



Isle of Man

Ellan Vannin

AT 3 of 2007

**CRIMINAL JUSTICE, POLICE AND
COURTS ACT 2007**



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CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

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**Isle of Man***Ellan Vannin*

CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

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| <i>Received Royal Assent:</i> | <i>11 July 2007</i> |
| <i>Announced to Tynwald:</i> | <i>11 July 2007</i> |
| <i>Commenced:</i> | <i>See endnotes</i> |

AN ACT to make new provision relating to criminal justice, the police, criminal courts and emergency powers; to amend enactments relating to those matters; and for other purposes.

PART 1 – SEXUAL OFFENCES AND OFFENDERS

1 Amends Criminal Justice Act 2001

[Amends Schedule 1 to the *Criminal Justice Act 2001* as follows:- paragraph (a) inserts paragraph 3A; paragraph (b) amends paragraph 4(1) by substituting the words from “he shall be liable” to the end and by inserting paragraph 4(3); paragraph (c) amends paragraph (5)(2) by substituting “3, 3A and 4 and regulations under paragraph 3A” for “3 and 4”; paragraph (c) amends paragraph (5)(2)(a) by inserting “and 3A and regulations under that paragraph” after “3”; and paragraph (c) amends paragraph 5(3) by inserting “and (3)” after “4(1)”.]

2 [Amends Schedule 3 to the *Criminal Justice Act 2001* by inserting paragraph 5A.]

PART 2 – WEAPONS

3 Amendments

(1) [Amends the *Firearms Act 1947* as follows: paragraph (a) inserts section 23A; paragraph (b) amends section 26(1)(b) by inserting “, imitation firearm” after “firearm”; paragraph (c) amends section 26(3) by inserting “, imitation firearm” after “firearm”.]

- (2) [Amends the *Firearms Act 1968* as follows: paragraph (a) substitutes in section 2 the words “firearm (whether loaded or not) or any imitation firearm shall” for the words from “loaded shot” to “firearm shall”; paragraph (b) inserts in section 3 “or imitation firearm” after “firearm”; and paragraph (c) inserts in section 4 “or imitation firearm” after “firearm”.]
- (3) [Amends section 27(2) of the *Police Powers and Procedures Act 1998* by adding paragraph (j).]

PART 3 – ANTI-SOCIAL BEHAVIOUR

4 Amendments

- (1) [Amends section 28 of the *Criminal Justice Act 2001* as follows: paragraph (a) amends subsection (1)(a) by repealing the words “or was likely to cause”; paragraph (b) amends subsection (1)(b) by inserting “or a particular area or locality within the Island” after “in the Island”; paragraph (c) amends subsection (2) by inserting “and the Department of Health and Social Security” after “relevant authority” ; paragraph (d) inserts subsections (3A) and (3B); paragraph (e) amends subsection (10) by inserting “or an interim order under subsection (3A)” after “anti-social behaviour order”; paragraph (f) amends subsection (12) by adding at the end “or such other persons or bodies as the Department of Home Affairs may by order specify”; and paragraph (g) adds subsections (13) and (14).
- (2) [Amends Schedule 3 to the *Legal Aid Act 1986* by inserting entries 1A and 1B.]

5 [Inserts section 28A in the *Criminal Justice Act 2001*.]

6 [Amends section 7 of the *Protection from Harassment Act 2000* by substituting subsection (2).]

PART 4 – AMENDMENTS TO LICENSING ACT 1995

7 Amends *Licensing Act 1995*

[Amends section 8 of the *Licensing Act 1995* as follows: paragraph (a) substitutes subsection (1); paragraph (b) inserts subsections (1A), (1B), (1C), (1D), (1E), (1F), (1G) and (1H); paragraph (c) substitutes subsection (3); paragraph (d) inserts subsection (3A); paragraph (e) substitutes subsection (4); paragraph (f) inserts subsections (4A) and (4B); and paragraph (g) substitutes subsection (5).]

