



**Isle of Man**

*Ellan Vannin*

**AT 1 of 1995**

**CUSTODY ACT 1995**





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**Isle of Man***Ellan Vannin*

## CUSTODY ACT 1995

*Received Royal Assent:* 17 January 1995  
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**AN ACT** to re-enact with amendments certain enactments relating to the custody of offenders and others; to make fresh provision for such custody; and for connected purposes.

### PART 1 – CUSTODY

#### *Custody*

#### **1 Meaning of “custody” etc**

- (1) Where by virtue of any statutory provision or rule of law a person is —
  - (a) sentenced to imprisonment, detention or custody, or
  - (b) committed to or remanded in custody, or
  - (c) committed to prison, or
  - (d) required to be detained or confined in, any prison or other institution,he shall be detained in an institution in accordance with this Act.
- (2) Detention or confinement in an institution in accordance with this Act may be referred to as “custody” and, unless the context otherwise requires, any reference in this Act or in any statutory provision made after the passing of this Act to custody, or to a sentence of custody, an order for custody or a committal to or remand in custody, shall be construed accordingly.
- (3) Any reference in any statutory provision, whenever made, to —
  - (a) imprisonment, custody or detention, or
  - (b) imprisonment, custody or detention for life or for any term, or
  - (c) detention during Her Majesty’s pleasure,

shall, unless the context otherwise requires, be construed as a reference to custody, or to custody for life or for the like term or during Her Majesty's pleasure, as the case may be.

- (4) This section does not apply to —
- (a) detention by virtue of an application, order or direction under the *Mental Health Act 1974*, or
  - (b) detention by virtue of an order under section 54(1)(a) or (b) (mental disorder) of the *Criminal Jurisdiction Act 1993*.

## 2 Detention in custody

- (1) Subject to any restrictions imposed by or under this Act, any person who is required to be in custody (a “detainee”) —
- (a) may lawfully be detained in any institution, in accordance with any directions of the Department of Home Affairs for the time being in force; and
  - (b) may by direction of the Department be removed from an institution to any other institution.
- (2) A detainee shall be deemed to be in the legal custody of the officer in charge of the institution in which he is, or was last, detained.
- (3) A detainee shall be deemed to be in legal custody while he is detained in, or is being taken to or from, an institution and while he is working, or is for any other reason, outside an institution in the custody or under the control of an officer of the institution.

## 3 Transfer to United Kingdom

- (1) Where the Secretary of State has made an order under section 26(2) or 27(2) (transfer of detainee to United Kingdom etc.) of the Criminal Justice Act 1961 (an Act of Parliament) in respect of a detainee, the order shall be sufficient authority to the officer in charge of the institution in which he is confined to convey or deliver him, or to cause him to be conveyed or delivered, to the appropriate institution in the United Kingdom or the Channel Islands named in the order.
- (2) In the application to the Island of the provisions specified in subsection (3) —
- (a) “prison” includes an institution, and
  - (b) “hospital” includes a hospital within the meaning of the *Mental Health Act 1974*.<sup>1</sup>
- (3) The provisions referred to in subsection (2) are —
- (a) sections 80, 82 and 83 of the Criminal Justice Act 1991 (an Act of Parliament), and

- (b) sections 94(1) to (3), 96, 97, 110, 112 and 113 of the Criminal Justice and Public Order Act 1994 (an Act of Parliament).<sup>2</sup>

#### **4 Assisting escape from custody etc**

- (1) Any person who —
- (a) aids a detainee in escaping or attempting to escape from an institution, or
  - (b) with intent to facilitate the escape of a detainee, conveys anything into an institution or to a detainee, or
  - (c) with intent to facilitate the escape of a detainee, places anything anywhere outside an institution with a view to its use by a detainee or its coming into a detainee's possession,

is guilty of an offence and liable, on conviction on information, to custody for a term not exceeding 5 years.

- (2) Any person who —
- (a) knowingly harbours an escaped detainee, or
  - (b) gives to an escaped detainee any assistance with intent to prevent, hinder or interfere with his being taken into custody,

is guilty of an offence.

- (3) A person guilty of an offence under subsection (2) is liable —
- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or both;
  - (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both.
- (4) In subsection (2) “escaped detainee” means a person who has escaped from an institution, or who, having been sentenced in any part of the United Kingdom or any of the Channel Islands to imprisonment or detention, is otherwise unlawfully at large.

#### **5 Detainees unlawfully at large**

- (1) Any detainee who is unlawfully at large may be arrested by a constable without warrant and taken to the place in which he is required to be detained.
- (2) Where a detainee is unlawfully at large at any time when he is liable to be detained, then, unless the Department otherwise directs, no account shall be taken, in calculating the period for which he is liable to be detained, of any time during which he is at large.
- (3) Subsection (2) does not apply to a period during which a detainee is detained in pursuance of a sentence or order of any court in the Island.

## 6 Computation of sentence

[1975/24/1; 1991/25/4/10]

- (1) The length of any sentence of custody imposed on an offender by a court shall be treated as reduced by any relevant period.
- (2) Where the offender was previously subject to a probation order, a community service order, an order for conditional discharge or a suspended sentence in respect of that offence, any such period falling before the order was made or the suspended sentence was passed shall be disregarded for the purposes of subsection (1).
- (3) For the purposes of this section a suspended sentence shall be treated as a sentence of custody when it takes effect under paragraph 3 of Schedule 1 and as being imposed by the order under which it takes effect.
- (4) In this section “relevant period” means —
  - (a) any period during which the offender was in police detention in connection with the offence for which the sentence was passed; or
  - (b) any period during which he was in custody —
    - (i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or
    - (ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court.
- (5) A person is in police detention for the purposes of this section if —
  - (a) he has been taken to a police station after being arrested for an offence or after being arrested —
    - (i) under section 30 of the *Anti-Terrorism and Crime Act 2003*, or<sup>3</sup>
    - (ii) [Repealed]<sup>4</sup>
  - (b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it,  
and is detained there or is detained elsewhere in the charge of a constable.
- (6) A person is also in police detention at any time when he is detained under section 30 of the *Anti-Terrorism and Crime Act 2003*.<sup>5</sup>

## 7 Calculation of term

- (1) Any reference in any statutory provision (whenever made) to the length of any sentence of custody shall, unless the context otherwise requires, be



construed as a reference to the sentence pronounced by the court and not the sentence as reduced by section 6.

- (2) In any sentence, the word “**month**”, unless the contrary is expressed, means a calendar month.
- (3) Where a court sentences any person to custody for a term of less than 2 months, the court shall express the term in weeks or days.

### *Restrictions on custody*

## **8 Detention during Her Majesty’s pleasure**

[1993/5/1/4]

- (1) A person convicted of an offence who —
  - (a) appears to the court to have been under the age of 18 years at the time the offence was committed, and
  - (b) apart from this section and section 9 would be liable to be sentenced to custody for life,shall instead be sentenced to be detained during Her Majesty’s pleasure.
- (2) A person sentenced under subsection (1) shall be liable to be detained under such conditions as the Department may direct.

## **9 General restrictions on custody**

[1986/48/2]

- (1) No court shall impose custody on a person unless it is of the opinion that no other method of dealing with him is appropriate.
- (2) Without prejudice to subsection (1), no court shall impose custody on a child or young person unless the court is of the opinion that the circumstances are so exceptional that it would be inappropriate to deal with him by any other method.
- (3) For the purpose of forming an opinion under subsection (1) or (2) the court shall —
  - (a) obtain and consider information about the circumstances including, unless the court thinks it unnecessary or impracticable, a social inquiry report, and
  - (b) take into account any information before the court which is relevant to his character and mental condition.
- (4) Where a court of summary jurisdiction imposes custody on a person, it shall state in open court the reasons —
  - (a) for its opinion that no other method of dealing with him is appropriate; and

- (b) if no social inquiry report has been obtained, for its opinion that such a report is unnecessary or impracticable;
- and those reasons shall be entered in the order book.
- (5) Subsections (1) and (2) do not apply to —
- (a) a sentence under section 8;
  - (b) a sentence imposed under section 1(2) of the *Death Penalty Abolition Act 1993* (life sentence for certain offences);
  - (c) a sentence of custody in default of payment of a sum adjudged to be paid by a conviction, judgment, order, award or execution of a court;
  - (d) an order remanding or committing a person in custody to await trial, judgment or sentence; or
  - (e) an order committing a person to custody for contempt of court.
- (6) In this section —
- “the order book” means the book required to be kept by section 78 of the *Summary Jurisdiction Act 1989*;
- “social inquiry report” means a report about a person and his circumstances made by a probation officer or by an officer of the Department of Health and Social Care designated for the purpose.<sup>6</sup>

### *Suspended sentences*

## 10 **Suspended sentences**

Schedule 1 shall have effect with respect to suspended sentences of custody.

