions Conferred on the Department to Arbory Parish Commissioners 2010

[GC 58/10 - Commencement : 13/12/10 : Issuing Authority - DI]

Historic Buildings Conservation Scheme 2011

[GC 1/11: Commencement : 01/04/11/Terminates 30/11/12 : Issuing Authority - DTI]

Statement of Changes in Immigration Rules

[GC 2/11: Commencement : 28/02/11 : Issuing Authority - CoM : *English language test for partners*]

## **PART III**

### **UK LEGISLATION EXTENDED TO THE ISLAND**

*{List contains only Statutory Instruments that have appeared on the Tynwald Order Paper}*

#### **CONVENTIONS**

##### **GENEVA CONVENTIONS ACTS (ISLE OF MAN) ORDER 2010**

S.I. 2010/2964 - Effective 15/01/11

The Order consolidated the extension of the UK Acts concerning the Geneva Conventions and in particular recognised a new humanitarian symbol the red crystal.

#### **IMMIGRATION**

##### **IMMIGRATION (ISLE OF MAN) (AMENDMENT) ORDER 2011**

S.I. 2011/1408 - Effective 29/06/11

The Order extended sections 31, 32, 34, 36, 37 and 39 (disclosure of information) of the UK Immigration, Asylum and Nationality Act 2006. The Order will ensure all journeys between the Island and the UK are journeys within the e-Border and also made minor amendments following the restructuring of the government and the introduction of the Civil Partnership Act 2011.

#### **PUBLIC HEALTH**

##### **PUBLIC HEALTH (AIRCRAFT AND SHIPS) (ISLE OF MAN) ORDER 2010**

S.I. 2010/2982 - Effective 15/02/11 [Amended by S.I. 2011/1212 - Effective -1/07/11 - substitutes definition of arrival]

The Order applied with modifications the Public Health (Aircraft) Regulations 1979 and the Public Health (Ships) Regulations 1979.

#### **TERRORISM**

##### **TERRORIST ASSET-FREEZING ETC ACT 2010 (ISLE OF MAN) ORDER 2011**

S.I. 2011/749 - Effective 17/03/11

The Order applied with modifications Part 1 (including Part 1 of Schedule 2) of the Terrorist Asset-Freezing etc Act 2010. See SD558/11 Rules of the High Court of Justice (Amendment) (No.2) 2011 - consequential amendments on the application of sections 26 and 27 (court proceedings and appeals) of the above Act [operative 01/07/11].

**PART IV**  
**REPORTS**

Isle of Man Government Annual Report 2011 on the Government Strategic Plan 2007-2011

Council of Ministers - Interim Tynwald Policy Decisions Report October 2010 - April 2011  
[GD27/11]

Functions of the Lieutenant Governor under Acts of Tynwald - Report by the Council of Ministers  
June 2011 [GD34/11]

Legal Aid in Family Matters (Petition for Redress of Grievance) Council of Ministers Report on  
Implementation of the Recommendations contained in the Second Report of the Select Committee of  
Tynwald [GD12/11]

Select Committee of Tynwald on Service Charges and Freehold Property (Petition for Redress of  
Grievance - Report 2010-11 [PP48/11]

Second (Interim) Report of the Select Committee of Tynwald on Kaupthing Singer & Friedlander  
(Isle of Man) Limited [PP165/10]

Select Committee of Tynwald on Kaupthing Singer & Friedlander (Isle of Man) Limited Third (Final)  
Report 2010-2011 [PP113/11]

Standing Committee of Tynwald on Public Accounts - Report on the Annual "Basic Expenditure and  
Activity Review" Process [*the budget*] [PP41/11]

Report on the Establishment of the Corporate Leadership Group of the Isle of Man Civil Service  
2010-2011- Standing Committee of Tynwald on Public Accounts [PP3/11]

Report of the Civil Service Commission to the Chief Minister 1 April 2010 - 31 March  
2011 [GD28/11]

Chief Constable's Annual Report 2010 – 2011 [GD17/11]

Policing Plan 2011-2012 [Department of Home Affairs - GD18/11]

Isle of Man ACMD Advisory Council on the Misuse of Drugs Annual Report April; 2010 - March  
2011 [GD22/11]

Douglas Quayside Development Scheme June 2011 [GD23/11]

Marketing Initiatives Fund Report 1 April 2010 to 31 March 2011 [Treasury - GD19/11]

Standing Committee of Tynwald on Economic Initiatives Second Report 2010 -11 [PP119/11]

Department of Economic Development - Annual Report for 2009/10 under the Enterprise Act 2008  
[GD1/11]

Government Estate in 2010/11 - Report of the Estates Management Forum [Treasury - GR11/11]

Isle of Man Road Transport Licensing Committee - Annual Report 2010 [GD66/10]

Water Rates Increases 2011/12 and Beyond - Water and Sewerage Authority [GD4/11]

Report by the Migration Policy Group [GD65/10]

Criminal Injuries Compensation Scheme Report for 2010/11 [GD16/11]

Surveillance Commissioner Annual Report 2010 [Department of Home Affairs - GD9/11]

Report of the Public Auditors on the Accounts of Local Authorities, Burial Authorities, Elderly Persons' Housing Committees and Joint Boards [GD3/11 - February 2011 - Department of Infrastructure]

Commentary by the Treasury on Report on the Public Audit of Local Authorities, Burial Authorities, Elderly Persons' Housing Committees and Joint Boards [GD5/11]

Select Committee of Tynwald on the Committee System - Report 2010-11 [PP167/10]

Standing Committee of Tynwald on Scrutiny - Annual Report 2010-11 [PP111/11]

