



Isle of Man

Ellan Vannin

AT 18 of 2020

**COURTS, TRIBUNALS AND LOCAL
AUTHORITY PROCEDURES, AND
MISCELLANEOUS PROVISIONS ACT 2020**



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<i>Signed in Tynwald:</i>	<i>15 December 2020</i>
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<i>Announced to Tynwald:</i>	<i>15 December 2020</i>

AN ACT to make provision about procedures under the Criminal Justice Police and Courts Act 2007, the Police Powers and Procedures Act 1998 and the Criminal Law Act 1981, and Local Authority procedures in respect of meetings, to make provision in respect of the vacation of Departmental facilities, to amend the Public Health Act 1990; and for connected purposes

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Act 2020.

2 Commencement

- (1) This Act, apart from section 1 and this section, comes into operation on such day or days as the Council of Ministers may by order appoint.¹
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Council of Ministers to be necessary or expedient.

PART 2 – COURTS AND TRIBUNALS

DIVISION 1- CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

3 Amendment of the Criminal Justice, Police and Courts Act 2007

The *Criminal Justice, Police and Courts Act 2007* is amended in accordance with this Part.

4 Repeal of section 29

[Repealed section 29]

5 Amendment of section 30

[Substituted section 30]

6 Repeal of section 31

[Repealed section 31]

7 Amendment of section 32

In section 32 (courts permitted to sit at other locations), in subsection (1) —

- (a) [Substituted paragraph (a)]
- (b) [Amended paragraph (b)]

8 New section 32A

[Inserted section 32A]

9 Amendment of section 33

[Amended section 33]

10 Amendment of section 35

Section 35 (rules of court) is amended as follows —

- (a) in subsection (2)—
 - (i) [Amended paragraph (a)]
 - (ii) [Amended paragraph (b)]
- (b) in subsection (3)—
 - (i) [Amended paragraph (a)]
 - (ii) [Amended paragraph (c)]

11 Amendment of section 38

- (1) Section 38 (interpretation of Part 9) is amended as follows.
- (2) [Inserted definitions of “bail” and “eligible criminal proceedings” in subsection (1)]
- (3) [Substituted subsection (2) and inserted subsections (2A) to (2D)]
- (4) In subsection (3)—
 - (a) [Substituted the words before paragraph (a)]
 - (b) [Amended paragraph (c)]
 - (c) [Inserted paragraph (ca)]
 - (d) [Amended paragraph (e)]
- (5) [Inserted subsection (3A)]
- (6) [Substituted subsection (4)]

12 New Schedule

[Inserted Schedule]

DIVISION 2 -PROCEDURE OF TRIBUNALS

13 Use of live video links and live audio links for tribunal purposes

- (1) No enactment or other rule of law is to be taken to prevent a relevant tribunal from using a live video link or live audio link if it considers it appropriate to do so for the purposes of conducting a hearing.
- (2) In deciding whether it is appropriate to use a live audio link or a live video link, a relevant tribunal must have regard to all the circumstances and in particular whether it is in the interests of justice to use such a link.
- (3) A person who participates in a hearing of a relevant tribunal by means of a live video link or live audio link is to be regarded for all purposes as being present at the hearing.
- (4) In this section —

“live audio link” is to be construed in accordance with subsection (5);

“live video link” is to be construed in accordance with subsection (6);

“relevant tribunal” means any of the following—

 - (a) a tribunal listed in Part 1 or Part 2 of Schedule 2 to the *Tribunals Act 2006*;
 - (b) the Advocates Disciplinary Tribunal constituted by section 15A of the *Advocates Act 1976*;
 - (c) the Interception of Communications Tribunal established by section 8 of the *Interception of Communications Act 1988*.

- (5) A “live audio link”, in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live telephone link or other arrangement which—
- (a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.
- (6) A “live video link” in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live television link or other arrangement which—
- (a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.
- (7) The following matters are to be disregarded for the purposes of subsections (5) and (6)—
- (a) the extent (if any) to which a person is unable to—
 - (i) see by reason of any impairment of eyesight, or
 - (ii) hear by reason of any impairment of hearing;
 - (b) the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.