- 8 Amends *Licensing Act 1995***
[Amends section 25 of the *Licensing Act 1995* as follows: paragraph (a) substitutes subsection (2); and paragraph (b) substitutes subsection (6).]
- 9 Amends *Licensing Act 1995***
[Amends the *Licensing Act 1995* as follows: subsection (1) inserts section 25A; and subsection (2) amends section 80(1) by inserting the definitions of “business” and “premises”.]
- 10 Amends *Licensing Act 1995***
[Amends the *Licensing Act 1995* as follows: subsection (1) substitutes in sections 9(5)(b) and 66(1) “a designated official” for “the designated official”; and subsection (2) substitutes in section 80 the definition of “a designated official” for the definition of “the designated official”.]

PART 5 – POLICE

- 11 [Amends section 2 of the *Police Act 1993* by inserting subsection (4A).]**
- 12 [Amends section 8 of the *Police Act 1993* by adding subsection (4).]**

PART 6 – POLICE POWERS AND PROCEDURES

- 13 Amends *Police Powers and Procedures Act 1998***
[Amends section 58 of the *Police Powers and Procedures Act 1998* as follows: paragraph (a) inserts subsections (3A) and (3B); paragraph (b) inserts subsection (11A); paragraph (c) amends subsection (12) by substituting “subsections (11) and (11A)” for “subsection (11)”; and paragraph (d) inserts subsection (14A).]
- 14 [Amends section 66 of the *Police Powers and Procedures Act 1998* by inserting subsection (7A).]**
- 15 Amends *Police Powers and Procedures Act 1998***
[Amends section 69 of the *Police Powers and Procedures Act 1998* as follows: paragraph (a) inserts “(1)” at the beginning; paragraph (b) inserts the definition of “analysis”, substitutes paragraph (e) in the definition of “non-intimate sample” and inserts the definition of “skin impression”; and paragraph (c) adds subsection (2).]

16 [Inserts section A77 in the *Police Powers and Procedures Act 1998*.]

17 **Amends *Police Powers and Procedures Act 1998***

[Amends section 67(1) of the *Police Powers and Procedures Act 1998* by inserting “impression of footwear” after “fingerprints”, in both places where the word occurs.]

PART 7 – SUMMARY COURTS

18 [Amends section 16(5) of the *Summary Jurisdiction Act 1989* by substituting “12 months” for “6 months”.]

19 **Amends *Summary Jurisdiction Act 1989***

[Amends section 24 of the *Summary Jurisdiction Act 1989* as follows: paragraph (a) substitutes in subsection (1) “12 months” for “6 months”; paragraph (b) repeals subsection (2); and paragraph (c) substitutes in subsection (3) “does” for “and (2) do”.]

20 [Substitutes section 33 of and inserts section 33A in the *Summary Jurisdiction Act 1989*.]

21 [Inserts section 36A in the *Summary Jurisdiction Act 1989*.]

22 [Amends section 90 of the *Summary Jurisdiction Act 1989* by substituting “14 days” for “7 days”.]

23 **Amends *Criminal Law Act 1981***

[Amends section 17 of the *Criminal Law Act 1981* as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes in subsection (2) “the court” for “the Court of General Gaol Delivery”.]

24 **Confiscation of uninsured vehicles**

[S 24 (never operative) repealed by *Road Traffic and Highways (Miscellaneous Amendments) Act 2012* s 54(d).]

PART 8 – PROTECTION OF WITNESSES AND JURORS

Witnesses, jurors, etc protection

25 Intimidation: police investigations, etc

[P1994/33/51]