Standing Orders Committee of Tynwald - First Report 2010-11 [PP74/11]

Standing Committee of Tynwald on Standards and Members' Interests - First Report 2010-11 [PP73/11]

Standing Committee of Tynwald on Emoluments - First Report 2010-11 [PP76/11]

Tynwald Membership Pension Scheme Management Committee - Report for the Session 2010-2011 Report No 1 [PP24/11]

**PART V**  
**INTERNATIONAL SANCTIONS**  
**JANUARY - JULY 2011**

*{Unless otherwise stated the Issuing Authority was the Council of Ministers}*

Al-Qaida and Taliban Sanctions Regulations 2011  
[SD 121/11[re-issued] : Commencement : 21/2/11]

Belarus Sanctions Regulations 2011  
[SD 137/11 : Commencement : 4/03/11]

Belarus Sanctions (No.2) Regulations 2011  
[SD 255/11 : Commencement : 15/04/11]

Belarus Sanctions (Amendment) (No.3) Regulations 2011  
[SD 494/11 : Commencement : 02/06/11]

Cote d'Ivoire Sanctions (Amendment) Regulations 2011  
[SD 139/11 : Commencement : 04/03/11]

Cote d'Ivoire Sanctions (Freezing of Funds etc) (Amendment) Regulations 2011  
[SD 141/11 am by SD 364/11 : Commencement : 04/03/11]

Cote d'Ivoire Sanctions (Freezing of Funds etc) (Amendment) (No.2) Regulations 2011  
[SD 270/11 : Commencement : 15/04/11]

Egypt Sanctions Regulations 2011  
[SD 232/11 : Commencement : 04/04/11]

European Union (Al-Qaida and Taliban Sanctions) (Application) (Amendment) Order 2011  
[SD 120/11 [re-issued] : Commencement 18/02/11]

European Union (Belarus Sanctions) (Application) (Amendment) Order 2011  
[SD 136/11 : Commencement : 04/03/11]

European Union (Belarus Sanctions) (Application) (Amendment) (No.2) Order 2011  
[SD 254/11 : Commencement : 15/04/11]

European Union (Belarus Sanctions) (Application) (Amendment) (No.3) Order 2011  
[SD 493/11 : Commencement : 02/06/11]

European Union (Cote d'Ivoire Sanctions) (Application) (Amendment) Order 2011  
[SD 138/11 : Commencement : 04/03/11]

European Union (Cote d'Ivoire Sanctions) (Freezing of Funds etc) (Application)  
(Amendment) Order 2011  
[SD 140/11 : Commencement : 04/03/11]

European Union (Cote d'Ivoire Sanctions) (Freezing of Funds etc) (Application) (Amendment) (No.2)  
Order 2011  
[SD 269/11 : Commencement : 15/04/11]

European Union (Cote D'Ivoire Sanctions) (Freezing of Funds Etc) (Application) (Amendment) (No.3) Order 2011

[SD 363/11 : Commencement : 23/05/11]

European Union (Egypt Sanctions) (Application) Order 2011

[SD 231/11 : Commencement : 04/04/11]

European Union (Guinea Sanctions) (Application) (Amendment) Order 2011

[SD 234/11 : Commencement : 04/04/11]

European Union (Iran Sanctions) (Application) Order 2011

[SD 15/11 : Commencement : 11/01/11]

European Union (Iran Sanctions) (Application) (No.2) Order 2011

[SD 315/11 : Commencement : 28/04/11]

European Union (Iran Sanctions) (Application) (No.3) Order 2011

[SD 427/11 : Commencement : 27/05/11]

European Union (Libya Sanctions) (Application) Order 2011

[SD 157/11 : Commencement : 10/03/11]

European Union (Libya Sanctions) (Application) (Amendment) (No.4) Order 2011

[SD 229/11 : Commencement : 01/04/11]

European Union (Libya Sanctions) (Application) (Amendment) (No.6) Order 2011

[SD 488/11 : Commencement : 02/06/11]

European Union (Syria Sanctions) (Application) Order 2011

[SD 365/11 : Commencement : 27/05/11]

European Union (Syria Sanctions) (Application) (Amendment) Order 2011

[SD 490/11 : Commencement : 02/06/11]

European Union (Tunisia Sanctions) (Application) Order 2011

[SD 142/11 : Commencement : 04/03/11]

Export Control (Amendment) Order 2011 (Application) Order 2011

[SD 149/11 : Deemed Commencement : 27/2/11 : Issuing Authority - Treasury]

[Libya]

Export Control (Amendment) (No.2) Order 2011 (Application) Order 2011

[SD 155/11 : Deemed Commencement : 21/3/11 : Issuing Authority - Treasury]

[Libya]

Export Control (Eritrea, Iran, Syria and Miscellaneous Amendments) (Application) Order 2011

[SD 501/11 : Deemed Commencement : 20/06/11 : Issuing Authority - Treasury]

Export Control (Libya) Order 2011 (Application) Order 2011

[SD 187/11 : Deemed Commencement : 28/03/11 : Issuing Authority - Treasury]

Export Control (Somalia) Order 2011 (Application) Order 2011

[SD 71/11 : Commencement : 01/4/11 : Issuing Authority - Treasury]

Guinea Sanctions (Amendment) Regulations 2011

[SD 235/11 : Commencement : 04/04/11]

Iran Sanctions Regulations 2011

[SD 16/11 am by SD 428/11: Commencement : 12/01/11]

Iran Sanctions (No.2) Regulations 2011

[SD 316/11 : Commencement : 28/04/11]