## **PART 2 – INSTITUTIONS**

### *Provision of institutions*

## 11 **Provision of institutions**

- (1) It is the duty of the Department to provide, or to make arrangements with other persons for the provision of, such premises in the Island as are from time to time necessary as institutions for the detention of detainees.
- (2) The Department shall by order designate as an institution any premises provided under subsection (1); and an order under this subsection shall be laid before Tynwald as soon as may be after it is made.
- (3) Without prejudice to any other restriction on the detention of detainees of any class or description imposed by or under this Act, an order under subsection (2) shall specify the categories of detainees who may be

detained in the institution in question; and no detainee of any category may, except in an emergency, be detained in any institution other than one in which detainees of that category may be detained by virtue of such an order.

- (4) Any provision of this Act or of any enactment passed before this Act, or of any public document made under this Act, and any warrant, order, direction or other instrument, which authorises the detention of a detainee in any prison, gaol or other institution (however described) shall be construed as authorising his detention in any institution in which he may be detained in accordance with subsection (3).
- (5) A warrant, order, direction or other instrument which is expressed to authorise the detention of a detainee in a named institution, or in an institution of a specified description, in which he may not be detained by virtue of subsection (3) shall not be thereby invalidated, but shall be treated as authorising his detention in any institution in which he may be so detained.
- (6) A writ, warrant or other instrument addressed to the officer in charge of an institution and identifying the institution by its situation or any other sufficient description shall not be invalidated by reason only that the institution is usually known by a different description.

## **12 Separation of certain detainees**

[1993/18/1/1]

- (1) Where an institution is used for detaining both male and female detainees, separate living accommodation shall be provided in the institution for the male detainees and the female detainees.
- (2) The Department must secure that detainees under 18 years of age are, so far as practicable, detained in a separate institution or in separate accommodation within an institution.<sup>7</sup>

## **13 Staff of institutions**

- (1) There shall be appointed the following officers for every institution provided by the Department, and arrangements under section 11(1) relating to any other institution shall include arrangements for the provision of the following officers for the institution —
  - (a) an officer in charge (who may be given the title “governor” or such other title as the Department thinks fit);
  - (b) [Repealed]<sup>8</sup>
  - (c) such other officers as may be necessary.
- (2) Any institution, or part of an institution, in which women are received shall have a sufficient number of women officers.

- (3) Every officer of an institution while acting as such shall have all the powers, authority, protection and privileges of a constable.

#### **14 Chaplains etc**

- (1) The Department shall appoint as chaplain to every institution one or more ministers of religion, of whom one shall be a clerk in Holy Orders of the Church of England, and may pay to any chaplain so appointed such remuneration as it considers reasonable.
- (2) Before appointing a chaplain under subsection (1) the Department shall consult —
  - (a) the Bishop, in the case of a clerk in Holy Orders of the Church of England; and
  - (b) in the case of a minister of another denomination, such person or body as appears to the Department to be representative of that denomination.
- (3) Every detainee in an institution shall be allowed, in accordance with the arrangements in force in the institution —
  - (a) to attend such service of worship, in the chapel (if any) or elsewhere in the institution, as a chaplain to the institution considers appropriate, and
  - (b) where a chaplain of a particular denomination is appointed for the institution, to be visited by a chaplain of that denomination.
- (4) The Department may allow a minister of religion of any denomination to visit detainees of his denomination in an institution to which no chaplain of that denomination has been appointed under subsection (1).
- (5) No detainee may be visited against his will by a chaplain or other minister of religion.
- (6) The officer in charge of an institution shall on the reception of each detainee record the religious denomination to which the detainee declares himself to belong, and shall notify any chaplain of that denomination who is appointed to the institution, or any minister of that denomination who is permitted to visit detainees there, of each detainee who has declared himself to belong to that denomination.

#### **15 Use of police station for detention**

- (1) If the Department is satisfied that a police station has suitable accommodation for the detention of detainees, it may by order designate that station for the purposes of this section; and an order under this subsection shall be laid before Tynwald as soon as may be after it is made.

- (2) A detainee of any category may be detained at a police station designated under this section —
- (a) for a period not exceeding 8 days, or
  - (b) in an emergency, for a period exceeding 8 days,
- as if it were an institution, and as if that category were specified in an order designating it under section 11(3).

*Conduct of institutions*

**16 Rules for conduct of institutions**

- (1) Subject to the following provisions of this Part, the Department shall make rules (“custody rules”) for the regulation and management of every institution.
- (2) Custody rules may include provision for all or any of the following matters with respect to detainees —
- (a) their classification and treatment;
  - (b) their reception, removal and discharge;
  - (c) their measurement (including fingerprinting) and photographing;
  - (d) their welfare (including physical welfare) and social relations;
  - (e) their education, training and employment;
  - (f) their after-care;
  - (g) their discipline and control.
- (2A) Custody rules must make provision for healthcare for detainees.<sup>9</sup>
- (2B) Custody rules may authorise detainees of a class or description specified in the rules to be designated by a style or name there specified.<sup>10</sup>
- (3) Custody rules shall not have effect unless they are approved by Tynwald.
- (4) The Department may give to any person, or to persons of any description, exercising functions under custody rules general directions or guidance as to the exercise of those functions.<sup>11</sup>

**17 Further provisions as to rules**

[1986/48/3(2)]

- (1) Custody rules shall not —
- (a) require a remand detainee or civil detainee to work in the service or industries of any institution except with his consent, in which event he shall receive payment in accordance with rates to be fixed by the Department;

- (b) authorise punishments or privations of any kind to be awarded except by the officer in charge or an adjudicator;<sup>12</sup>
  - (c) [Repealed]<sup>13</sup>
  - (d) authorise corporal punishment to be inflicted in an institution.
- (2) Custody rules shall make provision for ensuring that a person who is charged with any offence under the rules is given a proper opportunity of presenting his case.
- (3) Custody rules may make provision as to the mode in which contracts may be entered into in relation to the operation of institutions, the maintenance of institutions and the maintenance of detainees in them.<sup>14</sup>
- (4) Custody rules shall provide for the special treatment of the following detainees —
- (a) a detainee who is appealing against conviction or against a sentence or other order made on conviction;
  - (b) any other detainee who is not serving a sentence or in custody in default of payment of a fine or other sum adjudged to be paid on conviction;
  - (c) detainees under 21 years of age.

## 18 Independent monitoring of institutions

- (1) Custody rules must provide for the establishment for every institution of an independent body (a “board”) consisting of such persons appointed at such times, in such manner and for such terms as may be prescribed.
- (2) A board may be given such title as the Department thinks fit.
- (3) Custody rules must prescribe the functions of a board in respect of each institution for which it is established, and must in particular require members of the board —
- (a) to pay frequent visits to the institution;
  - (b) to hear, in private or otherwise at their discretion, any complaints or requests which may be made by detainees; and
  - (c) to report to the Department any matter which they consider it expedient to report.
- (4) Custody rules may require the board for an institution to consider periodically the character, conduct and prospects of each of the detainees.
- (5) Custody rules may —
- (a) provide for the procedure to be followed by a board in exercising any function; and
  - (b) enable the board (subject to any provision made under paragraph (a)) by rules or otherwise to regulate its own procedure.

- (6) Any member of the board for an institution may at any time enter the institution and must have free access to every part of it and to every detainee.<sup>15</sup>

### **18A Independent monitoring of other premises**

- (1) This section applies to the following premises —
- (a) any cell or other place in a police station where persons in police detention are or may be held or interviewed;
  - (b) any part of a court building, being a part where defendants in criminal proceedings are or may be held before, during or after their appearance before a court.
- (2) The Department must make regulations providing for —
- (a) the frequent monitoring by one or more members of a body established pursuant to section 18(1) of all premises to which this section applies;
  - (b) the access to such premises to be granted to members of the body for the purpose of —
    - (i) carrying out such monitoring;
    - (ii) informing themselves of the treatment of persons held or otherwise dealt with in such premises; and
    - (iii) hearing, in private or otherwise at their discretion, any complaints or requests which may be made by such persons; and
  - (c) the reports to be made by members of any such body to the Department on any matter referred to in paragraph (a) or (b), and any other matter on which they consider it expedient to report.
- (3) Before making any regulations under subsection (2) the Department must consult the Chief Constable and such other persons as it considers appropriate.
- (4) Regulations under subsection (2) do not have effect unless they are approved by Tynwald.
- (5) In this section —
- “court building” means any building where the business of a court is carried on;
- “police detention” has the meaning given by section 81(2) of the *Police Powers and Procedures Act 1998*.<sup>16</sup>

### **19 Introduction of articles**

- (1) Any person who, contrary to custody rules, —
- (a) brings or attempts to bring into an institution any prohibited article or substance, or

- (b) by any means introduces or attempts to introduce into an institution any prohibited article or substance, or
- (c) places any prohibited article or substance anywhere outside an institution, or attempts to throw any prohibited article or substance over the wall or fence of an institution, with the intent that it shall come into the possession of a detainee,

is guilty of an offence.