- (1) A person (“A”) commits an offence if –
 - (a) A does an act which intimidates, and is intended to intimidate, another person (“the victim”);
 - (b) A does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and
 - (c) A does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.
- (2) A person (“A”) commits an offence if –
 - (a) A does an act which harms, and is intended to harm, another person, or, intending to cause another person to fear harm, A threatens to do an act which would harm that other person;
 - (b) A does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person, has assisted in an investigation into an offence or, given evidence or particular evidence in proceedings for an offence, has acted as a juror or concurred in a particular verdict in proceedings for an offence; and
 - (c) A does or threatens to do it because of that knowledge or belief.
- (3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made –
 - (a) otherwise than in the presence of the victim; or
 - (b) to a person other than the victim.
- (4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person’s property) and similarly as respects an intimidatory act which consists of threats.
- (5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.
- (6) A person guilty of an offence under this section shall be liable –
 - (a) on conviction on information, to custody for a term not exceeding 7 years or a fine or both;

- (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.
- (7) If, in proceedings against a person for an offence under subsection (1), it is proved that the person did an act falling within paragraph (a) with the knowledge or belief required by paragraph (b), the person shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (c) of that subsection.
- (8) If, in proceedings against a person (“A”) for an offence under subsection (2), it is proved that within the relevant period –
- (a) that A did an act which harmed, and was intended to harm, another person; or
- (b) intending to cause another person fear of harm, A threatened to do an act which would harm that other person,
- and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (b), A shall be presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by paragraph (c) of that subsection.
- (9) In this section –
- “investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;
- “offence” includes an alleged or suspected offence;
- “potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and
- “the relevant period” –
- (a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal, of the conclusion of the appeal;
- (b) in relation to a person who has, or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of that person, or any act believed by the accused to be an act of that person, assisting in the investigation; and
- (c) in relation to a person who both has, or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of that person, or any act believed by the

accused to be an act of that person, assisting in the investigation and ending with the anniversary mentioned in paragraph (a).

- (10) For the purposes of the definition of the relevant period in subsection (9) –
- (a) proceedings for an offence are instituted at the earliest of the following times –
 - (i) when a justice of the peace issues a summons or warrant under section 4 of the *Summary Jurisdiction Act 1989* in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an information is preferred by virtue of section 2(3)(b) or (c) of the *Criminal Jurisdiction Act 1993*;
 - (b) proceedings at a trial of an offence are concluded with the occurrence of any of the following; the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which the accused was convicted; and
 - (c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.
- (11) This section is in addition to, and not in derogation of, any other offence.

26 Intimidation of witnesses

[P2001/16/39]

- (1) A person (“A”) commits an offence if –
- (a) A does an act which intimidates, and is intended to intimidate, another person (“the victim”);
 - (b) A does the act –
 - (i) knowing or believing that the victim is or may be a witness in any relevant proceedings; and
 - (ii) intending, by A’s act, to cause the course of justice to be obstructed, perverted or interfered with; and
 - (c) the act is done after the commencement of those proceedings.
- (2) For the purposes of subsection (1) it is immaterial –
- (a) whether or not the act that is done is done in the presence of the victim;
 - (b) whether that act is done to the victim or to another person; and
 - (c) whether or not the intention to cause the course of justice to be obstructed, perverted or interfered with is the predominating intention of the person doing the act in question.

- (3) If, in proceedings against a person (“A”) for an offence under this section, it is proved –
- (a) that A did any act that intimidated, and was intended to intimidate, another person; and
 - (b) that A did that act knowing or believing that that other person was or might be a witness in any relevant proceedings that had already commenced,
- A shall be presumed, unless the contrary is shown, to have done the act with the intention of causing the course of justice to be obstructed, perverted or interfered with.
- (4) A person guilty of an offence under this section shall be liable –
- (a) on conviction on information, to custody for a term not exceeding 7 years or to a fine, or to both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.
- (5) References in this section to a witness, in relation to any proceedings, include references to a person who provides, or is able to provide, any information or any document or other thing which might be used as evidence in those proceedings or which (whether or not admissible as evidence in those proceedings) –
- (a) might tend to confirm evidence which will be or might be admitted in those proceedings;
 - (b) might be referred to in evidence given in those proceedings by another witness; or
 - (c) might be used as the basis for any cross examination in the course of those proceedings.
- (6) References in this section to doing an act include references to issuing any threat (whether against a person or a person’s finances or property or otherwise), or making any other statement.
- (7) This section is in addition to, and not in derogation of, any other offence.