Libya Sanctions Regulations 2011

[SD 158/11 am by SDs 230/11, 280/11, 489/11 : Commencement : 10/03/11]

Syria Sanctions Regulations 2011

[SD 366/11 am by SD 491/11 : Commencement : 27/05/11]

Tunisia Sanctions Regulations 2011

[SD 143/11 : Commencement : 04/03/11]

**PART VI**  
**INTERNATIONAL TAXATION AGREEMENTS**

**JANUARY - JULY 2011**

*{Issuing Authority - Council of Ministers}*

Income Tax (Bahrain) (Double Taxation) Order 2011  
[SD 101/11 : Commencement : 18/03/11]

Income Tax (Canada) Order 2011  
[SD 99/11 : Commencement : 18/0/11]

Income Tax (China) Order 2011  
[SD 1029/10 : Commencement : 21/01/11]

Income Tax (India) Order 2011  
[SD 100/11 : Commencement : 18/03/11]

Income Tax (Indonesia) Order 2011  
[SD 544/11 : Commencement : 15/07/11]

Income Tax (Japan) Order 2011  
[SD 543/11 : Commencement : 15/07/11]

Income Tax (Mexico) Order 2011  
[SD 318/11 : Commencement : 24/06/11]

Income Tax (Poland) Order 2011  
[SD 244/11 : Commencement : 24/06/11]

Income Tax (Poland) (Double Taxation) Order 2011  
[SD 245/11 : Commencement : 24/06/11]

**INFORMATION SOURCES**

The Newsletter is free when accessed via the home page of Isle of Man Government - [www.gov.im](http://www.gov.im) on the ribbon click “infocentre” followed by “Manx Law”.

# THE PRODUCTION OF LEGISLATION IN THE CROWN DEPENDENCIES<sup>i</sup>

Lucy Marsh-Smith<sup>ii</sup>

## *Introduction*

*This article compares the procedures for making primary and secondary legislation in the Isle of Man, with that of Jersey and Guernsey, from the formulation of policy through the drafting and parliamentary stages to its formal making. It also touches on how the drafting of legislation is resourced and organised in each Island. Most lawyers in private practice, though they may work with legislation every day, may have given very little thought to how it came about. They will doubtless be aware that a Bill (or in the Channel Islands a projet de loi) has to be approved by the Island's politicians and then given Royal Assent, but perhaps few will have thought that is merely the end of a lengthy process which probably began at least a couple of years earlier. Even fewer will have thought about law drafting as a field of practice. This article invites you into the engine room of law production in the Islands and introduces you to those of us privileged to work there.*

## *Pre-drafting stages*

- 1 All legislation starts with policy. Most legislation results from an initiative within Government; in all cases an idea considered to require action is formulated and legislation is the chosen method by which that action is given effect. If new legislation is needed - and it is often forgotten that there is much that Government can do without legislation - it may be that the necessary change in the law can be effected using powers in existing primary legislation to make secondary legislation, Regulations, Orders, etc. If the action is outside the scope of those powers, new primary legislation is needed to extend them.
- 2 In the case of all legislation promoted by Government it is up to officials in the Department responsible for the particular subject area to seek approval from the relevant Minister for the policy and the necessary legislative changes. In the Isle of Man and in Jersey there is a legislation programme published as part of the Government's Strategic Plan. In the Isle of Man<sup>iii</sup> the Legislative Programme is agreed following bids from the various departments. It is published in the Strategic Plan produced at the beginning of the new administration and updated for each annual report on that Plan. It operates effectively as a rolling programme as the Council of Ministers will add to and delete items from the Programme and change priorities according to prevailing circumstances. Bills are allocated to a particular year in which they are to go before Tynwald and informally are given a priority within that year according to an ABC system with "A" Bills having the highest priority and "C" Bills the lowest. This provides a guide to the Chief Legislative Drafter in allocating and managing the work. Proposals for new primary legislation are referred to the Council of Ministers with an Impact Assessment that includes an explanation as to the need for the legislation, the alternatives to it and why they have been rejected, the resource implications of the Bill (Treasury consent is needed if there is to be an increase in expenditure or reduction in income), a timetable for its progression and details of consultation with the business community if they are affected by it. It is usual for there to be full consultation on any new legislative proposals.
- 3 In Jersey all but minor and routine drafting items (matters that are not expected to take more than a day of drafting time) need a place on the Law Drafting Programme

in order to be drafted. The Programme is administered by the Chief Minister on behalf of the States. Ministers (plus the Comité des Connétables and the Privileges and Procedures Committee) submit bids for drafting time and the bids are assessed and prioritised according to the extent that they deliver States' strategic policy and their impact on the finances and manpower complement of the public sector, and on the private sector. The programme is reviewed quarterly by the Corporate Management Board (consisting of Chief Officers) and the Council of Ministers. Once a year it is debated by the States Assembly as part of its Annual Business Plan, which sets States' spending for the following year.

