



Isle of Man

Ellan Vannin

AT 6 of 2010

**ORGANISED AND INTERNATIONAL
CRIME ACT 2010**



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**Isle of Man***Ellan Vannin*

ORGANISED AND INTERNATIONAL CRIME ACT 2010

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AN ACT to give effect, as part of the law of the Island, to the United Nations Convention against Transnational Organized Crime adopted by the General Assembly of the United Nations and opened for signature in Palermo in 2000 and the Protocols to that Convention to Prevent, Suppress and Punish Trafficking in Persons and Against the Smuggling of Migrants; to amend the *International Criminal Court Act 2003*; to make amendments to the *Telecommunications Act 1984* and the *Proceeds of Crime Act 2008*; and for connected purposes.

PART 1 – OPENING PROVISIONS

1 Short title

The short title of this Act is the Organised and International Crime Act 2010.

PART 2 – ORGANISED AND INTERNATIONAL CRIME

2 Participation in a criminal organisation

- (1) A person commits an offence if he or she —
 - (a) participates in a criminal organisation, knowing that it is a criminal organisation; and
 - (b) knows, or is reckless as to whether, his or her participation contributes, or may contribute, to the commission of a serious offence against the law of a State.
- (2) A person who commits an offence contrary to subsection (1) is liable on conviction on information to custody for not more than 10 years, a fine, or both.

- (3) For the purposes of this section —
- (a) a “criminal organisation” is a group of 3 or more persons who have as their objective, or one of their objectives, the immediate obtaining (directly or indirectly) of a material benefit from the commission of a serious offence against the law of a State by the organisation or an associated person, but does not include a group that is randomly formed for the commission of a single offence;
 - (b) a group of 3 or more persons may be a criminal organisation regardless of whether —
 - (i) some are subordinates or employees of other members of the group or of other persons;
 - (ii) only some of those involved in the group at a particular time are involved in the planning, arrangement or execution of any particular act;
 - (iii) its membership changes from time to time;
 - (iv) the persons are present in the Island;
 - (v) a serious offence against the law of a State was committed by the organisation or an associated person, or was intended to be so committed (anywhere in the world);
 - (vi) any person received a material benefit from the commission of a serious offence against the law of a State by the organisation or an associated person;
 - (c) “**associated person**” in relation to a criminal organisation means a member, associate member or prospective member;
 - (d) “**participation in a criminal organisation**” includes in particular —
 - (i) agreeing with another to participate in an act that contributes, or may contribute, to the commission of a serious offence against the law of a State;
 - (ii) organising, directing, participating in or assisting in, the commission of a serious offence against the law of a State by the organisation or an associated person,but a person is only to be taken to participate in a criminal organisation if he or she is an associated person in relation to that organisation; and
 - (e) “**a serious offence against the law of a State**” means —
 - (i) an offence against the law of the Island that is punishable by more than 4 years’ custody; or
 - (ii) an offence against the law of any other State that, had it been committed in the Island, would have been so punishable.

- (4) In proceedings for an offence contrary to subsection (1) against a person for participating in the criminal organisation, it is not necessary to prove that —
- (a) a serious offence was committed by the organisation or an associated person;
 - (b) a serious offence committed or intended to be committed by the organisation or an associated person was committed or intended to be committed in the Island;
 - (c) any person received a material benefit from the commission of a serious offence by the organisation or an associated person; or
 - (d) the person knew the identity of any member of the organisation.

3 People smuggling

- (1) A person commits an offence if he or she —
- (a) arranges for an unauthorised migrant to enter a State;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or another; and
 - (c) knows, or is reckless as to whether, the unauthorised migrant is an unauthorised migrant.
- (2) A person commits an offence if he or she —
- (a) arranges for an unauthorised migrant to be brought to a State;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or another;
 - (c) knows, or is reckless as to whether, the unauthorised migrant is an unauthorised migrant; and
 - (d) knows, or is reckless as to whether, the unauthorised migrant intends to enter the State.
- (3) A person commits an offence if he or she —
- (a) enables a person who is not a national or a permanent resident of a State to remain in the State by the means described in section 6 (travel documentation offences) or any other illegal means;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or another; and
 - (c) knows that the person mentioned in paragraph (a) is not a national or a permanent resident of the State or is reckless as to the person's status.
- (4) A person who commits an offence against subsection (1), (2) or (3) is liable, on conviction on information, to custody for a term of not more than 20 years and to a fine.