27 Harming witnesses etc

[P2001/16/40]

- (1) A person (“A”) commits an offence if, in circumstances falling within subsection (2) –
- (a) A does an act which harms, and is intended to harm, another person; or
 - (b) intending to cause another person to fear harm, A threatens to do an act which would harm that other person.
- (2) The circumstances fall within this subsection if –

- (a) the person doing or threatening to do the act does so knowing or believing that some person (whether or not the person harmed or threatened or the person against whom harm is threatened) has been a witness in relevant proceedings; and
 - (b) the person does or threatens to do that act because of that knowledge or belief.
- (3) If, in proceedings against a person (“A”) for an offence under this section, it is proved that, within the relevant period —
 - (a) A did an act which harmed, and was intended to harm, another person; or
 - (b) intending to cause another person to fear harm, A threatened to do an act which would harm that other person,and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (a) of subsection (2), A shall be presumed, unless the contrary is shown, to have done the act, or (as the case may be) threatened to do the act, because of that knowledge or belief.
- (4) For the purposes of this section it is immaterial —
 - (a) whether or not the act that is done or threatened, or the threat that is made, is or would be done or is made in the presence of the person who is or would be harmed or of the person who is threatened;
 - (b) whether or not the motive mentioned in subsection (2)(b) is the predominating motive for the act or threat; and
 - (c) whether the harm that is done or threatened is physical or financial or is harm to a person or to a person’s property.
- (5) A person guilty of an offence under this section shall be liable —
 - (a) on conviction on information, to custody for a term not exceeding 7 years or to a fine, or to both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.
- (6) In this section “the relevant period”, in relation to an act done, or threat made, with the knowledge or belief that a person has been a witness in any relevant proceedings, means the period that begins with the commencement of those proceedings and ends one year after they are finally concluded.
- (7) References in this section to a witness, in relation to any proceedings, include references to a person who has provided any information or any document or other thing which was or might have been used as evidence in those proceedings or which (whether or not it was admissible as evidence in those proceedings) —

- (a) tended to confirm or might have tended to confirm any evidence which was or could have been given in those proceedings;
 - (b) was or might have been referred to in evidence given in those proceedings by another witness; or
 - (c) was or might have been used as the basis for any cross examination in the course of those proceedings.
- (8) This section is in addition to, and not in derogation of, any other offence.

28 Relevant proceedings

[P2001/16/41]

- (1) A reference in section 26 or 27 to relevant proceedings is a reference to any proceedings in or before the High Court, the Court of General Gaol Delivery or any court of summary jurisdiction which —
- (a) are not proceedings for an offence; and
 - (b) were commenced after the coming into force of that section.
- (2) For the purposes of any reference in section 26 or 27 or in this section to the commencement of any proceedings, relevant proceedings are commenced (subject to subsection (5)) at the earliest time at which one of the following occurs —
- (a) a complaint is made or application, petition, summons or other process made or issued for the purpose of commencing the proceedings;
 - (b) any other step is taken by means of which the subject matter of the proceedings is brought for the first time (whether as part of the proceedings or in anticipation of them) before the court.
- (3) For the purposes of any reference in section 26 or 27 to the time when any proceedings are finally concluded, relevant proceedings are finally concluded (subject to subsection (4)) —
- (a) if proceedings for an appeal against, or an application for a review of, those proceedings or of any decision taken in those proceedings are brought or is made, at the time when proceedings on that appeal or application are finally concluded;
 - (b) if the proceedings are withdrawn or discontinued, at the time when they are withdrawn or discontinued; and
 - (c) in any other case, when the court in or before which the proceedings are brought finally disposes of all the matters arising in those proceedings.
- (4) Relevant proceedings shall not be taken to be finally concluded by virtue of subsection (3)(a) where —
- (a) the matters to which the appeal or application relate are such that the proceedings in respect of which it is brought or made continue