- (2) Any officer of an institution who, contrary to custody rules, allows any prohibited article or substance to be sold or used in an institution is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.
- (4) A person who, contrary to custody rules, —
  - (a) conveys or attempts to convey any letter or any other thing into or out of an institution or to a detainee, or
  - (b) places any letter or any other thing outside an institution with the intent that it shall come into the possession of a detainee,who is not guilty of an offence under subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (5) In this section “prohibited article or substance” means —
  - (a) alcoholic liquor;
  - (b) tobacco; or
  - (c) any other article or substance which is prescribed for the purpose of this section.

### **19A Testing detainees for drugs or alcohol**

- (1) An officer of an institution may require a person detained in the institution to provide one or more samples for the purpose of ascertaining whether the detainee has any drug or alcohol in his or her body.
- (2) The requirement must be made in accordance with custody rules.
- (3) The sample must be provided at the institution.
- (4) The sample must be —
  - (a) a sample of urine;
  - (b) a sample of breath; or
  - (c) a non-intimate sample.
- (5) In this section —



“**drug**” means any drug which is a controlled drug for the purposes of the *Misuse of Drugs Act 1976*; and

“**non-intimate sample**” has the same meaning as in Part V of the *Police Powers and Procedures Act 1998*.<sup>17</sup>

## PART 3 – RELEASE AND DISCHARGE

### *Temporary removal or release*

#### 20 Removal of detainees for judicial purposes etc

- (1) Subject to any rules under section 44 of the *Criminal Jurisdiction Act 1993*, custody rules may provide in what manner a detainee who is appealing against conviction or against a sentence or other order made on conviction, when in custody, is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purposes of his appeal, or any place to which the High Court or a judge thereof may order him to be taken for the purpose of any proceedings of that Court.
- (2) The Department may, if it is satisfied that the attendance at any place in the Island of a person detained in an institution is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place.
- (3) The Department may, if it is satisfied that a person detained in an institution requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of his treatment.
- (4) Where any person is directed under subsection (2) or (3) to be taken to any place, he shall, unless the Department otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the institution where he is required to be detained.

#### 21 Temporary release

- (1) Custody rules may provide for the temporary release of detainees.
- (2) A detainee who, after being temporarily released from an institution in pursuance of custody rules, is at large at any time during the period for which he is liable to be detained shall be treated as being unlawfully at large if –
  - (a) the period for which he was temporarily released has expired, or
  - (b) an order recalling him has been made by the Department in pursuance of the rules.

## 22 Temporary release on grounds of ill health

- (1) If the Department is satisfied —
- (a) that, by reason of the condition of a detainee's health it is undesirable to detain him in an institution, but
  - (b) that, such condition being wholly or partly due to his own conduct in an institution, it is desirable that his release should be temporary and conditional only,

the Department may authorise the temporary release of the detainee for such period and subject to such conditions as it may direct.

- (2) An authority under this section in the case of a detainee remanded or committed to custody to await trial, judgment or sentence —
- (a) shall not be given without the leave of —
    - (i) a Deemster, in the case of a detainee remanded or committed to or by a Court of General Gaol Delivery, or
    - (ii) a court of summary jurisdiction, in any other case; and
  - (b) shall be subject to conditions requiring his attendance at any further proceedings on his case at which his presence may be required.
- (3) A detainee released under this section —
- (a) shall comply with any conditions imposed by the Department, and
  - (b) shall return to the institution at the expiration of the period directed by the Department, or such extended period as the Department may direct,

and if he fails to do so he shall be deemed to be unlawfully at large.

- (4) Where a detainee under sentence is released under this section, the currency of the sentence shall be suspended from the day on which he is released to the date on which he returns to the institution, so that the former day shall, and the latter day shall not, be reckoned as part of the sentence.
- (5) [Repealed]<sup>18</sup>

### *Early release*

## 23 Early release of detainees

[1986/48/8]

- (1) Schedule 2 shall have effect with respect to the early release of detainees.
- (2) Custody rules shall provide for the constitution of a body to be called the Parole Committee, who shall advise the Department with respect to —

- (a) the release and recall under Schedule 2 of persons whose cases are referred to it by the Department;
  - (b) where such persons are released on licence, the conditions of such licences and the variation or cancellation of such conditions; and
  - (c) any other matter so referred which is connected with the release or recall of persons to whom Schedule 2 applies.<sup>19</sup>
- (2A) Custody rules may —
- (a) provide for the procedure to be followed by the Parole Committee in exercising any function; and
  - (b) enable the Committee (subject to any provision made under paragraph (a)) by rules or otherwise to regulate its own procedure.<sup>20</sup>
- (3) [Repealed]<sup>21</sup>

### **23A Release in case of overcrowding**

- (1) If the Department is satisfied that so many detainees are or will be detained in an institution that the health of those persons or the security or operation of the institution is or will be prejudiced, it may authorise the temporary release from the institution of one or more detainees for such period and subject to such conditions as it may direct.
- (2) The following detainees may not be released under this section —
  - (a) a person serving a sentence of custody for life;
  - (b) a person serving a sentence of custody for a term of 4 years or more;
  - (c) a person serving a sentence in respect of a sexual offence or a violent offence (as defined in section 38 of the *Criminal Justice Act 2001*);
  - (d) a transferred life detainee (as defined in paragraph 5 of Schedule 2).
- (3) Subsections (2) and (3) of section 22 apply to a release under this section as they apply to a release under that section.<sup>22</sup>

### *Discharge*

### **24 Date of discharge**

A detainee who would, apart from this section, be discharged on a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday (within the meaning of the *Bank Holidays Act 1989*) shall be discharged on the next preceding day which is not one of those days.

## 25 Payments on discharge

When a detainee is discharged from an institution the Department may provide him with the means of returning to his home, either by paying his fare or in any other convenient manner.

## PART 4 – SUPPLEMENTAL

## 26 Interpretation

In this Act –

“**adjudicator**” means an independent adjudicator appointed under custody rules;<sup>23</sup>

“**the Department**” means the Department of Home Affairs;

“**detainee**” means any person who is required to be in custody;

“**civil detainee**” means a person committed to custody in civil proceedings;

“**custody**” has the meaning given by section 1(2);

“**custody rules**” means rules under section 16 and, in relation to any institution, means the rules applicable to that institution;

“**institution**” means premises provided under this Act for the detention of detainees, or any class of detainees, and designated as an institution under section 11(2);

“**justice**” means a justice of the peace;

“**prescribed**” means prescribed by custody rules;

“**remand detainee**” means a person in custody by virtue of an order remanding or committing him in custody to await trial, judgment or sentence;

“**sentence**” includes an order.

## 27 Transitional provisions, amendments and repeals

- (1) The transitional provisions in Schedule 3 shall have effect.
- (2) The enactments specified in Schedule 4 are amended in accordance with that Schedule.
- (3) The enactments specified in Schedule 5 are repealed to the extent specified in column 3 of that Schedule.

## 28 Short title and commencement

- (1) This Act may be cited as the Custody Act 1995.
- (2) This Act shall come into operation on such day as the Department may by order appoint.<sup>24</sup>

## SCHEDULE 1

### SUSPENDED SENTENCES OF CUSTODY

Section 10 [1981/20/Sch 1]

#### *Suspended sentences*

1. (1) Subject to sub-paragraph (2), a court which passes a sentence of custody for a term of not more than 2 years for an offence may order that the sentence shall not take effect unless —

- (a) during a period specified in the order, being not less than one year or more than 2 years from the date of the order, the offender commits in the Island another offence punishable with custody, and
- (b) thereafter a competent court orders under paragraph 3 that the original sentence shall take effect;

and in this Schedule “**operational period**”, in relation to a suspended sentence, means the period specified under (a) above.

(2) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of custody could have been appropriate in the absence of any power to suspend such a sentence by an order under this paragraph.

(3) A court which passes a suspended sentence on any person for an offence shall not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(4) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under paragraph 3 if, during the operational period, he commits an offence punishable with custody.