- 4 The most notable feature of the Guernsey system<sup>iv</sup> is that the principal debate takes place on a departmental report (known as a States Report) and not on the draft legislation itself, the legislation not being drafted until the policy as set out in the report has itself been approved by the States of Deliberation. Alternatively, though this happens only rarely, at least 7 States Members may ask for a change in any recommended policy or the law by way of a petition known as a *requête*. The report/petition is addressed to the Chief Minister who publishes it as part of the *Billet D'Etat* for a forthcoming States meeting with a proposition based on the contents of the document. The *Billet* is a collection of papers that serves both as an order paper giving the agenda and order of business for the States meeting and also as the vehicle for reports by Departments as to proposed action, including legislative action. Unless the proposal comes from the Policy Council and/or the Treasury and Resources Department, a report is usually accompanied by an opinion from one or both of them as to whether the States should accept the proposals and sometimes suggesting qualifications or modifications. The report (or *requête*) is debated by the States and if passed, the proposition (which may be amended) becomes a resolution directing the preparation of such legislation as may be necessary to give effect to their decision. The States give each policy a priority category on an ABC system similar to that used informally in the Isle of Man. The legislative counsel in Guernsey thus get involved at a much earlier stage than drafters in the other Islands as they will have been involved in the preparation of the report and so have knowledge or, and sometimes a hand in, the development of policy. It also means that a draft Law is based on what the States rather than a Department have decided, largely obviating the need for amendments during the passage of the legislation, which must mean that those drafting in Guernsey spend less time drafting provisions that never see the light of day. Because the decisions have already been taken, the States have much less of a role to play in relation to the resulting *Projet de Loi* than in Jersey, as we shall see.
- 5 Assuming, then, that a proposed new Law/Bill has the requisite authority, the appropriate official in the relevant government department prepares drafting instructions. In Guernsey the policy as published in the *Billet* forms the basis of the instructions, as supplemented by input from Departments. In the other Islands, at least in theory, the drafters do not get involved in the policy formulation stage. The role of the drafter is to give effect to the policy (in the way the instructions set out) in the draft, not to decide the policy, which is the province of the Department via its instructing official who should be steeped in the subject matter. However, in small jurisdictions where there is inevitably less detailed expertise, the drafter, who may have wide experience of drafting comparable schemes in other fields of Government activity or in other jurisdictions, may be tempted to make suggestions as to the policy, though this should be on the basis that the Department is free to accept or reject them. Instructions should consist of a detailed brief to the drafter in narrative form setting out the full details of the scheme and attaching all relevant background material. Producing drafting instructions for a Bill of any significant size is a major

task. Drafters sometimes find themselves having to explain that it is not enough just to be told that a licensing scheme or an appeals system is needed without giving details of what those provisions should consist of. Instructions in the form of a draft are also not a good idea because the instructor may not have achieved the intended result and unless the drafter knows the intention behind a particular provision this may well not come to light. Drafters are, however, pleased to be told that there is comparable legislation elsewhere, but are wary of being told to copy and paste it as it is important to take account of the fact that the needs of the Island might be different. The law in each of the Islands is not the same as that in England and Wales, which is designed for a much larger nation with multiple layers of government. Frequently it needs substantial adaptation to produce either the same effect in the Island or, perhaps more to the point, a result that is appropriate for the Island.<sup>v</sup>

- 6 Once the instructions have been received, they are assigned to a particular drafter to be drafted. Before we look at the next stage of the process we should know a little more about these drafters (or draftsmen/legislative counsel as they are called in Jersey and Guernsey).

#### *Law drafting resources*

- 7 The drafting of legislation, in all sophisticated jurisdictions, is recognised as a complex task. At least insofar as the drafting of primary legislation is concerned, it is normally undertaken by lawyers of high intellectual ability who have developed the skill of drafting over a number of years. To those who practise in the field it is a hugely fascinating area of law in which to work. The drafters in both the Isle of Man and Guernsey come under the Attorney General and are part of the Attorney General's Chambers, St Mary's Court, Douglas and St James' Chambers, St Peter Port respectively. This structure is the most common in small jurisdictions. In the Isle of Man the Legislative Drafting Division of the Attorney General's Chambers consists of the Chief Legislative Drafter, two Legislative Drafters, one assistant in training to be a full drafter and a legislation and publications clerk. Two of the team are Manx Advocates and two drafters were recruited from Jersey and the UK respectively. The Isle of Man is fortunate that in recent times it has been able to recruit and train highly competent lawyers from the Manx Bar. The Manx drafters usually draft only primary legislation, about 20 Bills a year, but are responsible for reviewing draft secondary legislation, which is drafted by legislation officers who are civil servants in the various Government Departments and Statutory Boards. As the Island currently produces over 1,000 Statutory Documents a year resources are targeted to checking around 200 of the more important Statutory Documents.
- 8 The Legislative Drafting and Advisory Division of St James' Chambers consists of eight legislative counsel, one of whom is the Director of Legislative Drafting, and two consultants, together with a paralegal. In addition, the Director of Legal Services, who heads all the legal teams in Chambers, also contributes to the drafting and advisory service provided. The legislative counsel tend to be recruited earlier in their careers than their Jersey counterparts and are normally expected to qualify as Guernsey Advocates. The Guernsey team, in addition to being responsible for advisory work, draft all primary legislation for the Bailiwick (including Alderney and Sark) and most secondary legislation. Guernsey produces about 20 Laws a year, 50 Ordinances (explained later) and 90 Statutory Instruments.
- 9 In Jersey the Law Draftsman's Office is part of the Chief Minister's Office. Prior to the advent of Ministerial Government at the end of 2005 it was an autonomous unit

sharing a budget with the States Greffe. In fact until about 20 years ago the positions of Law Draftsman and the Greffier of the States were held by the same individual. The office continues to share accommodation in Morier House, St Helier, with the States Greffe. The Law Draftsman is assisted by four assistant law draftsmen (including the senior assistant who deputises for the law draftsman), a draftsman who works on a consultancy basis and one full and one part time law clerk. The office also benefits from the services of the States Greffe's publications editor. All the draftsmen are Commonwealth-qualified lawyers recruited from outside the Island following substantial drafting experience in a Commonwealth jurisdiction (including the United Kingdom). The Law Draftsman's Office is responsible for drafting all primary and secondary legislation in Jersey (except for Rules of Court). Judged on the output of the past few years the office drafts around 30-40 Laws and about 170 sets of Regulations and Orders a year. Unlike the position in the other Crown Dependencies, none of the Jersey draftsmen is locally qualified. It is not considered necessary for them to be. All primary legislation is reviewed in draft by the Law Officers' Department, the Law Officers being advisers to the States, who check for compliance with the European Convention on Human Rights and other international obligations, assess impact on customary law and review any offences created by the proposed legislation and the level of penalties proposed for them. In the Isle of Man and Guernsey, where the drafting and advisory functions are not divided, advice is given often as part of the drafting process with colleagues consulted as considered appropriate.