- or resume after the making of any determination on that appeal or application; or
- (b) a determination made on that appeal or application requires those proceedings to continue or to be resumed.
- (5) Where, after having appeared to be finally concluded, any relevant proceedings continue by reason of —
- (a) the giving of permission to bring an appeal after a fixed time for appealing has expired;
 - (b) the lifting of any stay in the proceedings;
 - (c) the setting aside, without an appeal, of any judgment or order; or
 - (d) the revival of any discontinued proceedings,

sections 26 or 27 and this section shall have effect as if the proceedings had concluded when they appeared to, but as if the giving of permission, the lifting of the stay, the setting aside of the judgment or order or, as the case may be, the revival of the discontinued proceedings were the commencement of new relevant proceedings.

PART 9 – EVIDENCE

29 Use of live television links at preliminary hearings

[P1998/37/57]

- (1) In any proceedings for an offence, a court may, after hearing representations from the parties, direct that the accused shall be treated as being present in the court for any particular hearing before the start of the trial if, during that hearing —
- (a) the accused is held in custody in a prison or other institution; and
 - (b) whether by means of a live television link or otherwise, the accused is able to see and hear clearly and to be clearly seen and heard by it.¹
- (2) A court shall not give a direction under subsection (1) unless —
- (a) it has been notified by the Department of Home Affairs that facilities are available for enabling persons held in custody in a prison or other institution in which the accused is or is to be so held to see and hear the court and to be seen and heard by it; and
 - (b) the notice has not been withdrawn.
- (3) If in a case where it has power to do so the court decides not to give a direction under subsection (1), it shall give its reasons for not doing so.
- (4) In this section “the start of the trial” shall be taken to occur —
- (a) when the court begins to hear evidence for the prosecution at the trial; or

- (b) if the court accepts a plea of guilty without proceeding as mentioned in paragraph (a), when that plea is accepted.
- (5) In this section, “prison or other institution” includes a prison or institution outside the Island.

30 Live links in criminal proceedings

[P2003/44/51]

- (1) A witness (other than the accused) may, if the court so directs, give evidence through a live link in criminal proceedings (including committal proceedings) before —
 - (a) the Staff of Government Division;
 - (b) the Court of General Gaol Delivery; and
 - (c) a court of summary jurisdiction.
- (2) A direction may be given under this section —
 - (a) on an application by a party to the proceedings; or
 - (b) of the court’s own motion.
- (3) But a direction may not be given under this section unless —
 - (a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link;
 - (b) it has been notified by the Chief Registrar that suitable facilities for receiving evidence through a live link are available in the courtroom in which it appears to the court that the proceedings will take place; and
 - (c) that notification has not been withdrawn.
- (4) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.
- (5) In deciding whether to give a direction under this section the court must consider all the circumstances of the case.
- (6) Those circumstances include in particular —
 - (a) the availability of the witness;
 - (b) the need for the witness to attend in person;
 - (c) the importance of the witness’s evidence to the proceedings;
 - (d) the views of the witness;
 - (e) the suitability of the facilities at the place where the witness would give evidence through a live link;
 - (f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness’s evidence.

- (7) The court must state in open court its reasons for refusing an application for a direction under this section.

31 Effect of, and rescission of, direction

[P2003/44/52]

- (1) Subsection (2) applies where the court gives a direction under section 30 for a person to give evidence through a live link in particular proceedings.
- (2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this section).
- (3) The court may rescind a direction under section 30 if it appears to the court to be in the interests of justice to do so.
- (4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 30 in relation to that person.
- (5) A direction under section 30 may be rescinded under subsection (3) —
 - (a) on an application by a party to the proceedings; or
 - (b) of the court's own motion.
- (6) But an application may not be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.
- (7) The court must state in open court its reasons —
 - (a) for rescinding a direction under section 30; or
 - (b) for refusing an application to rescind such a direction.