PART 3 - BAIL

14 Amendment of the Police Powers and Procedures Act 1998

The *Police Powers and Procedures Act 1998* is amended as follows.

15 Amendment of section 20

- (1) Section 20 (entry for the purpose of arrest etc) is amended as follows.
- (2) [Inserted paragraph (ba), (bb) and (bc)]

16 Amendment of section 50

[Inserted subsection (7)]

17 New section 50A

[Inserted section 50A]

18 Amendment of section 52

Section 52 (power of arrest for failure to answer police bail) is amended as follows—

- (a) [Amended subsection (1)]
- (b) [Inserted subsection (1A)]

19 Amendment of the Criminal Law Act 1981

The *Criminal Law Act 1981* is amended as follows.

20 Amendment of section 5

- (1) Section 5 (arrest of persons granted bail) is amended as follows.
- (2) In subsection (1) —
 - (a) [Amended paragraph (a)]
 - (b) [Amended paragraph (b)]
- (3) [Amended subsection (2)(a)]
- (4) [Amended subsection (3)]

PART 4 - LOCAL AUTHORITY MEETINGS

21 Interpretation

In this Part —

“**the 1985 Act**” means the *Local Government Act 1985*;

“**annual meeting**”, in relation to a local authority, means the meeting of the authority held in pursuance of paragraph 1 of Schedule 1 to the 1985 Act;

“**joint board**” means a joint board established or deemed to be established by an order under section 7 of the 1985 Act;

“**joint committee**” means a committee appointed by one or more local authorities under section 17 of the 1985 Act or another enactment, but does not include a joint board which is a body corporate;

“**local authority**” means (as the case requires) —

- (a) a local authority within the meaning given by the 1985 Act,
- (b) a joint board,
- (c) a joint committee, and
- (d) a committee or sub-committee of anything within paragraphs (a) to (c);

“**local authority meeting**” means a meeting of a local authority;

“**the Regulations**” means the Emergency Powers (Coronavirus) (Local Government) Regulations 2020 (SD 2020/0277) as amended from time to time and as continued by the Emergency Powers (Coronavirus) (Continuation) (No.2) Regulations 2020 (SD 2020/0370).

22 Local authority meetings

Despite the expiry of the Regulations –

- (a) any act or omission of a local authority under and in accordance with the terms of the Regulations continues to be legal, valid and binding;
- (b) any appointment continued under regulation 5(3) of the Regulations continues until the next annual meeting of the local authority in May 2021 or until such earlier time as that local authority may determine, unless the person earlier vacates office;
- (c) if an appointment that would otherwise have been made or required to have been made at an annual meeting of a local authority has been made or is made at a meeting other than the annual meeting of a local authority, such appointment continues until the next annual meeting of that local authority in May 2021 or until such earlier time as that local authority may determine, unless the person earlier vacates office;
- (d) any appointment continued under regulation 5(4) of the Regulations continues until 1 May 2021 or until such earlier time as the joint board may determine, unless the person earlier vacates office;
- (e) if an appointment continued under regulation 5(4) of the Regulations continues until a time earlier than 1 May 2021, any successor appointed shall hold office in accordance with the terms of any statutory document governing the joint board in question;
- (f) any appointment continued under regulation 5(5) of the Regulations shall continue in accordance with the terms of that regulation.

23 Ratification

Any decision taken at a virtual local authority meeting held before the date on which the Regulations came into operation and ratified by the local authority at a meeting held after that date shall be deemed to be legal valid and binding.