### *The drafting process*

- 10 Let us return to our drafter who has received his or her instructions. Frequently there will be a number of queries and need for clarification. It may be that a note of these matters will accompany the first draft or the drafter may want to meet the instructing officer or obtain further information before producing the draft. In any event, it would be odd if the first draft were the end of the process rather than a spring-board for further discussion and analysis. It is often only at this stage that the policy, or how it is to be given effect, is tested in detail. The drafter will be looking to see that all relevant areas are covered, the necessary powers provided for details to be prescribed in regulations and orders (if appropriate), that nothing is objectionable in terms of human rights requirements, international obligations or constitutionally. The proposals will have to fit with existing legislation so there may be a number of substantial or consequential amendments and if an old regime is to be replaced, thought will have to be given to transitional arrangements. It is normal for several drafts to pass between the drafter and the instructing officer before the draft is finalised and in a large Bill this process is expected to take several months. Frequently the instructing officer will think of modifications to his or her plans only on seeing the draft and the dialogue then ensuing with the drafter will refine the product considerably.
- 11 Once the draft is settled, it may go out for consultation and in the Isle of Man it usually does. In Jersey it is common for matters of any substance to be referred to the appropriate scrutiny panel at this stage rather than to wait until the *projet* is before the States and, as noted above, all primary legislation is usually considered in detail by the Law Officers' Department. Several months are likely to have passed for these processes to take place and the various comments received to be reviewed by the relevant Department. As a result of the consultation process the instructing officer may well request the drafter to make changes. Thereafter the draft must then be approved by the Council of Ministers for introduction into the Branches of

Tynwald (Isle of Man) and the Minister to be lodged *au greffe* (Jersey). At this stage the Isle of Man has hitherto often sent the Bill to the Ministry of Justice; in the Channel Islands it is only rarely that a draft Law is sent for what is known as 'pre audit' prior to being passed by the States. When legislating on matters within its competence (ie domestic affairs) Jersey and Guernsey take the view that the matter is of no concern to London until it has been passed by the States and is submitted for Royal Assent. The Isle of Man, as a matter of long practice, tended to submit its legislation at an earlier stage in the hope that any conflict with the UK authorities might be ironed out before the Bill is introduced and because it might speed up the process of legislation obtaining Royal Assent if the UK authorities can be persuaded to start the process earlier. Since it is apparent that in practice nothing much happens to Bills before they have been through the Branches, it is now not the practice to send Manx legislation to London in advance of its being passed by Tynwald unless it is very urgent.

- 12 So far we have mainly concerned ourselves with primary legislation, but the bulk of law-making these days is in the form of secondary legislation. In the Isle of Man the more important Statutory Documents are sent to the drafters for scrutiny and occasionally they are drafted in Chambers. It should be noted that a very large proportion of Manx secondary legislation are temporary traffic orders, many to do with road racing events such as the TT, and there is no input from the drafters for most of those. Legislation is currently in the process of being enacted to enable most of these matters to be dealt with administratively, by notice. In Jersey, instructions for drafting Regulations and Orders are submitted to the Law Draftsman's Office in the same way as drafting requests for primary legislation. Rules of Court, however, being made by the Royal Court and not by the States or a Minister, are historically drafted in the Law Officers' Department. In Guernsey the procedure is the same for Ordinances as for Laws. When it comes to Statutory Instruments (Regulations, Orders and Rules) drafting is often undertaken by Departments without input from the drafting team but more complex items are sent to the drafting team for comments or drafting, and they also draft the Rules of Court. The difference between the various types of legislation is explained further below.

#### *The legislative process*

- 13 In the Isle of Man, once a Bill has been approved by the Council of Ministers it is printed on green paper together with an Explanatory Memorandum prepared by the drafter and Notes on Clauses prepared by the Department. It is introduced into one of the Branches of Tynwald, usually the House of Keys. Bills must pass through both Branches of Tynwald and they each meet, in term time on three Tuesdays a month (the other Tuesday being reserved for the monthly sitting of the 2 Branches together as the Court of Tynwald for a variety of purposes, including to approve secondary legislation).
- 14 The procedure for the passing of Bills in the Isle of Man is very similar to that of the Westminster Parliament and thus takes much longer than it does in the Channel Islands. The First Reading in the Keys consists merely of the announcement of the short title by the Secretary of the House; however there may be some debate at First Reading in the Legislative Council. The Bill then returns at a later sitting for its Second Reading when the Member moving the Bill gives a speech on the principles of the Bill and there is a general debate. The Clauses Stage must take place at least 2 weeks after Second Reading. This stage requires the Member in charge of the Bill to move that each clause (or blocks of clauses) stand part of the Bill. It gives