32 Courts permitted to sit at other locations

[P2003/44/53]

- (1) This section applies where —
 - (a) a court is minded to give a direction under section 30 other for evidence to be given through a live link in proceedings before the court; and
 - (b) suitable facilities for receiving such evidence are not available at any courtroom in which the court intends to sit.
- (2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available and which has been appointed for the purposes of this section by the Chief Registrar.

33 Directions to jury

[P2003/44/54]

- (1) This section applies where, as a result of a direction under section 30, evidence has been given through a live link in proceedings before a court other than a court of summary jurisdiction.
- (2) The Deemster may give the jury (if there is one) such direction as the Deemster thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

34 Oaths made through live links

[1990/1/27/5]

A statement made on oath by a witness (whether inside or outside the Island) and given in evidence through a live link shall be treated for the purpose of section 1 of the *Perjury Act 1952* as having been made in the proceedings in which it is given in evidence.

35 Rules of court

[P2003/44/55]

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.
- (2) Rules of court may in particular make provision —
 - (a) as to the procedure to be followed in connection with applications under section 30 or 31; and
 - (b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.
- (3) The provision which may be made by virtue of subsection (2)(a) includes provision —
 - (a) for uncontested applications to be determined by the court without a hearing;
 - (b) for preventing the renewal of an unsuccessful application under section 30 unless there has been a material change of circumstances;
 - (c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 30 or 31 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.
- (4) Nothing in this section is to be taken as affecting the generality of any statutory provision conferring power to make rules of court.

36 Evidence by video recording

[P2003/44/137]

- (1) This section applies where —
 - (a) a person is called as a witness in criminal proceedings (including committal proceedings) before —
 - (i) the Staff of Government Division;
 - (ii) the Court of General Gaol Delivery; and
 - (iii) a court of summary jurisdiction;
 - (b) the person claims to have witnessed (whether visually or in any other way) —
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
 - (ii) events closely connected with such events;
 - (c) the person has previously given an account of the events in question (whether in response to questions asked or otherwise);
 - (d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in subsection (b));
 - (e) a video recording was made of the account;
 - (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and
 - (g) the recording is played in the proceedings in accordance with the direction.
- (2) If, or to the extent that, in the oral evidence of the witness in the proceedings, the witness asserts the truth of the statements made by the witness in the recorded account, they shall be treated as if made by the witness in that evidence.
- (3) A direction under subsection (1)(f) —
 - (a) may not be made in relation to a recorded account given by the accused;
 - (b) may be made only if it appears to the court that —
 - (i) the witness's recollection of the events in question is likely to have been significantly better when the witness gave the recorded account than it will be when oral evidence is given in the proceedings; and
 - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are —

- (a) the interval between the time of the events in question and the time when the recorded account was made;
 - (b) any other factors that might affect the reliability of what the witness said in that account;
 - (c) the quality of the recording;
 - (d) any views of the witness as to whether the evidence in chief of the witness should be given orally or by means of the recording.
- (5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

37 Video evidence: further provisions

[P2003/44/138]

- (1) Where a video recording is admitted under section 36, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.
- (2) The reference in subsection (1)(f) of section 36 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account shall, where appropriate, be read accordingly.
- (3) In considering whether any part of a recording should not be admitted under section 36, the court must consider —
 - (a) whether admitting that part would carry a risk of prejudice to the accused; and
 - (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (4) A court may not make a direction under section 36(1)(f) in relation to any proceedings unless —
 - (a) the Chief Registrar has notified the court that arrangements can be made, in the courtroom in which it appears to the court that the proceedings will take place, for implementing directions under that section; and
 - (b) the notice has not been withdrawn.
- (5) Nothing in section 36 affects the admissibility of any video recording which would be admissible apart from that section.

38 Interpretation of Part 9

[P2003/44/56, 140]

- (1) In this Part —

“**document**” means anything in which information of any description is recorded, but not including any recording of sounds or moving images;

“**oral evidence**” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“**rules of court**” means —

- (a) rules made under section 25 of the *High Court Act 1991* (as extended by section 57 of the *Criminal Jurisdiction Act 1993*); and
- (b) rules made under section 91 of the *Summary Jurisdiction Act 1989*;

“**video recording**” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track;

“**witness**”, in relation to any criminal proceedings, means a person called or proposed to be called, to give evidence in the proceedings.