PART 5 – MISCELLANEOUS PROVISIONS

DIVISION 1 - DEPARTMENTAL FACILITIES

24 Interpretation

In this Part—

- (a) “**Department**” means the Department of Health and Social Care and “**Departmental**” shall be construed accordingly;
- (b) “**Departmental facility**” means any institution, building, structure, room, ward, bed, unit or other place used for, or in connection with, the provision of health or social care services (or both) and includes a mobile facility;
- (c) “**O**” means a person who occupies any Departmental facility for the purpose of receiving care or treatment (or both);
- (d) “**O’s representative**” means any of the following—
 - (a) a donee of a power of attorney;
 - (b) a person appointed by the court to represent the interests of O;
 - (c) any person involved in the care and treatment of O (whether professionally or otherwise and whether or not for remuneration);
 - (d) any person whom the Department is satisfied holds themselves out (with or without the express or implied consent of O) as O’s representative;
- (e) “**P**” means a person authorised by the Department;
- (f) references to a person “**occupying**” (howsoever expressed) a Departmental facility shall be read as including a person being present or accommodated in such a facility.

25 Application of this Part

- (1) This Part applies where P considers, having taken and considered the advice of those concerned in a professional capacity in the care or treatment (or both) of O, that —
 - (a) it is no longer necessary for O to remain in occupation of the facility in question or that the facility is required for some other person who requires care or treatment (or both), and
 - (b) O can be removed from the facility without undue risk of harm to O’s health or wellbeing.
- (2) P must retain a written record of the advice referred to in subsection (1) including the reasons why it is considered that O can be removed from the facility without undue risk of harm to their health or wellbeing.

26 Vacation procedure

- (1) Before removing O, P must inform O or O's representative that O is to be removed from the facility and —
 - (a) O must be afforded such time as is reasonable in the circumstances to vacate the facility, or
 - (b) where appropriate, O's representative must be afforded such time as is reasonable in the circumstances to remove O from the facility.
- (2) Where subsection (1) applies, P may take all necessary steps to remove O from the facility notwithstanding any refusal on O's part or on the part of O's representatives.
- (3) If practicable in all the circumstances, O must be moved to another Departmental facility in the same institution or facility.
- (4) But nothing in this Part requires the Department to give effect to, or comply with, O's wishes as to where O is to be accommodated or re-accommodated where it is impracticable to do so in the circumstances or would put others (including staff of any Departmental facility) at risk of harm of any kind.
- (5) Where O is removed from a Departmental facility and not moved to another Departmental facility, the Department must ensure that an appropriate care package is in place for O.
- (6) A constable may be called upon to assist in the removal of O and may use reasonable force for that purpose.

27 Occupation fee

- (1) Where O without reasonable cause refuses to vacate a Departmental facility in accordance with this Division, O may be charged a daily occupation fee in respect of O's continued occupation of that facility.
- (2) A representative of O who in any way obstructs the removal of O from a Departmental facility in accordance with this Division may, instead of O, be charged an amount equal to the daily occupation fee O could be charged under subsection (1) for each day O remains in occupation of the Departmental facility in question.
- (3) The daily occupation fee must not exceed an amount representing the average daily cost for each occupant of the facility, of—
 - (a) the maintenance of the facility and its staff, and
 - (b) the maintenance and treatment of the occupants of the facility.

DIVISION 2 - PUBLIC HEALTH

28 Amendment of the Public Health Act 1990

- (1) The *Public Health Act 1990* is amended as follows.
- (2) [Amended the following provisions —
 - (a) section 51B(1);
 - (b) section 51C(1);
 - (c) section 51D(1);
 - (d) section 51G(7);
 - (e) section 51H(6);
 - (f) section 51L(3) and (4);
 - (g) section 51M(2) and (10);
 - (h) section 51N(1);
 - (i) section 51(O)(1)(b), (c) and (d);
 - (j) section 51PA;
 - (k) section 51Q(1)]
 - (3) [Amended section 51C]
 - (4) In section 51F (health protection regulations: supplementary) —
 - (a) [Inserted subsection (2)(i)];
 - (b) [Inserted subsection (5)(c)]
 - (5) [Amended section 51I(6)]
 - (6) [Substituted section 51Q(5) and inserted subsections (5A), (5B) and (5C)]

DIVISION 3 — GENERAL

29 Regulations

- (1) The Council of Ministers may by regulations make such provision as it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Such Regulations may make—
 - (a) supplementary, incidental or consequential provision;
 - (b) transitory, transitional or saving provision.Tynwald procedure — approval required.