members the opportunity to debate each clause, to seek an explanation from the Member in charge as to the effect of particular clauses and to move amendments. The precise procedure is governed by the Standing Orders of each House. Amendments to the Bill have to be submitted to the Secretary of the Keys no later than 6 working days before the day of the sitting; no notice of amendments has to be given in the case of the Legislative Council. Keys amendments are usually drafted by the drafters but sometimes this does not happen in the Legislative Council where amendments may be proposed 'on the hoof'. At the next sitting (unless Standing Orders are waived) the Bill is moved in Third Reading which is usually a brief and formal affair, following which it is sent to the other Branch of Tynwald to undergo similar stages. If the second chamber amends the Bill it is returned to the first for agreement and there are provisions to resolve the situation if this is not forthcoming. The Bill is then prepared for Royal Assent by the Crown and External Relations Division of the Chief Secretary's Office and submitted via the Lieutenant Governor's Office to the Ministry of Justice, the UK Government Department responsible for the Crown Dependencies. The 'UK stage' of the process, which is largely the same for all three Crown Dependencies, is considered further below.

- 15 Manx secondary legislation is made by a Department in accordance with what is provided by the parent Act, by being signed by the Minister for that Department. This is very similar to the process with Jersey Orders and Statutory Instruments in Guernsey. The Act will also set out the appropriate Tynwald procedure. The Act may require Tynwald approval before the Statutory Document can come into operation. It may provide for it to be laid before Tynwald and for it to cease to have effect if it is not approved at that sitting or the next, or it may give Tynwald power to annul it at that sitting or the next. The Statutory Document may just have to be laid for information. There are a few other variants but the most common procedure is to require Tynwald approval, which means that more routine matters of legislation are considered by Tynwald than are considered by the States in the Bailiwicks.
- 16 In Jersey there are 3 types of legislation that require States approval: Laws, Triennial Regulations and Regulations made under the authority of a Law. Triennial Regulations are made under the authority of an Order in Council of 1771. The States have competence to make Triennial Regulations on matters that would normally require Royal Assent, but they may not remain in force for longer than 3 years. Under the powers of an 1884 Order in Council they may be re-enacted if they are purely municipal and administrative. Triennial Regulations must not affect customary law or existing legislation. They are a convenient vehicle when legislation is needed quickly, as there is no requirement for Royal Assent. In each case the draft legislation must be lodged *au Greffe* with a report prepared by the Department for a minimum of 6 weeks prior to being considered. These documents together form a *Projet de Loi* (or *Reglements*). It is common in Jersey for legislation to go through the States in one sitting, this being, like the States of Deliberation in Guernsey, a unicameral legislature that usually considers its Laws in one bite, as it were. After it is moved by the Minister responsible for it, ie read for the first time, there is a debate on the principles. If the States approve the *projet* in principle, the Bailiff (or other officer presiding) will ask the Chairman of the relevant scrutiny panel if he or she wishes to have it referred to the panel. As in practice the opportunity will usually have been afforded in advance, the Chairman usually declines. The States may then go on to consider the legislation clause by clause, together with any amendments (which the Law Draftsman's Office will draft for any States' Member) that may have been lodged. In practice few amendments are lodged. Thereafter the Minister is invited to move the *projet* in Third Reading. In the case of Regulations that is the end of the process and they will come into force as they provide. Usually a period of

at least a week is given to allow for the Regulations to be brought to the attention of the public by means of a notice in the *Jersey Gazette*.

- 17 In the case of a draft Law that has been adopted by the States, a report is prepared by a legal adviser in the Law Officers' Department which is transmitted with the draft as so adopted (including any amendments that were passed) via the Lieutenant Governor's Office to the Ministry of Justice in similar manner as happens in the Isle of Man.
- 18 In the case of Orders and other forms of subordinate legislation in Jersey that are made by a Minister, the completed draft is submitted to the Minister for signature and the Order will come into force as it provides. Again it is usual to allow a week or so from the Order being made to publicise it. The Order is laid before the States and may at any time be annulled if the States so vote on a proposition from a States member, but this is very rarely invoked.
- 19 In Guernsey the *Projet de Loi* is examined by the Legislation Select Committee of the States whose job is to see that it is in accordance with the resolution made by the States (see paragraph 5 above) and that it carries the resolution into effect. This Committee has seven members, five of whom are States members. Most will not have legal training but there is usually at least one Advocate on the Committee from the Guernsey private Bar. Once the Committee is satisfied with the *projet* it appears in the brochure that accompanies the *Billet D'Etat* which includes a proposition that the *Projet de Loi* be approved. It is then considered by the States but usually with little debate or amendment. Laws will be transmitted for Royal Assent in a similar manner to that for Jersey.
- 20 The procedure also applies to Ordinances which are passed by the States of Deliberation of Guernsey either as subordinate legislation under the authority of an enabling Law or under inherent customary powers. These powers are similar to those exercised by the States of Jersey when making Triennial Regulations save that Ordinances are unlimited in duration. Generally speaking, provided that there is no conflict with existing customary or primary legislation, and the proposal does not involve the imposition of a tax or removal of property rights, an Ordinance may be enacted to give effect to a proposal requiring legislation. Ordinances do not require Royal Assent and will come into force in accordance with their commencement provisions (or if none on approval by the States). In any case where Guernsey's Legislation Select Committee believes that the immediate or early enactment of a draft Ordinance is necessary or expedient in the public interest, the Committee may order that the Ordinance is to have legislative effect immediately, or on such future date as the Committee shall prescribe. This legislative power of the Committee, whilst not often exercised, has proved useful in cases where the timing of States meetings makes it impossible for the States themselves to make Ordinances required as a matter of urgency. These Ordinances have to be laid before the States as soon as possible after being made by the Committee and the States have a power of annulment.
- 21 Guernsey's Statutory Instruments are made by Departments and signed by the relevant departmental Minister. The Law or Ordinance under which they are made usually requires their laying before the States. As in Jersey, the States can resolve to annul a Statutory Instrument. Occasionally the enabling legislation requires the Statutory Instrument to be approved by the States, for example certain Regulations made under the Income Tax Laws, in which case it will lapse if not approved.