#### *Effect of suspended sentence*

2. Subject to any provision to the contrary contained in any enactment passed after the 31st March 1982 —

- (a) a suspended sentence which has not taken effect under paragraph 3 shall be treated as a sentence of custody for the purposes of all enactments except any enactment which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to custody;
- (b) where a suspended sentence has taken effect under paragraph 3, the offender shall be treated for the purposes of the enactments excepted by sub-paragraph (a) as having been convicted on the ordinary date on which the period allowed for making an appeal

against an order under paragraph 3 expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

*Power to order suspended sentence to take effect*

3. (1) Where an offender is convicted of an offence punishable with custody committed during the operational period of a suspended sentence and either —

- (a) he is so convicted by or before a court which is competent to deal with him in respect of the suspended sentence, or
- (b) he subsequently appears or is brought before such a court,

the court shall consider his case and deal with him by one of the following methods.

(2) The methods by which a court may deal with an offender under subparagraph (1) are —

- (a) to order that the suspended sentence shall take effect with the original term unaltered;
- (b) to order that the sentence shall take effect with the substitution of a lesser term for the original term;
- (c) by order to vary the original order under paragraph 1 by substituting for the period specified therein a period expiring not later than 3 years from the date of the variation;
- (d) to make no order with respect to the suspended sentence;

and the court shall make an order under (a) above unless it is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion the court shall state its reasons.

(3) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, it may order that that sentence shall take effect immediately, or that the term thereof shall commence on the expiration of another term of custody passed on the offender by that or another court.

(4) In proceedings for dealing with an offender in respect of a suspended sentence which take place before a Court of General Gaol Delivery, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court and not by the verdict of a jury.

(5) Where an offender has been before a court with a view to its exercising its powers under this paragraph, the court shall —

- (a) if it made no order with respect to the suspended sentence, record that fact; and
- (b) whether or not it made an order, notify the court which passed the sentence of the manner in which the offender was dealt with.

(6) For the purposes of any enactment conferring rights of appeal in criminal cases, any such order made by a court shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

*Court by which suspended sentence may be dealt with*

4. (1) A competent court by which an offender may be dealt with in respect of a suspended sentence is —

- (a) any Court of General Gaol Delivery before which he appears, or
- (b) where the sentence was passed by a court of summary jurisdiction, any court of summary jurisdiction before which he appears or is brought.

(2) Where an offender is convicted by a court of summary jurisdiction of an offence punishable with custody and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by a Court of General Gaol Delivery —

- (a) the court may, if it thinks fit, remand him to the next Court of General Gaol Delivery, and
- (b) if it does not, shall give written notice of the conviction to the Chief Registrar.

(3) For the purposes of this paragraph and paragraph 5, a suspended sentence passed on an offender on appeal shall be treated as passed by the court by which he was originally sentenced.

*Procedure where court does not deal with suspended sentence*

5. (1) If it appears to a Court of General Gaol Delivery, where that court has jurisdiction in accordance with sub-paragraph (2), or to a justice having jurisdiction in accordance with that sub-paragraph, that —

- (a) an offender has been convicted in the Island of an offence punishable with custody committed during the operational period of a suspended sentence, and
- (b) he has not been dealt with in respect of the suspended sentence,

that court or justice may, subject to the following provisions of this paragraph issue a summons requiring the offender to appear at the place and time specified therein, or a warrant for his arrest.

(2) Jurisdiction for the purposes of this paragraph may be exercised —

- (a) if the suspended sentence was passed by a Court of General Gaol Delivery, by that court,
- (b) if it was passed by a court of summary jurisdiction, by any justice.

(3) A justice shall not issue a summons under this paragraph except on complaint, and shall not issue a warrant under this paragraph except on complaint in writing and on oath.

(4) A summons or warrant issued under this paragraph shall direct the offender to appear or to be brought before the court by which the suspended sentence was passed.

#### *Suspended sentence supervision orders*

6. (1) Where a court passes on an offender a suspended sentence for a term of more than 3 months for a single offence, the court may make a suspended sentence supervision order (a “supervision order”) placing the offender under the supervision of a probation officer for a period specified in the order, being a period not exceeding the operational period of the suspended sentence.<sup>25</sup>

(2) The Department may by order —

(a) amend sub-paragraph (1) by substituting for the number of months specified in that sub-paragraph (as originally enacted or as amended by a previous order under this sub-paragraph) such other number (not more than 6) as may be specified in the order; or

(b) make in sub-paragraph (1) the repeals necessary to enable the court to make a supervision order thereunder in the case of any suspended sentence, whatever the length of the term.

(3) An order under sub-paragraph (2) shall not have effect unless it is approved by Tynwald.

#### *Procedure on making supervision order*

7. (1) The court by which a supervision order is made shall forthwith give copies of the order to a probation officer and to the offender.

(2) On making a supervision order the court shall in ordinary language explain its effect to the offender.

#### *Effect of supervision order*

8. An offender in respect of whom a supervision order is in force shall —

(a) keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer, and

(b) notify him of any change of address; and

(c) comply during the whole or any part of the supervision period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by the



offender of the same offence or the commission of other offences but such requirements may not require the payment of sums by way of damages for injury or compensation for loss.<sup>26</sup>

*Termination or replacement of supervision order*

9. (1) A supervision order shall cease to have effect if, before the end of the period specified in it —

- (a) a court orders under paragraph 3 that a suspended sentence passed in the proceedings in which the order was made shall have effect; or
- (b) the order is revoked or replaced under sub-paragraph (2) or (3).

(2) A supervision order may be revoked, on the application of the supervising officer or of the offender —

- (a) if it was made by a Court of General Gaol Delivery, and includes a direction reserving the power of discharging it to that court, by a Court of General Gaol Delivery;
- (b) in any other case, by a court of summary jurisdiction.

(3) Where under paragraph 3 a court deals with an offender in respect of a suspended sentence by varying the operational period of the sentence or by making no order with respect to the sentence, the court may make a supervision order in respect of the offender —

- (a) in place of any such order made when the suspended sentence was passed; or
- (b) if the court which passed the sentence could have made such an order but did not do so; or
- (c) if that court could not then have made such an order, but could have done so if paragraph 6(1) had then had effect as it has effect at the time when the offender is dealt with under paragraph 3.

*Breach of requirement of supervision order*

10. (1) If, at any time while a supervision order is in force in respect of an offender, it appears on complaint to a justice that the offender has failed to comply with any of the requirements of paragraph 8, the justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the complaint is in writing and on oath, issue a warrant for his arrest.

(2) A summons or warrant issued under this paragraph shall direct the offender to appear or to be brought before a court of summary jurisdiction.

(3) If it is proved to the satisfaction of the court before which an offender appears or is brought under this paragraph that he has failed without reasonable cause to comply with any of the requirements of paragraph 8, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding £2,500.<sup>27</sup>

(4) A fine imposed under sub-paragraph (3) shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction.

## SCHEDULE 2

### EARLY RELEASE OF DETAINEES

Section 23(1) [P1991/53/33-51]

#### *Interpretation*

1. (1) In this Schedule —

“**the Committee**” means the Parole Committee;

“**discretionary life detainee**” has the meaning given by paragraph 4;

“**life detainee**” means —

- (a) a person serving a sentence of custody for life, and
- (b) a person ordered to be detained during Her Majesty’s pleasure under section 8;

“**long-term detainee**” means a person serving a sentence of custody for a term of 4 years or more;

“**mandatory life detainee**” has the meaning given by paragraph 3;

“**short-term detainee**” means a person serving a sentence of custody for a term of less than 4 years;

“**sentence of custody**” does not include a committal in default of payment of any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

“**transferred life detainee**” has the meaning given by paragraph 5.

(2) For the purposes of any reference in this Schedule, however expressed, to the term of custody to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(3) Nothing in this Schedule requires the Department to release a person who is serving —

- (a) a sentence of custody for a term, and
- (b) one or more sentences of custody for life,

unless and until he is entitled under this Schedule to be released in respect of each of those sentences.

*Duty to release short-term and long-term detainees*

2. (1) As soon as a short-term detainee has served one-half of his sentence, the Department shall —
- (a) release him unconditionally if that sentence is for a term of less than 12 months; and
  - (b) release him on licence if that sentence is for a term of 12 months or more.
- (2) As soon as a long-term detainee has served two-thirds of his sentence, the Department shall release him on licence.
- (3) As soon as a short-term or long-term detainee who —
- (a) has been released on licence under sub-paragraph (1)(b) or (2) or paragraph 6(1) or 7(1); and
  - (b) has been recalled to an institution under paragraph 9(2) or 10(1) or (2),

would (but for his release) have served three-quarters of his sentence, the Department shall release him unconditionally.