30 Amendment of the Emergency Powers Act 1936

- (1) The *Emergency Powers Act 1936* is amended as follows.
- (2) [Inserted section 4A(3A)]

SCHEDULE

SCHEDULE TO BE INSERTED INTO THE CRIMINAL JUSTICE, POLICE AND
COURTS ACT 2007

[Section 12]

SCHEDULE

PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

[Section 30(8)]

PART 1 – GENERAL

1 Other limitations to apply

The limitations imposed under this Schedule are in addition to any other limitations (such as those in section 30(6)) which apply to the exercise of the power to give a direction under section 30.

PART 2 – AUDIO PROCEEDINGS

2 Conduct of proceedings wholly as audio proceedings

- (1) Eligible criminal proceedings may be conducted wholly as audio proceedings only if the proceedings meet one of the following conditions.
- (2) Condition A: the proceedings are preliminary or incidental to a criminal appeal to the Staff of Government Division.
- (3) Condition B: the proceedings are preliminary or incidental to a reference, or the hearing of a reference, under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) Condition C: the proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted.
- (5) Condition D:—
 - (a) the proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and
 - (b) the making of the decision is not disputed (including where the court is minded to refuse or revoke bail of its own motion).

- (6) But proceedings which meet any of those conditions may not be conducted wholly as audio proceedings if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings.

3 Other use of live audio links in preliminary and incidental proceedings etc

- (1) This paragraph applies to eligible criminal proceedings which meet any of the conditions in paragraph 2.
- (2) The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
- (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.
- (4) This paragraph does not apply to proceedings which meet any of the conditions in paragraph 2 if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings.

4 Other use of live audio links in other eligible criminal proceedings


- (1) This paragraph applies to both of the following—
- (a) eligible criminal proceedings which do not meet any of the conditions in paragraph 2;
 - (b) eligible criminal proceedings which meet any of those conditions if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).
- (2) The defendant may not take part in the proceedings through a live audio link.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link unless—
- (a) that person's participation through the live audio link is only for the purpose of giving evidence in the proceedings,
 - (b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and

- (c) the parties agree to that person giving evidence through a live audio link.
- (4) Where this paragraph applies by virtue of sub-paragraph (1)(b), references to the defendant include references to the person whom the court is minded to deal with for contempt of court.
- (5) Where this paragraph applies to proceedings under section 9 or 21 of the *Criminal Jurisdiction Act 1993*, it is for the defendant's representative (if such a representative has been appointed), rather than the defendant, to give any agreement under sub-paragraph (3)(c).
- (6) In this paragraph "defendant's representative" means the person appointed by the court to put the case for the defence.

PART 3 – VIDEO PROCEEDINGS

5 Conduct of proceedings wholly as video proceedings

- (1) Eligible criminal proceedings may be conducted wholly as video proceedings only if the proceedings meet one of the following conditions.
- (2) Condition A : the proceedings are—
 - (a) an appeal to the Staff of Government Division which is an appeal only against sentence,
 - (b) an appeal to that Division arising out of a trial by a court of summary jurisdiction—
 - (i) which is an appeal arising out of a trial by such a court which was itself conducted wholly as video proceedings, and
 - (ii) which the parties agree may be conducted wholly as video proceedings, or
 - (c) preliminary or incidental to any criminal appeal to the Staff of Government Division.
- (3) Condition B: the proceedings are preliminary or incidental to a reference to the Staff of Government Division under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) Condition C: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.
- (5) Condition D: the proceedings are a trial in a court of summary jurisdiction, and the parties agree to the proceedings being conducted wholly as video proceedings.

- (6) Condition E: the proceedings are a hearing under section 33 or 33A of the *Summary Jurisdiction Act 1989*. .

ENDNOTES

Table of Endnote References

¹ ADO – S 28 in operation 15/12/2020; remainder of Act in operation immediately before the lapse of the Emergency Powers (Coronavirus)(Continuation)(No.2) Regulations 2020. [See SD 2020/0591]. Editorial Note: The Emergency Powers (Coronavirus)(Continuation)(No.2) Regulations 2020 [SD 2020/0370] lapsed on 27/12/2020.]