(2) In this Part “**live link**” means a live television link or other arrangement by which a witness, while at a place whether inside or outside the Island, is able to see and hear a person at the place where the proceedings are being held and to be seen and heard by the following persons.

(3) They are —

- (a) the accused;
- (b) the Deemster and the jury (if there is one);
- (c) the High Bailiff or the Justices of the Peace hearing the proceedings;
- (d) legal representatives acting in the proceedings; and
- (e) any interpreter or other person appointed by the court to assist the witness.

(4) The extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing is to be disregarded for the purposes of subsection (2).

39 Saving

(1) No provision of this Part has effect in relation to criminal proceedings begun before the commencement of that provision.

(2) Nothing in this Part is to be regarded as affecting any power of a court —

- (a) to make an order, give directions or give leave of any description in relation to any witness (including the accused); or
- (b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

40 Abolition of right of accused to make unsworn statement

[P1982/48/72]

- (1) Subject to subsections (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if the accused gives evidence, the accused shall do so (subject to section 77 of the *Children and Young Persons Act 2001*) on oath and be liable to cross-examination.
- (2) This section shall not affect the right of the accused, if not represented by counsel, to address the court or jury otherwise than on oath on any matter on which, if the accused were so represented, counsel could address the court or jury on the accused's behalf.
- (3) Nothing in subsection (1) shall prevent the accused making a statement without being sworn —
 - (a) if it is one which the accused is required by law to make personally; or
 - (b) if the accused makes it by way of mitigation before the court passes sentence upon the accused.
- (4) Nothing in this section applies —
 - (a) to a trial; or
 - (b) to committal proceedings before a court of summary jurisdiction, which began before the commencement of this section.

PART 10 – SENTENCING PRINCIPLES**41 Influence of alcohol: effect on sentence**

- (1) This section applies where a court is considering the seriousness of an offence.
- (2) If the defendant was under the influence of alcohol at the time the offence was committed, the court —
 - (a) may treat that fact as an aggravating factor; and
 - (b) if it does so, must state in open court that the offence was so aggravated.

PART 11 – CUSTODY ACT 1995

42 [Repealed]²

43 Amends *Custody Act 1995*

- (1) [Amends paragraph 8(b) of Schedule 1 to the *Custody Act 1995* by adding item (c).]
- (2) [Amends paragraph 10(3) of Schedule 1 to the *Custody Act 1995* by substituting “£2,500” for “£1,000”.]

PART 12 – EMERGENCY POWERS

44 [Amends the *Emergency Powers Act 1936* by inserting section 2A after section 1.]

45 Amends emergency powers

- (1) [Amends section 3 of the *Emergency Powers Act 1936* by substituting subsection (1).]
- (2) [Amends section 1 of the *Emergency Powers (Amendment) Act 1989* by repealing subsection (1).]

PART 13 – MISCELLANEOUS

46 Amends *Criminal Justice Act 1963*

[Amends section 5 of the *Criminal Justice Act 1963* as follows: paragraph (a) inserts subsections (2) and (2A); paragraph (b) amends subsection (3) by substituting the words from the beginning to “or may”; and paragraph (c) repeals subsection (5).]