(4) Where a detainee whose sentence is for a term of less than 12 months has been released on licence under paragraph 7(1) and recalled to an institution under paragraph 9(2), sub-paragraph (3) shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half his sentence.

*Restrictions on unconditional release of certain sex offenders*

2A. (1) Notwithstanding paragraph 2, a detainee who is serving a sentence in respect of a sexual offence shall not be released unconditionally and for this purpose that paragraph shall have effect as if references to unconditional release were to release on licence.

- (2) The following offences are sexual offences for the purposes of sub-paragraph (1) —
- (a) offences under the following provisions of the *Sexual Offences Act 1992* —
    - (i) section 1 (rape);
    - (ii) section 2 (procurement by threats or lies);
    - (iii) section 3 (administering drugs to obtain or facilitate sexual act);
    - (iv) section 4 (intercourse with young people);
    - (v) section 5 (sexual act with subnormal person);
    - (vi) section 6 (sexual act with a mental patient);
    - (vii) section 7 (incest);
    - (viii) an offence under section 8 (incitement to commit incest);

- (ix) section 9 (unnatural offences);
  - (x) section 11 (assault with intent to commit buggery);
  - (xi) section 12 (bestiality);
  - (xii) section 13 (indecent assault);
  - (xiii) an offence under section 14 (indecent conduct towards young people);
  - (xiv) section 18 (procurement of a young person);
  - (xv) section 19 (procurement of subnormal person);
  - (xvi) section 23 (causing or encouraging prostitution of, intercourse with, or indecent assault on, young people);
  - (xvii) section 24 (causing or encouraging prostitution of subnormal person);
  - (xviii) section 25 (living on or controlling prostitution);
  - (xix) section 28 (keeping a brothel);
- (b) an offence under Schedule 3 to the *Criminal Justice Act 2001* (indecent photographs of children).<sup>28</sup>

#### *Mandatory life detainees*

3. (1) In this Schedule “**mandatory life detainee**” means a life detainee whose sentence was imposed under section 1(2) of the *Death Penalty Abolition Act 1993* (person convicted of certain offences to be sentenced to custody for life).

(2) Subject to subsection (3), the Department, if recommended to do so by the Committee, and after consulting —

- (a) the Deemsters, and
- (b) the trial judge, if the Deemsters consider it appropriate and he is available,

may release a mandatory life detainee on licence.

(3) Except as provided in paragraph 7(1), a mandatory life detainee may not be released on licence unless —

- (a) the period specified by the court under section 1(4) of the *Death Penalty Abolition Act 1993* (minimum period) has expired; and
- (b) where he is serving 2 or more such sentences as are mentioned in sub-paragraph (1), the period so specified in relation to each of those sentences has expired.

#### *Discretionary life detainees*

4. (1) Subject to sub-paragraph (3), in this Schedule “**discretionary life detainee**” means a life detainee whose sentence was imposed for an offence the sentence for which is not fixed by law, where the court, in imposing that sentence on

him, ordered that this paragraph should apply to him as soon as he had served a part of his sentence specified in the order (“the relevant part”).

(2) A part of a sentence specified under sub-paragraph (1) shall be such part as the court considers appropriate taking into account —

- (a) the seriousness of the offence, or the combination of the offence and other offences associated with it; and
- (b) the provisions of this paragraph as compared with those of paragraphs 2(2) and 6(1).

(3) A person serving 2 or more sentences of custody for life shall not be treated as a discretionary life detainee unless the requirements of sub-paragraph (1) are satisfied as respects each of those sentences; and sub-paragraphs (4) and (6) do not apply in relation to such a person until after he has served the relevant part of each of those sentences.

(4) As soon as a discretionary life detainee has served the relevant part of his sentence, the Committee may direct his release, and thereupon the Department shall release him on licence.

(5) The Committee shall not give a direction under sub-paragraph (4) with respect to a discretionary life detainee unless —

- (a) the Department has referred his case to the Committee, and
- (b) the Committee is satisfied that it is no longer necessary for the protection of the public that he should be confined.

(6) A discretionary life detainee may require the Department to refer his case to the Committee at any time —

- (a) after he has served the relevant part of his sentence; and
- (b) where there has been a previous reference of his case to the Committee, after the end of the period of 2 years beginning with the disposal of that reference; and
- (c) where he is also serving a sentence of custody for a term, after he has served one-half of that sentence;

and in this sub-paragraph “previous reference” means a reference under sub-paragraph (5) or under paragraph 10(4) made after the detainee had served the relevant part of his sentence.

(7) In determining for the purpose of sub-paragraph (4) or (6) whether a discretionary life detainee has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large.

#### *Transferred life detainees*

5. (1) In this Schedule “**transferred life detainee**” means a person —

- (a) on whom a court in a country or territory outside the Island has imposed one or more sentences of custody, imprisonment or detention for an indeterminate period; and
- (b) who has been transferred to the Island in pursuance of an order made by the Secretary of State under section 26 of the Criminal Justice Act 1961 (an Act of Parliament) or a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (an Act of Parliament), there to serve his sentence or sentences or the remainder of his sentence or sentences.

(2) A person who is required to serve the whole or part of 2 or more sentences as mentioned in sub-paragraph (1) shall not be treated as a discretionary life detainee for the purposes of this Schedule unless the requirements of sub-paragraph (1) are satisfied as respects each of those sentences; and paragraph 4(4) and (6) does not apply in relation to such a person until after he has served the relevant part of each of those sentences.

(3) This paragraph applies in the case of a transferred life detainee where the Department, after consultation with the Deemsters, certifies its opinion that, if he had been sentenced for his offence in the Island after the commencement of this Schedule, the court by which he was so sentenced would have ordered that paragraph 4 should apply to him as soon as he had served a part of his sentence specified in the certificate.

(4) Where this paragraph applies, this Schedule (except paragraph 4(2)) applies as if —

- (a) the transferred life detainee were a discretionary life detainee; and
- (b) the relevant part of his sentence within the meaning of paragraph 4 were the part specified in the certificate.

*Power to release long-term and other life detainees*

6. (1) After a long-term detainee has served one-half of his sentence, the Department, if recommended to do so by the Committee, may release him on licence.

(2) Subject to sub-paragraph (3), the Department, if recommended to do so by the Committee, and after consulting —

- (a) the Deemsters, and
- (b) the trial judge, if the Deemsters consider it appropriate and he is available,

may release on licence a life detainee other than a discretionary life detainee or a mandatory life detainee.

(3) The Committee shall not make a recommendation under sub-paragraph (2) unless the Department has referred the particular case, or the class of case to which that case belongs, to the Committee for its advice.

*Power to release on compassionate grounds*

7. (1) The Department may at any time release a detainee on licence if it is satisfied that exceptional circumstances exist which justify his release on compassionate grounds.

(2) Before releasing a long-term or life detainee under this paragraph the Department shall consult —

- (a) the Committee, unless the circumstances are such as to render such consultation impracticable; and
- (b) in the case of a mandatory life detainee —
  - (i) the Deemsters, and
  - (ii) the trial judge, if the Deemsters consider it appropriate and he is available.

*Duration and conditions of licence*

8. (1) Subject to sub-paragraphs (2) and (4), where a short-term or long-term detainee is released on licence, the licence shall, subject to any suspension under paragraph 9(2) or, as the case may be any revocation under paragraph 10(1) or (2), remain in force until the date on which he would (but for his release) have served three-quarters of his sentence.

(2) Where a detainee whose sentence is for a term of less than 12 months has been released on licence under paragraph 7(1), sub-paragraph (1) shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half his sentence.

(3) Subject to sub-paragraph (4), where a life detainee is released on licence, the licence shall, unless previously revoked under paragraph 10(1) or (2), remain in force until his death.

(4) A person subject to a licence shall comply with such conditions as may for the time being be specified in the licence; and those conditions may include conditions as to his supervision —

- (a) in the case of a person under 17 years of age at the time of his release, by the Department of Health and Social Care or a probation officer;<sup>29</sup>
- (b) in any other case, by a probation officer.

(4A) Without prejudice to the generality of sub-paragraph (4), a licence may include conditions —

- (a) for securing the electronic monitoring of the released person's whereabouts during such periods as may be specified in the conditions;
- (b) requiring the released person to remain, for periods specified in the conditions, at a place so specified.<sup>30</sup>

(4B) If, after a licence has been granted on the recommendation or direction of the Committee but before the detainee has been released, it appears to the Department that the circumstances which justified his or her release no longer obtain, the Department may revoke the licence.<sup>31</sup>

(4C) On the revocation of a licence under sub-paragraph (4B) —

- (a) the detainee is liable to be detained in pursuance of his or her sentence and, if at large, is deemed to be unlawfully at large; and
- (b) the Department must forthwith refer the case to the Committee who must, within one month of the reference, review the case; and paragraph 3, 4 or 6, as the case may be, applies as if it had been referred to the Committee under the paragraph in question.<sup>32</sup>

(5) The Department may at any time vary or cancel a condition in a licence.