- 22 In the case of legislation made by the States of Alderney or Sark's Chief Pleas, these Islands being part of the Bailiwick of Guernsey, the procedures are the same except that the Legislation Select Committee (the functions of which extend only to Guernsey) does not consider Laws or Ordinances from those parliaments. However, Ordinances made by the Chief Pleas must be transmitted to Guernsey's Royal Court and may be annulled by the Court (without prejudice to anything done under the Ordinance) wherever the Court takes the view that they are *ultra vires*.
- 23 In all three Crown Dependencies primary legislation requires the Assent of Her Majesty in Council. In the Isle of Man, however, the power is delegated to the Lieutenant Governor in most cases<sup>vi</sup>. It is not, however, the case that this leads to Manx legislation being passed any more quickly than that in the Bailiwicks. In all cases there is a 4-6 month delay while the draft legislation is considered by the Ministry of Justice, the UK Government Department responsible for the Crown Dependencies<sup>vii</sup>. That Department normally requires 80 working days from receipt to process Crown Dependency legislation. First the draft is sent to the UK Government Department that deals with the area of policy that is covered by it. This 'policy holding Department' is given 20 days to respond and its lawyers look at the legislation to see if there are any matters of concern from a UK perspective. Thereafter the Constitutional section of the Ministry of Justice's own legal advisers considers the Bill and any comments made by the policy holding Department to ensure that it does not conflict with any of the UK's international or constitutional obligations. Quite often informal queries are raised with the Island concerned. Officials then advise the Minister responsible for the Crown Dependencies if he or she can advise that the legislation may receive Royal Assent<sup>viii</sup>. Manx Bills are then returned to the Isle of Man if the Lieutenant Governor is to grant Royal Assent on behalf of Her Majesty; other Manx Bills and Channel Island draft Laws are submitted to the next meeting of the Privy Council, which takes place about once a month. Once Royal Assent is given, Jersey and Guernsey Laws are registered in their respective Royal Courts, though they will come into force in accordance with their particular commencement provisions. In Jersey it is common for Laws to come into force on such day as the States may by Act appoint, which involves a draft Act being lodged as a *projet* and debated. Guernsey has a similar procedure to commence Laws by Ordinances of the States. It should be noted that only Jersey has a system of notifying the public of all its legislation via the *Jersey Gazette*, which is published as part of the *Jersey Evening Post*. This is in common with most if not all Commonwealth countries, but there are no gazetting requirements in the Isle of Man and no comprehensive system of publicising all Guernsey legislation.<sup>ix</sup>
- 24 Following notification that Royal Assent will be granted Manx Bills are put to the next sitting of Tynwald when they are signed by the Members present. Bills are then sent to the Lieutenant Governor for signature and once this is obtained each Bill is announced in Tynwald, when it becomes an Act. It is common for Acts to contain provision for them to be brought into operation on such day or days as may be appointed by Order of the Department responsible for the Bill. Finally, the Act must be promulgated by the reading on Tynwald Hill of a memorandum in English and Manx containing the short title of the Act and a summary of the long title. In practice this is done annually at the special sitting of Tynwald on Tynwald Day. If an Act is not promulgated within 18 months of being passed it will cease to have effect<sup>x</sup>.
- 25 There are two other matters that might usefully be touched on in the context of Crown Dependency legislation. The first is that it should be remembered that domestically produced legislation is not the whole story. Acts of the Westminster Parliament sometimes, although now rarely, provide that they extend to the Channel

Islands and the Island of Man, usually with a power for an Order in Council to modify their application. More commonly, Acts contain a power for an Order in Council to extend the Act to the Islands, with exceptions and modifications. The Islands are consulted about these provisions<sup>xi</sup>, and the respective Orders in Council, though they are UK instruments, are drafted by or with a large input from the Islands. In matters where there is not much need for local legislation, such as broadcasting or armed forces, it saves time to apply UK Acts. However it is becoming much more common, especially in Jersey, for home-grown versions of the legislation to be produced, which can then be tailor-made to the Islands' needs.<sup>xii</sup> The Isle of Man has more UK legislation applying to it than appears to be the case in the Channel Islands, because in several areas it chooses to follow UK regimes.<sup>xiii</sup> European Community legislation that applies to the Islands because of the terms of Protocol 3 to the UK Act of Accession is also part of Crown Dependency law.

- 26 Secondly, access to Crown Dependency legislation is now much improved. Jersey currently leads the field with its locally-produced primary legislation and secondary legislation and applicable Orders in Council all updated annually using law revision powers and made available on a website.<sup>xiv</sup> Guernsey now has a website containing its more recent legislation.<sup>xv</sup> The Isle of Man publishes recent legislation as enacted and is in the process of setting up a dedicated legislation website which is expected to be operation at the beginning of 2012<sup>xvi</sup>. Easy access to the current version of the statute book is a vital tool for the drafter as well as the legal practitioner. International standards on access to legislation to which a number of jurisdictions have signed up, also expect it to be made available to the public<sup>xvii</sup>.
- 27 As a final thought, you may recollect the 'Guide, Philosopher and Friend' of your student days, namely *Learning the Law* by Professor Glanville Williams<sup>xviii</sup>. If so, you will still probably have forgotten the paragraph that reads:

*There is no more important, exciting and intellectually rewarding work for a lawyer than that of drafting legislation... My little book will have performed a useful function if it persuades one or two of the best of its readers to take up this career.*

Fortunately for the Crown Dependencies, a few of us have.