- (5) An offence against subsection (1) may be committed even if the unauthorised migrant in relation to whom the alleged offence occurred —
- (a) consented to the arrangement for him or her to enter the State; or
 - (b) did not enter the State in respect of which the arrangement was made.
- (6) An offence against subsection (2) may be committed even if the unauthorised migrant in relation to whom the alleged offence occurred —
- (a) consented to the arrangement for him or her to be brought to the State; or
 - (b) was not brought to the State in respect of which the arrangement was made.
- (7) In this section —
- “arrange for an unauthorised migrant to be brought to a State” includes —
- (a) organising, or procuring, the bringing of an unauthorised migrant to a State;
 - (b) recruiting a person to be brought, as an unauthorised migrant, to a State;
 - (c) carrying an unauthorised migrant to a State;
- “arrange for an unauthorised migrant to enter a State” includes —
- (a) organising or procuring the entry of an unauthorised migrant into a State;
 - (b) recruiting a person to enter, as an unauthorised migrant, into a State;
 - (c) carrying an unauthorised migrant into a State;
- “unauthorised migrant”, in relation to a State, means a person who —
- (a) is not a citizen of the State; and
 - (b) does not have in his or her possession all the documents required by or under the law of the State lawfully to enter the State.

4 Trafficking in persons

- (1) A person commits an offence if, for the purposes of the physical exploitation of another person, he or she —
- (a) recruits or arranges for the other person to enter a State, or travel within a State; or
 - (b) arranges, organises or procures the reception, concealment or harbouring, in a State of the other person.
- (2) If the person physically exploited or intended to be physically exploited is aged 18 years or more, a person only commits an offence against

- subsection (1) if the recruitment, arrangement, organisation or procurement is by means of —
- (a) the threat or use of force or other forms of coercion;
 - (b) abduction;
 - (c) fraud or deception;
 - (d) the abuse of power or of a position of vulnerability; or
 - (e) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- (3) A person who commits an offence against subsection (1) is liable, on conviction on information, to custody for a term of not more than 20 years and to a fine.
- (4) An offence against subsection (1) may be committed even if the person physically exploited or intended to be physically exploited —
- (a) did not in fact enter, or travel within, the State; or
 - (b) was not in fact received, concealed, or harboured, in the State.
- (5) An offence against subsection (1) may be committed in respect of a person aged 18 years or more even if steps in the process by which the person entered, or was to enter, the State, or travelled, or was to travel, within the State, did not involve means described in subsection (2).
- (6) In this section, any reference to the physical exploitation of a person means any of the following —
- (a) the use of the person for sexual purposes;
 - (b) the removal of a body part from the person, unless for the benefit (other than the financial, monetary, or equivalent, benefit) of the person;
 - (c) the use of the person in forced labour or services, slavery or practice similar to slavery, or servitude.
- (7) Subsection (6)(a) includes, in particular —
- (a) the taking, or transmission, by any means, of an image of the person engaged in real or simulated sexual activities;
 - (b) the taking, or transmission, by any means, of images of the person's genitalia, anus, or breasts, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person;
 - (c) the person's participation, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person, in a performance or display, or other employment, that involves the exposure of the person's genitalia, anus or breasts.
- (8) But subsection (6)(a) does not include —
- (a) the taking, in good faith, for purposes primarily other than the exposure of body parts of the person for the sexual gratification of

- a viewer, of an image of the person as part of an artistic or cultural performance or display;
- (b) the taking or transmission of an image of the person for the purpose of —
- (i) depicting, for the instruction or information of health professionals, a medical condition or a surgical or medical technique;
 - (ii) providing medical or health education;
 - (iii) providing information relating to medical or health matters; or
 - (iv) advertising a product, instrument, or service, intended to be used for medical or health purposes.
- (9) The other person in respect of whom an offence against this section is committed, or is suspected of being committed, must not be charged as a party to the offence.