(6) In the case of a long-term or life detainee, the Department shall not include on release, or subsequently insert, a condition (other than a condition as to supervision) in a licence, or vary or cancel any such condition, except after consultation with the Committee.

(7) For the purposes of sub-paragraph (6), the Department shall be treated as having consulted the Committee about a proposal to include, insert, vary or cancel a condition in any case if it has consulted the Committee about the imposition of proposals of that description generally or in that class of case.

(8) The Department may make rules for regulating the supervision under sub-paragraph (4) of any description of persons, but such rules shall not have effect unless they are approved by Tynwald.

*Breach of licence conditions by short-term detainee*

9. (1) A short-term detainee who —

- (a) is released on licence under this Schedule; and
- (b) fails to comply with such conditions as are for the time being specified in the licence,

is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(2) The court by which a person is convicted of an offence under this paragraph may, whether or not it passes any other sentence on him —

- (a) suspend the licence for a period not exceeding 6 months; and
- (b) order him to be recalled to an institution for the period during which the licence is so suspended.

(3) On the suspension of the licence of a person under this paragraph, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.



*Recall of long-term or life detainee while on licence*

10. (1) If recommended to do so by the Committee in the case of a long-term or life detainee who has been released on licence under this Schedule, the Department may revoke his licence and recall him to an institution.

(2) The Department may revoke the licence of any such detainee without a recommendation by the Committee where it appears to the Department that it is expedient in the public interest to recall him before such a recommendation is practicable.

- (3) A person recalled to an institution under sub-paragraph (1) or (2) —
- (a) may make representations in writing with respect to his recall; and
  - (b) on his return to an institution, shall be informed of the reasons for his recall and of his right to make representations.
- (4) The Department shall refer to the Committee —
- (a) the case of a person recalled under sub-paragraph (1) who makes representations under sub-paragraph (3), and
  - (b) the case of a person recalled under sub-paragraph (2).
- (5) Where on a reference under sub-paragraph (4) the Committee —
- (a) directs in the case of a discretionary life detainee, or
  - (b) recommends in the case of any other detainee (except a mandatory life detainee),

his immediate release on licence under this paragraph, the Department shall give effect to the direction or recommendation.

(6) On the revocation of the licence of a person under this paragraph, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

*Conviction during currency of original sentence*

11. (1) This paragraph applies to a short-term detainee or long-term detainee who is released under this Schedule if —

- (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with custody; and
- (b) whether before or after that date, he is convicted of that offence (“the new offence”).

(2) Subject to sub-paragraph (3), the court by or before which a person to whom this paragraph applies is convicted of the new offence may, whether or not it passed any other sentence on him, order him to be returned to an institution for the whole or any part of the period which —

- (a) begins with the date of the order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in sub-paragraph (1).
- (3) A court of summary jurisdiction —
- (a) may not order a person to whom this paragraph applies to be returned to an institution for a period of more than 6 months; but
  - (b) may commit him in custody or on bail to a Court of General Gaol Delivery for sentence in accordance with section 17 of the *Summary Jurisdiction Act 1989*.
- (4) The period for which a person to whom this paragraph applies is ordered under sub-paragraph (2) to be returned to an institution —
- (a) shall be taken to be a sentence of custody for the purposes of this Schedule;
  - (b) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
  - (c) in either case, shall be disregarded in determining the appropriate length of that sentence.

*Remand time to count towards time served*

12. (1) This paragraph applies to any person whose sentence falls to be reduced under section 6 by any period during which he was in custody (“the relevant period”).
- (2) For the purpose of determining for the purposes of this Schedule —
- (a) whether a person to whom this paragraph applies has served one-half or two-thirds of his sentence; or
  - (b) whether such a person would (but for his release) have served three-quarters of his sentence,

the relevant period shall, subject to sub-paragraph (3), be treated as having been served by him as part of that sentence.

- (3) Nothing in sub-paragraph (2) shall have the effect of reducing the period for which a licence granted under this Schedule to a short-term or long-term detainee remains in force to a period which is less than —
- (a) one-quarter of his sentence in the case of a short-term detainee; or
  - (b) one-twelfth of his sentence in the case of a long-term detainee.

*Additional days for disciplinary offences*

13. (1) Custody rules may include provision for the award of additional days —
- (a) to short-term or long-term detainees; or

- (b) conditionally on their becoming such detainees, to remand detainees,

who (in either case) are guilty of disciplinary offences.

(2) Where additional days are awarded to a short-term or long-term detainee, or to a remand detainee who subsequently becomes a short-term or long-term detainee, and are not remitted in accordance with custody rules —

- (a) any period which he must serve before becoming entitled to or eligible for release under this Schedule, and
- (b) any period for which a licence granted to him under this Schedule remains in force,

shall be extended by the aggregate of those additional days.

*Extended sentences for serious criminal offenders*

[P1998/37/59]

13A. (1) This paragraph applies to a detainee serving an extended sentence within the meaning of section [38] of the *Criminal Justice Act 2001*.<sup>33</sup>

(2) Subject to this paragraph, this Schedule, except paragraph 11, shall have effect as if the term of the extended sentence did not include the extension period.

(3) Where the detainee is released on licence under this Schedule, the licence shall, subject to any revocation under paragraph 10(1) or (2), remain in force until the end of the extension period.

(4) Where, apart from this sub-paragraph, the detainee would be released unconditionally —

- (a) he shall be released on licence; and
- (b) the licence shall, subject to any revocation under paragraph 10(1) or (2), remain in force until the end of the extension period.

(5) The extension period shall be taken to begin as follows —

- (a) for the purpose of sub-paragraph (3), on the date given by paragraph 8(1);
- (b) for the purposes of sub-paragraph (4), on the date on which, apart from that sub-paragraph, the detainee would have been released unconditionally.

(6) Paragraph 2(3) and paragraph 15 shall not apply in relation to the detainee.

(7) [Repealed]<sup>34</sup>

(8) In this paragraph, “extension period” has the same meaning as in section 38 of the *Criminal Justice Act 2001*.<sup>35</sup>

*Re-release of prisoners serving extended sentences*

[P1998/37/60]

13B. (1) This paragraph applies to a detainee serving an extended sentence within the meaning of section 38 of the *Criminal Justice Act 2001* who is recalled to an institution under section 10(1) or (2).

(2) Subject to sub-paragraph (3), the detainee may require the Department to refer his case to the Committee at any time.

(3) Where there has been a previous reference of the detainee's case to the Committee (whether under this paragraph or paragraph 10(4)), the Department shall not be required to refer the case until after the end of the period of one year beginning with the disposal of that reference.

(4) On a reference —

- (a) under this paragraph; or
- (b) under paragraph 10(4),

the Committee shall direct the detainee's release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise).

(5) If the Committee gives a direction under sub-paragraph (4) it shall be the duty of the Department to cause the release of the detainee on licence.

(6) Without prejudice to sub-paragraphs (2) to (5), it is the duty of the Department to cause the release of the detainee on licence if it is of the opinion that the circumstances which justified his or her recall under paragraph 10(1) or (2) no longer obtain.<sup>36 37</sup>

*Fine defaulters and contemnors*

14. (1) Subject to sub-paragraph (2), this Schedule (except paragraphs 6 and 11) applies to persons committed to custody —

- (a) in default of payment of a sum adjudged to be paid by a conviction; or
- (b) for contempt of court or any kindred offence,

as it applies to persons serving equivalent sentences of custody; and references in this Part to short-term or long-term detainees shall be construed accordingly.

(2) In relation to persons committed as mentioned in sub-paragraph (1), paragraphs 2 and 8 have effect subject to the following modifications.

(3) For paragraph 2(1) to (4) substitute —

- “(1) As soon as a person committed as mentioned in paragraph 14(1) has served the appropriate proportion of his term, that is —

- (a) one-half, in the case of a person committed for a term of less than 12 months; and
  - (b) two-thirds, in the case of a person committed for a term of 12 months or more;
- the Department shall release him unconditionally.
- (2) As soon as a person so committed who —
    - (a) has been released on licence under paragraph 7(1); and
    - (b) has been recalled under paragraph 9(2) or 10(1) or (2),
 would (but for his release) have served the appropriate proportion of his term, the Department shall release him unconditionally.”
  - (4) For paragraph 8(1) to (3) substitute —
    - “(1) Where a person committed as mentioned in paragraph 14(1) is released on licence under paragraph 6(1), the licence shall, subject to —
      - (a) any suspension under paragraph 9(2), or
      - (b) any revocation under paragraph 10(1) or (2),
 remain in force until the date on which he would (but for his release) have served the appropriate proportion of his term; and in this sub-paragraph “the appropriate proportion” has the meaning given by paragraph 2(1).”