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<sup>i</sup> This article is a slightly modified version of an article published in the Jersey and Guernsey Law Review, vol 14 issue 1 February 2010 and is reproduced for the Manx Legislation Newsletter by kind permission of the Editor.

<sup>ii</sup> The author is grateful to colleagues and former colleagues who have reviewed this article in draft. Particular thanks go to Robert Titterington, Director of Legislative Drafting, and members of the Guernsey drafting team in respect of the passages relating to Guernsey.

<sup>iii</sup> For details of the process in the Isle of Man see *New Acts of Tynwald - A guide to instructing the drafter*, Attorney General's Chambers, 2<sup>nd</sup> Edition, 2009.

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<sup>iv</sup> For the process of passing Guernsey legislation see Ogier, *The Government and Law of Guernsey*, States of Guernsey, 2005, pages 39-42 and Dawes, *The Laws of Guernsey*, Oxford, 2003 pages 30-32.

<sup>v</sup> A short article in the Jersey and Guernsey Law Review (Miscellany, February 2007 page 5) criticised the approach of cutting and pasting English legislation, regardless of its quality, complexity, length, appropriateness or success. The author agrees but strongly doubts the conclusion that sharing drafting resources between the Bailiwicks is of any practical use, because policy considerations and the steps needed for the legislation to fit into the local statute book are always different. The sharing of ideas amongst and the adapting of legislation from, comparable jurisdictions is, however, to be encouraged.

<sup>vi</sup> The power stems from an Order in Council of 1981. The Lieutenant Governor reserves for Her Majesty any Bill that he considers should be so reserved or which he is directed to reserve by the Secretary of State. He has to consult the latter about the reservation of a Bill that he considers deals wholly or partly with defence, international relations, nationality and citizenship, his own powers and remuneration or the constitutional relationship between the UK and the Isle of Man, or affects the Royal prerogative or the rights of the Queen in her personal capacity. In practice, after passing through the Branches, a Bill goes to a "Royal Assent Committee" consisting of the Chief Minister, the Attorney General and the Chief Secretary who certify that it is fit to be considered for Royal Assent and advise His Excellency on the question of reservation of Royal Assent.

<sup>vii</sup> This description that follows is of the current system. Following a report of the House of Commons Justice Committee in March 2010, which questioned the degree of scrutiny of insular legislation, the Ministry of Justice are currently looking at a system which would involve the Islands taking a greater role in detailing the international and constitutional issues that new legislation may touch upon and are working with them to put an appropriate revised procedure in place. See Government Response to the Justice Committee Report Cm 7965, November 2010.

<sup>viii</sup> Considerations as whether Royal Assent could be refused in relation to insular domestic legislation are outside the scope of this article.

<sup>ix</sup> As to the importance of accessibility of legislation by those affected by it see *ZL & VL v Home Secretary and Lord Chancellor's Department* [2003] EWCA Civ 25 discussed in Greenberg, Access to Legislation – the Legislative Counsel's Role, paper presented to the Conference of the Commonwealth Association of Legislative Counsel, Hong Kong 2009, available on the CALC website <http://www.opc.gov.au/calc/loophole.htm>, see October 2009 edition of 'The Loophole'.

<sup>x</sup> See the Promulgation Act 1988.

<sup>xi</sup> Again, this article does not deal with the interesting question as to whether the UK could legislate for the Islands without their consent. See for example articles by Young and Jowell in volume 5 (2001) of the Jersey Law Review.

<sup>xii</sup> In relation to Extradition, for example, instead of applying UK legislation as previously, Jersey now has the Extradition (Jersey) Law 2004 and the Isle of Man is preparing its own legislation, both adapted from the UK Extradition Act 2003. The Armed Forces Act 2006, however, applies automatically to the Isle of Man (but not to the Channel Islands), with power for an Order in Council to modify it in its application to the Island. Jersey is bringing forward its own Armed Forces Offences and Jurisdiction (Jersey) Law rather than relying on the power in the 2006 Act for an Order in Council to extend it to Jersey.

<sup>xiii</sup> For example, customs and social security. In the Isle of Man, UK legislation is often applied to the Island using powers given in Acts of Tynwald. An answer to a recent Keys question (8<sup>th</sup> December 2009) stated that there are over 500 UK Acts that apply in whole or in part to the Isle of Man.

<sup>xiv</sup> See the Law Revision (Jersey) Law 2003 and [www.jerseylaw.je](http://www.jerseylaw.je)

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<sup>xv</sup> <http://www.guernseylegalresources.gg> contains Laws since 1980, Ordinances since 1990 (plus key earlier items) and Statutory Instruments and Orders of the Royal Court since 1980. Unofficial consolidations since 1990 are also available on the site.

<sup>xvi</sup> See <http://www.gov.im/infocentre/acts/>. This contains Acts of Tynwald since 2001 and Statutory Documents since 2000 excluding those concerned with road closures and temporary traffic restrictions, etc. The current subscription service which covers the Acts of Tynwald in reprinted form is being replaced with a similar Internet service accessible to all, to which other forms of legislation will be added when time and resources allow.

<sup>xvii</sup> See <http://www.falm.info/>. The Jersey Legal Information Board which produces Jersey's website is now a member of the Free Access to Law Movement and subscriber to the declaration on Free Access to Law.

<sup>xviii</sup> Sweet & Maxwell, 13<sup>th</sup> edition, 2006.