4A Forfeiture of land vehicle, ship or aircraft

P2015/30/11

- (1) This section applies if a person is convicted on information of an offence under section 4.
- (2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person —
- (a) owned the vehicle at the time the offence was committed;
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle;
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement;
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
 - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person —
- (a) owned the ship or aircraft at the time the offence was committed;
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
 - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;

- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
 - (e) was at that time a charterer of the ship or aircraft; or
 - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) But where subsection (3)(a) or (b) does not apply to the convicted person, forfeiture of a ship or aircraft may be ordered only if subsection (5) applies or —
- (a) in the case of a ship other than a hovercraft, its gross tonnage is less than 500 tons;
 - (b) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (5) This subsection applies where a person who, at the time the offence was committed —
- (a) owned the ship or aircraft; or
 - (b) was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 4.
- (6) Where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations about its forfeiture, the court may not order its forfeiture without giving the person an opportunity to make representations.¹

4B Detention of land vehicle, ship or aircraft

P2015/30/12

- (1) If a person (“P”) has been arrested for an offence under section 4, a constable or an immigration officer may detain a relevant land vehicle, ship or aircraft.
- (2) A land vehicle, ship or aircraft is relevant if the constable or officer has reasonable grounds to believe that an order for its forfeiture could be made under section 4A if P were convicted of the offence.
- (3) The land vehicle, ship or aircraft may be detained —
 - (a) until a decision is taken as to whether or not to charge P with the offence;
 - (b) if P has been charged, until P is acquitted, the charge against P is dismissed or the proceedings are discontinued; or
 - (c) if P has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

- (4) A person (other than P) may apply to the court for the release of the land vehicle, ship or aircraft on the grounds that the person —
- (a) owns the vehicle, ship or aircraft;
 - (b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or
 - (c) is a charterer of the ship or aircraft.
- (5) The court to which an application is made under subsection (4) may, if satisfactory security or surety is tendered, release the land vehicle, ship or aircraft on condition that it is made available to the court if —
- (a) P is convicted; and
 - (b) an order for its forfeiture is made under section 4A.
- (6) In this section, “the court” means —
- (a) if P has not been charged, or P has been charged but proceedings for the offence have not begun to be heard, a court of summary jurisdiction;
 - (b) if P has been charged and proceedings for the offence have begun to be heard, the court hearing the proceedings.
- (7) In this section, “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971¹ (of Parliament) as that Act has effect in the Island.²

4C Interpretation of sections 4A and 4B

P2015/30/13

- (1) In sections 4A and 4B —
- “**captain**” means master (of a ship) or commander (of an aircraft);
- “**land vehicle**” means any vehicle other than a ship or aircraft;
- “**ship**” includes every description of vessel (including a hovercraft) used in navigation.
- (2) In sections 4a and 4b, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.³

5 Aggravating factors in relation to migrant smuggling and trafficking in persons

- (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 3 or 4, a court must take into account —

¹ 1971 c.77

- (a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence;
 - (b) whether the life or safety of any person in respect of whom the offence was committed was endangered or likely to be endangered;
 - (c) whether the offence was committed for the benefit of, at the direction of, or in association with, a criminal organisation within the meaning of section 2;
 - (d) whether a person in respect of whom the offence was committed was subject to inhuman or degrading treatment as a result of the commission of the offence; and
 - (e) if during the relevant criminal proceedings the person was convicted of the same offence in respect of 2 or more people, the number of people in respect of whom the offence was committed.
- (2) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 4 (trafficking), a court must also take into account —
- (a) whether a person in respect of whom the offence was committed was also subject to other exploitation (including, in particular physical exploitation of the other person, within the meaning of that section) as a result of the commission of the offence;
 - (b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years; and
 - (c) whether the person committed the offence, or took actions that were part of the offence, for a material benefit.
- (3) This section does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 3 or 4.