*Persons liable to removal from the Island*

- 15. (1) In relation to a long-term detainee who is liable to removal from the Island, paragraph 6 has effect with the omission of the words “if recommended to do so by the Committee”.
- (2) In relation to a person who is liable to removal from the Island, paragraph 8(5) has effect with the omission of the words from “and those conditions” onwards.
- (3) A person is liable to removal from the Island for the purposes of this paragraph if —
  - (a) he is liable to deportation under section 3(5) of the Immigration Act 1971 (an Act of Parliament) and has been notified of a decision to make a deportation order against him;
  - (b) he is liable to deportation under section 3(6) of that Act;
  - (c) he has been notified of a decision to refuse him leave to enter the Island or the United Kingdom; or
  - (d) he is an illegal entrant within the meaning of section 33(1) of that Act.

*United Kingdom prisoners on licence*

16. (1) This paragraph applies to a person who has been released on licence under —

- (a) Part II of the Criminal Justice Act 1991 (an Act of Parliament),
- (b) Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (an Act of Parliament), or
- (c) any corresponding provision having effect in Northern Ireland.

(2) Where a person to whom this paragraph applies, if his sentence had been imposed by a court in the Island, would have been a short-term detainee, paragraph 9 applies to him as if he were a short-term detainee released on licence under this Schedule.

(3) Where the licence of a person to whom this paragraph applies has been suspended or revoked under any provision mentioned in sub-paragraph (1), he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large, as if he were a detainee who had been released and whose licence had been suspended or revoked, as the case may be, under this Schedule.

(4) An order or other instrument suspending or revoking the licence of a person to whom this paragraph applies and signed on behalf of the Secretary of State or by an officer of a court in the United Kingdom shall be sufficient authority —

- (a) to any constable to arrest him and to convey him to an institution, and
- (b) to the officer in charge of the institution or any constable to convey or deliver him, or cause him to be conveyed or delivered, to an institution in the United Kingdom named in the instrument;

and an instrument purporting to be such an instrument and to be so signed shall be presumed to be so until the contrary is proved.

*Conviction of United Kingdom prisoner*

17. Where a person —

- (a) has been released under a provision specified in paragraph 16(1), and
- (b) if his sentence had been imposed by a court in the Island, would have been a short-term detainee or a long-term detainee,

paragraph 11 applies to him as if he were a short-term detainee or long-term detainee released under this Schedule, subject to the modification that the reference in paragraph 11(2) to an institution shall be construed as including a reference to a prison in the part of the United Kingdom in which he was released.

*Amendment of this Schedule*

18. (1) The Department may by order —
- (a) amend paragraph 1(1) by substituting some other period for the period of 4 years specified in the definitions of “long-term detainee” and “short-term detainee” (or for such other period as may for the time being be substituted for it by a previous order under this paragraph);
  - (b) amend any provision of this Schedule by substituting some other proportion of a detainee’s sentence for the proportion there specified (or for such other proportion as may for the time being be substituted for it by a previous order under this paragraph);
  - (c) make such transitional provisions as appear to the Department necessary or expedient in connection with the order.
- (2) An order under this paragraph shall not have effect unless it is approved by Tynwald.

## SCHEDULE 3

### TRANSITIONAL PROVISIONS

Section 27(1)

#### PART 1 – GENERAL

##### *References to obsolete penalties*

1. (1) Any statutory provision which empowers a court to pass a sentence of transportation, penal servitude or imprisonment with hard labour shall be construed as empowering the court to pass a sentence of custody for a term not exceeding the maximum term of transportation, penal servitude or imprisonment with hard labour, as the case may be, which could have been passed in the case in question immediately before the 15th October 1963.

(2) Sub-paragraph (1) has effect subject to any statutory provision coming into operation on or after the 15th October 1963.

##### *Existing sentences*

2. (1) Any sentence or order made or warrant issued before the commencement of this Act, by virtue of which a person may be imprisoned or detained in custody or detention or in any prison, gaol or other institution (however called), shall have effect as if it authorised him to be detained in custody for the like term and for the like purposes in accordance with this Act.

(2) Where before the commencement of this Act Her Majesty pardoned any person who had been sentenced to death on condition that he be imprisoned for life or for a term, he shall be deemed to have been sentenced to imprisonment for life or for that term, as the case may be, by the court before which he was convicted.

##### *Computation of sentence*

3. No period of police detention shall be taken into account under section 6 unless it falls after the 1st April 1992.

##### *Partly suspended sentences*

4. The repeal by this Act of Part VII of Schedule 1 to the *Criminal Law Act 1981* (partly suspended sentences) does not affect a sentence passed with an order under paragraph 36(1) of that Schedule before the commencement of this Act; and that Part continues to apply to such a sentence subject to the following modifications —

- (a) in paragraph 36(8), for the words from “and he has” onwards substitute



“, disregarding the provisions of Schedule 2 (early release) to the *Custody Act 1995*”;

- (b) in paragraph 40(3), for paragraph (b) substitute —  
 “(b) Schedule 2 (early release) to the *Custody Act 1995* were disregarded.”.

#### *Boards of visitors*

5. (1) The visiting committee for the Prison as constituted immediately before the commencement of this Act shall be deemed to be the board of visitors constituted for the institution or institutions comprised in the Prison until a board of visitors is constituted by custody rules for that institution or each of those institutions, as the case may be.

(2) Anything done before the commencement of this Act by or in relation to the visiting committee of the Prison shall be treated as having been done by or in relation to the board of visitors for the institution or institutions comprised in the Prison.

(3) In this paragraph “the Prison” has the meaning given by section 36(2) of the *Prison Act 1965*.

## PART 2 – EARLY RELEASE

### *Interpretation*

6. In this Part —

“**the 1966 Act**” means the *Children and Young Persons Act 1966*;

“**custodial sentence**” means —

- (a) a sentence of imprisonment or youth custody;  
 (b) a sentence of detention (whether during Her Majesty’s pleasure, for life or for a determinate term) under section 47 of the 1966 Act;

“**existing detainee**” means a person who, at the commencement of Schedule 2, is serving a custodial sentence;

“**existing licensee**” means a person who, before the commencement of Schedule 2, had been or was deemed to have been released on licence under section 8 of the *Prison and Youth Custody Act 1986* and whose licence under that section is in force at such commencement;

“**existing life detainee**” means a person who, at such commencement, is serving one or more of the following —

- (a) a sentence of imprisonment or youth custody for life;  
 (b) a sentence of detention during Her Majesty’s pleasure or for life under section 47 of the 1966 Act;

“extended sentence certificate” means a certificate issued under subsection (4) of section 24 of the *Criminal Law Act 1981* stating that an extended term of imprisonment was imposed on an offender under that section;

“**mandatory life detainee**” means —

- (a) a mandatory life detainee within the meaning of Schedule 2, and
- (b) a person sentenced to death and pardoned by Her Majesty on condition that he be imprisoned for life.

#### *General*

7. (1) This paragraph has effect subject to paragraphs 8 to 13.

(2) Subject to sub-paragraphs (3) to (6), Schedule 2 applies in relation to an existing licensee as it applies in relation to a person who is released on licence under that Schedule; and in its application to an existing detainee, that Schedule applies subject to the modifications in those sub-paragraphs.

(3) Paragraph 11 of Schedule 2 does not apply in relation to an existing detainee or an existing licensee.

(4) In relation to an existing detainee or an existing licensee whose sentence is for a term of 12 months, paragraph 2 of Schedule 2 applies as if that sentence were for a term of less than 12 months.

(5) In relation to an existing detainee or an existing licensee whose sentence is for a term of more than 12 months and less than 4 years, Schedule 2 applies as if he were or had been a long-term detainee and not a short-term detainee.

(6) In relation to an existing detainee or an existing licensee whose sentence is for a term of more than 12 months —

- (a) paragraph 6(1) of Schedule 2 applies with the substitution for “one-half of his sentence,” of “one-third of his sentence or 6 months thereof, whichever is the longer,”;
- (b) paragraphs 2(1) and 8(1) of Schedule 2 apply with the substitution for “three-quarters” of “two-thirds”.