47 Electronic monitoring

- (1) Where a court makes a community order the court may also impose an electronic monitoring requirement if the court —
 - (a) considers it appropriate to do so in the particular circumstances; and
 - (b) is not prevented from doing so by subsection (2) or by section 48(2).
- (2) A court may not include an electronic monitoring requirement in a community order in respect of an offender unless the court —

- (a) has been notified by the Department of Home Affairs that electronic monitoring arrangements are available in the Island, and
 - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) The Department of Home Affairs may make rules for regulating —
- (a) electronic monitoring in pursuance of an electronic monitoring requirement, and
 - (b) without prejudice to the generality of paragraph (a), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.
- (4) In this section —
- “community order” means —
- (a) an anti-social behaviour order under section 28 of the *Criminal Justice Act 2001*;
 - (b) a curfew order under section 29 of and Schedule 5 to the *Criminal Justice Act 2001*;
 - (c) a probation order under the *Criminal Justice Act 1963*;
 - (d) a community service order under Schedule 3 of the *Criminal Law Act 1981*;
 - (e) a reparation order under section 35 of the *Criminal Justice Act 2001*;
 - (f) an attendance centre order under section 37 of and Schedule 7 to the *Criminal Justice Act 2001*;
 - (g) a combination order under section 7 of the *Criminal Justice (Penalties, Etc.) Act 1993*;
 - (h) a non-molestation order under section 104 of the *Matrimonial Proceedings Act 2003*;
 - (i) an order of a court admitting a person to bail under the *Bail Act 1952*;

“electronic monitoring requirement” has the same meaning as in section 48.

- (5) The Department of Home Affairs may by order amend the definition of community order in subsection (4).

48 Electronic monitoring requirement

[P2003/44/215]

- (1) In this section “electronic monitoring requirement”, in relation to a community order, means a requirement for securing the electronic monitoring of the offender’s compliance with other requirements imposed by the order during a period specified in the order, or

determined by the responsible officer in accordance with the relevant order.

- (2) Where —
 - (a) it is proposed to include in a community order a requirement for securing electronic monitoring in accordance with this section, but
 - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,the requirement may not be included in the order without that person's consent.
- (3) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Department of Home Affairs.
- (4) Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify —
 - (a) the offender,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within subsection (2)(b),of the time when the period is to begin.

49 Sections 47 and 48: supplementary

- (1) Rules under section 47(3) and orders under section 48(3) or 47(5) shall not come into operation unless approved by Tynwald.
- (2) The power for a court to impose an electronic monitoring requirement (as defined in section 48) is additional to and does not prejudice any other powers of the court to deal with persons appearing before the court.
- (3) For the purposes of any enactment conferring rights of appeal in criminal cases, an electronic monitoring requirement (as defined in section 48) shall be subject to the same rights of appeal as the relevant community order.

50 Amends *Fireworks Act 2004*

[Amends section 4 of the *Fireworks Act 2004* as follows: subsection (1) inserts subsection (5)(aa); subsection (2) adds the word “or” to subsection (5)(b) and adds subsection (5)(c); and subsection (3) adds subsection (9).]

PART 14 – GENERAL

51 Financial

There shall be paid out of money provided by Tynwald any expenses of the Department of Home Affairs, the Treasury or the Chief Constable under this Act and any increase attributable to this Act in the sums so payable under any other Act.

52 Short title and commencement

- (1) This Act may be cited as the Criminal Justice, Police and Courts Act 2007.
- (2) This Act shall come into force on such day as the Department of Home Affairs may by order appoint and different days may be so appointed for different provisions and for different purposes.³
- (3) An order under subsection (2) may make such transitional provisions or savings as the Department may consider necessary in connection with any provision brought into force by the order.

ENDNOTES

Table of Legislation History

| Legislation | Year and No | Commencement |
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Table of Renumbered Provisions

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Table of Endnote References

¹ Subs (1) amended by Criminal Justice, Police Powers and Other Amendments Act 2014 s 54.

² S 42 repealed by Custody (Amendment) Act 2016 s 7.

³ ADO (ss 1, 3, 6, 11 to 19, 21 to 23, 25 to 28, 40, 41, 43 to 46 and 50 to 52) 14/9/2007; (s 2) 1/10/2007; (ss 7 to 10 and 42) 1/11/2007 (SD723/07); (ss 4 and 5) 7/12/2007 (SD974/07); (ss 20, 29 to 39 and 47 to 49) 21/7/2008 (SD609/08).