6 Travel documentation offences

- (1) A person commits an offence if he or she forges, or falsifies, a travel document that he or she knows, or has reason to suspect, is intended to be used in the course of, or for purposes related to, the commission of an offence against section 3 by any person.
- (2) A person commits an offence if, without reasonable excuse —
- (a) knowing a travel document to be forged, or false, he or she —
 - (i) uses it, deals with it, or acts upon it, as if it were genuine, or
 - (ii) causes another person to use it, deal with it, or act upon it, as if it were genuine,

- in the course of, or for purposes related to, the commission of an offence against section 3 by any person;
- (b) he or she has in his or her possession, or under his or her control, a travel document that he or she knows or has reason to suspect —
 - (i) is a forged or false travel document, and
 - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence contrary to section 3 by any person;
 - (c) he or she sells, hires, lends, gives, or otherwise disposes of to another person, a travel document that he or she knows or has reason to suspect —
 - (i) is a forged or false travel document, and
 - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence against section 3 by any person; or
 - (d) he or she —
 - (i) makes, uses, has in his or her possession, or disposes of to another person, any paper or other material that he or she knows is specially provided by the proper authorities of a State for any purpose related to travel documents of the State, and
 - (ii) knows or has reason to suspect that the paper or other material is intended to be used in the course of, or for purposes related to, the commission of an offence against section 3 by any person.
- (3) A person who commits an offence against subsection (1) or (2) is liable, on conviction on information, to custody for a term of not more than 10 years and to a fine.
- (4) In this section —
- “document” includes a thing that is, or is intended to be —
- (a) attached to a document; or
 - (b) stamped or otherwise signified on a document;
- “forge” includes doing any of following —
- (a) making a copy of an existing document or writing with the intention of representing it to be the original document or writing;
 - (b) altering an existing document or writing with the intention of representing the altered document or writing to be the original document or writing;
 - (c) making a document or writing that purports to be made or issued by or on behalf of a person who did not make or issue it or authorise

its making or issue, or who does not exist, with the intention of representing it as made or issued by or on behalf of that person;

- (d) making a document or writing that falsely purports to be made at a particular place or time, or before or witnessed by a particular person, with the intention of representing that such particulars are true;

“travel document” includes an identification document.

7 Obstructing justice

- (1) A person commits an offence if, for the purpose of —
 - (a) inducing false testimony;
 - (b) interfering with the giving of testimony; or
 - (c) interfering with the production of evidence,
 in relation to proceedings in respect of an offence against a provision of this Part, he or she takes a prohibited step.
- (2) For the purposes of subsection (1), the prohibited steps are —
 - (a) using physical force, or threats, against;
 - (b) intimidating or attempting to intimidate; or
 - (c) promising, or offering, a benefit to,
 a witness, a judge, a constable, the Collector of Customs and Excise or a customs officer, who takes part in or engages in activities in respect of the proceedings.
- (3) A person who commits an offence against subsection (1) is liable on conviction on information to custody for a term of not more than 15 years, a fine, or both.
- (4) In subsection (1) a reference to proceedings in respect of an offence against a provision of this Part includes proceedings in respect of an offence, against a provision of another enactment, of —
 - (a) attempting to commit an offence against a provision of this Part;
 - (b) aiding, abetting, counselling or procuring the commission of an offence against a provision of this Part; or
 - (c) conspiring or inciting another person to commit an offence against a provision of this Part.
- (5) In this section —

“customs officer” means a person authorised in writing by the Treasury to be an officer of customs and excise; and

“judge” means a Deemster, a judicial officer within the meaning of section 3C of the *High Court Act 1991*, a High Bailiff or a magistrate.

8 Territorial application

- (1) Proceedings for an offence alleged to have been committed by a person against a provision of this Part (including an offence against any provision referred to in another subsection of this section) may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if the person —
 - (a) is ordinarily resident in the Island;
 - (b) has been found in the Island and has not been extradited; or
 - (c) is a body corporate incorporated under a law of the Island.
- (2) Proceedings against a person for an offence against a provision of this Part (including an offence against any provision referred to in another subsection of this section) may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if a person in relation to whom the offence is alleged to have been committed —
 - (a) is ordinarily resident in the Island; or
 - (b) has been found in the Island.
- (3) Proceedings against a person for an offence against section 2 may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if subsection (4) applies to the person.
- (4) This subsection applies to a person if the criminal organisation, within the meaning of section 2, in which the person is alleged to have participated is alleged to have as its objective (or one of its objectives) the obtaining of material benefits by the commission in the Island of an offence against the law of the Island that is a serious offence within the meaning of section 79 of the *Police Powers and Procedures Act 1998*.⁴
- (5) Proceedings for an offence against section 3(1) may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if the act or omission is alleged to relate to arranging for a person to enter the Island.
- (6) Proceedings for an offence against section 3(2) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if the act or omission is alleged to relate to arranging to bring a person to the Island.
- (7) Proceedings for an offence against section 4 by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside the Island, if the act or omission is alleged to relate to arranging for a person to enter the Island or to travel to the Island.