#### *Certain life detainees*

8. (1) This paragraph applies in the case of an existing life detainee (other than a mandatory life detainee) where the Department, after consultation with the Deemsters, certifies that in its opinion, if paragraph 4 of Schedule 2 had been in force at the time he was sentenced, the court by which he was sentenced would have ordered that that paragraph should apply to him as soon as he had served a part of his sentence specified in the certificate.

(2) Where this paragraph applies, Schedule 2 (except paragraph 6(2)) applies as if —

- (a) the existing life detainee were a discretionary life detainee for the purposes of that Schedule; and
- (b) the relevant part of his sentence within the meaning of paragraph 4 of that Schedule were the part specified in the certificate.

(3) A person serving 2 or more sentences of custody for life shall not be treated as a discretionary life detainee for the purposes of Schedule 2 unless the requirements of sub-paragraph (1) are satisfied as respects each of those sentences; and paragraph 4(4) and (6) of that Schedule does not apply in relation to such a person until after he has served the relevant part of each of those sentences.

#### *Forfeiture of remission*

9. Custody rules may include provision for applying any provisions of Schedule 2, in relation to any existing detainee or existing licensee who has forfeited any remission of his sentence, as if he had been awarded such number of additional days as may be determined by or under the rules.

#### *Early release of young persons*

10. In relation to an existing detainee or existing licensee whose sentence is a determinate sentence of detention under section 47 of the 1966 Act —

- (a) Schedule 2 applies as if he were or had been a life detainee rather than a long-term detainee or a short-term detainee;
- (b) paragraph 6(2) of that Schedule applies with the omission of “after consulting the Deemsters,”;
- (c) paragraph 8(3) of that Schedule applies with the substitution for “until his death” of “until he would (but for his release) have served the whole of his sentence”.

#### *Extended sentences*

11. In relation to an existing detainee or existing licensee on the passing of whose sentence an extended sentence certificate was issued —

- (a) paragraph 2(3) of Schedule 2 applies as if the duty to release him unconditionally were a duty to release him on licence; and
- (b) paragraph 8(1) applies as if the reference to three-quarters of his sentence were a reference to the whole of that sentence.

#### *Partly suspended sentences*

12. (1) This paragraph applies where before the commencement of this Act a sentence has been passed on a person with an order under paragraph 36(1) of Schedule 1 to the *Criminal Law Act 1981*.

(2) Where the person has not been released from an institution since the sentence was passed, the only portion of the sentence to be taken into account for the purpose of Schedule 2 is any portion of it that he is required to serve in an institution under paragraph 36(1) or (4) of the said Schedule 1.

(3) Where the person is released from an institution but part of his sentence is subsequently restored under paragraph 36(4) of the said Schedule 1, he shall be treated for the purpose of Schedule 2 as if his only sentence for the offence were the part of his sentence so restored.

*Fine defaulters and contemnors*

13. Schedule 2 applies in relation to any person who, before the commencement of that Schedule, has been committed as mentioned in paragraph 14(1) of that Schedule as it applies in relation to any person who is so committed after such commencement.

## SCHEDULE 4

### AMENDMENT OF ENACTMENTS

#### Section 27(2)

[Sch 4 amended by Children and Young Persons Act 2001 Sch 13 and by Anti-Terrorism and Crime Act 2003 Sch 15, and amends the following Acts and Order —

Arbitration Act 1976 q.v.

Church (Ecclesiastical Jurisdiction) Act 1978 q.v.

Home Affairs Board Act 1981 q.v.

Legal Aid Act 1986 q.v.

Repatriation of Prisoners Act 1984 (Isle of Man) Order 1986 (SI1986/598)  
[see para 7 set out below]

Summary Jurisdiction Act 1989 q.v.

Civil Service Act 1990 q.v.

Death Penalty Abolition Act 1993 q.v.

Criminal Jurisdiction Act 1993 q.v.]

*Repatriation of Prisoners Act 1984 (Isle of Man) Order 1986 (SI1986/598)*

7. In the Schedule —

(a) for paragraph 3(1) substitute —

“(1) In section 2(4), for paragraph (b) substitute —

“(b) to provide for the prisoner to be treated as having been released on licence under Schedule 2 to the *Custody Act 1995* (an Act of Tynwald).”.”;

- (b) for paragraph 6(3)(a) substitute —
- “ (a) in sub-paragraph (1), for the words from “section 60” to “that section” substitute “Schedule 2 to the *Custody Act 1995* (an Act of Tynwald) whether the prisoner has at any time served any portion of his sentence”; and”.

## SCHEDULE 5

### ENACTMENTS REPEALED

#### Section 27(3)

[Sch 5 repeals the following Acts and Order wholly —

Prison Act 1965

Criminal Justice (Computation of Sentences) Act 1975

Transfer of Functions (Prison) Order 1992 (GC519/92)

and the following Acts and Order in part —

Criminal Justice Act 1963

Children and Young Persons Act 1966

Home Affairs Board Act 1981

Criminal Law Act 1981

Statute Law Revision Act 1983

Criminal Law (Amendment) Act 1985

Department of Home Affairs Order 1986 (GC120/86)

Statute Law Revision Act 1989

Summary Jurisdiction Act 1989

High Court Act 1991

Criminal Justice Act 1991

Death Penalty Abolition Act 1993

Criminal Justice (Penalties, Etc.) Act 1993.]



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> Subs (2) added by Criminal Justice Act 1996 Sch 2.
- <sup>2</sup> Subs (3) added by Criminal Justice Act 1996 Sch 2.
- <sup>3</sup> Subpara (i) amended by Anti-Terrorism and Crime Act 2003 Sch 14.
- <sup>4</sup> Subpara (ii) repealed by Anti-Terrorism and Crime Act 2003 Sch 15.
- <sup>5</sup> Subs (6) amended by Anti-Terrorism and Crime Act 2003 Sch 14.
- <sup>6</sup> Definition of “social inquiry report” amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>7</sup> Subs (2) substituted by Custody (Amendment) Act 2016 s 5.
- <sup>8</sup> Para (b) repealed by Custody (Amendment) Act 2016 s 6.
- <sup>9</sup> Subs (2A) inserted by Custody (Amendment) Act 2016 s 6.
- <sup>10</sup> Subs (2B) inserted by Custody (Amendment) Act 2016 s 6.
- <sup>11</sup> Subs (4) inserted by Custody (Amendment) Act 2016 s 6.
- <sup>12</sup> Para (b) amended by Criminal Justice, Police and Courts Act 2007 s 42 and by Custody (Amendment) Act 2016 s 8.
- <sup>13</sup> Para (c) repealed by Custody (Amendment) Act 2016 s 8.
- <sup>14</sup> Subs (3) amended by Custody (Amendment) Act 2016 s 6.
- <sup>15</sup> S 18 substituted by Custody (Amendment) Act 2016 s 7.
- <sup>16</sup> S 18A inserted by Custody (Amendment) Act 2016 s 7.
- <sup>17</sup> S 19A inserted by Criminal Justice Act 2001 s 43 and substituted by Custody (Amendment) Act 2013 s 2.
- <sup>18</sup> Subs (5) repealed by Custody (Amendment) Act 2016 s 6.
- <sup>19</sup> Subs (2) amended by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378) .

- <sup>20</sup> Subs (2A) inserted by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378).
- <sup>21</sup> Subs (3) repealed by Criminal Justice, Police and Courts Act 2007 s 42.
- <sup>22</sup> S 23A inserted by Custody (Amendment) Act 2016 s 12.
- <sup>23</sup> Definition of “adjudicator” inserted by Custody (Amendment) Act 2016 s 8.
- <sup>24</sup> ADO (whole Act) 1/8/1995 (SD384/95).
- <sup>25</sup> Subpara (1) amended by SD95/97.
- <sup>26</sup> Para (c) added by Criminal Justice, Police and Courts Act 2007 s 43.
- <sup>27</sup> Subpara (3) amended by Criminal Justice, Police and Courts Act 2007 s 43.
- <sup>28</sup> Para 2A inserted by Criminal Justice Act 2001 s 41.
- <sup>29</sup> Para (a) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>30</sup> Subpara (4A) inserted by Criminal Justice Act 2001 s 42.
- <sup>31</sup> Subpara (4B) inserted by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378).
- <sup>32</sup> Subpara (4C) inserted by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378).
- <sup>33</sup> Printed as 37 in original Act.
- <sup>34</sup> Subpara (7) repealed by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378).
- <sup>35</sup> Para 13A inserted by Criminal Justice Act 2001 s 39.
- <sup>36</sup> Subpara (6) inserted by Custody (Amendment) Act 2016 s 11, subject to transitional provisions (see Article 5 of SD2016/0378).
- <sup>37</sup> Para 13B inserted by Criminal Justice Act 2001 s 40.