9 General provisions as to offences under this Part

- (1) A person who —

- (a) aids, abets, counsels or procures the commission of an offence under any provision of this Part (a “principal offence”); or
 - (b) conspires, attempts or incites another to commit a principal offence, is also guilty of the offence and liable in the same manner as a principal offender to the penalty provided for the principal offence.
- (2) A person alleged to have committed an offence by virtue of subsection (1) shall be triable in the same manner as a person would be tried for the principal offence.
- (3) If an offence against any provision of this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —
 - (a) a person who is a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable to the penalty provided for that offence.
- (4) If the affairs of a body corporate are managed by its members, subsection (3) applies in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.
- (5) Section 8 applies to proceedings for an offence that is an offence by virtue of subsection (1) or (3) as it would apply to proceedings for the principal offence.

10 Consent to prosecution

A prosecution for an offence under this Part may only be brought by, or with the consent of, the Attorney General.

11 Interpretation

In this Part —

“**material benefit**” includes financial, monetary or equivalent benefits, and sexual gratification;

“**State**” means any country or territory (including the Island).

PART 3 – MISCELLANEOUS AMENDMENTS

12 International Criminal Court Act 2003 amended

The International Criminal Court Act 2003 is amended in accordance with sections 13 to 16.

[Amends section 47 of the *International Criminal Court Act 2003* by adding subsection (5).]

13 [Inserts sections 50A and 50B in the *International Criminal Court Act 2003*.]

14 [Inserts section 53A in the *International Criminal Court Act 2003*.]

15 Schedule 1, paragraph 1 amended

[P2005/20/6]

- (1) Paragraph 1 of Schedule 1 (legal capacity, privileges and immunities of the International Criminal Court) is amended as follows.
- (2) [Amends paragraph 1(2) of Schedule 1 to the *International Criminal Court Act 2003* as follows: paragraph (a) adds “and members of their families who form part of their households” at the end of item (b); paragraph (b) omits “and” at the end of item h (c); paragraph (c) adds “and” at the end of item h (d); and paragraph (d) adds item (e).]
- (3) [Amends paragraph 1 of Schedule 1 to the *International Criminal Court Act 2003* by adding sub-paragraph (3).]

16 [Repealed]⁵

17 Proceeds of Crime Act 2008 amended

- (a) [Amends section 43 (searches) of the *Proceeds of Crime Act 2008* as follows: subparagraph (i) inserts subsection (1A); and subparagraph (ii) adds subsection (9).]
- (b) [Amends section 141(2) (defences in connection with the acquisition, use or possession of criminal property) of the *Proceeds of Crime Act 2008* by omitting paragraph (c).]
- (c) [Amends section 142(1) (circumstances in which a person in the regulated sector commits an offence by failing to disclose money laundering) of the *Proceeds of Crime Act 2008* by substituting “(2) to (5)” for “(2) to (4)”.]
- (d) [Amends section 148(4) (permitted disclosures) of the *Proceeds of Crime Act 2008* by substituting “145(3)(b)” for “148(3)(b)”.]

ENDNOTES**Table of Endnote References**

¹ S 4A inserted by Sexual Offences and Obscene Publications Act 2021 s 226.

² S 4B inserted by Sexual Offences and Obscene Publications Act 2021 s 226.

³ S 4C inserted by Sexual Offences and Obscene Publications Act 2021 s 226.

⁴ Subs (4) amended by Criminal Justice, Police Powers and Other Amendments Act 2014 Sch 3.

⁵ S 16 repealed by Communications Act 2021 Sch 9.