



Isle of Man

Ellan Vannin

AT 13 of 2013

**SUMMARY JURISDICTION AND
MISCELLANEOUS AMENDMENTS ACT
2013**



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**Isle of Man***Ellan Vannin*

SUMMARY JURISDICTION AND MISCELLANEOUS AMENDMENTS ACT 2013

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AN ACT to amend further the Summary Jurisdiction Act 1989; to make minor amendments to other enactments; 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 – GENERAL PROVISIONS

1 Short title

The short title of this Act is the Summary Jurisdiction and Miscellaneous Amendments Act 2013.

2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Treasury may by order appoint.
- (2) An order under subsection (1) may contain such consequential, supplementary, incidental and transitional provisions as the Treasury considers appropriate.

3 Expiry

- (1) This Act expires —
 - (a) on the day after its promulgation if all its provisions are in operation on its promulgation; or
 - (b) otherwise, on the day after the last provision is brought into operation.

- (2) The expiry does not —
- (a) revive any Act it amended as the Act operated before the amendment commenced;
 - (b) revive anything not in operation or existing when the amendment took effect; or
 - (c) affect the continuing operation of the amendment.

PART 2 – AMENDMENTS TO SUMMARY JURISDICTION ACT 1989

4 Amendment of Summary Jurisdiction Act 1989

The Summary Jurisdiction Act 1989 is amended in accordance with this Part.

5 Sections 15A to 15C inserted – plea before venue

After the cross-heading before section 16 insert —

15A Initial procedure: accused to indicate intention as to plea

- (1) This section has effect if a person who has attained the age of 17 years appears or is brought before a court of summary jurisdiction charged with an offence specified in Schedule 2 or an offence triable either way.
- (2) Everything that the court is required to do under the following provisions of this section must be done with the accused present in court.
- (3) The court must cause the charge to be written down, if this has not already been done, and to be read to the accused.
- (4) The court must then explain to the accused in ordinary language that he or she may indicate whether (if the offence were to proceed to trial) he or she would plead guilty or not guilty, and that if the accused indicates that he or she would plead guilty —
 - (a) the court must proceed as mentioned in subsection (6); and
 - (b) the accused may be committed for sentence to a Court of General Gaol Delivery under section 17 if the court is of such opinion as is mentioned in subsection (1B)(d) of that section.
- (5) The court must then ask the accused whether (if the offence were to proceed to trial) he or she would plead guilty or not guilty.
- (6) If the accused indicates that he or she would plead guilty the court must proceed as if —

- (a) the proceedings constituted a summary trial of the information from the beginning; and
 - (b) section 8(1) were complied with and the accused had pleaded guilty under it.
- (7) If the accused indicates that he or she would plead not guilty the court must proceed as set out in section 16 or section 18 as appropriate.
- (8) If the accused fails to indicate how he or she would plead the accused is taken to indicate that he or she would plead not guilty.
- (9) Subject to subsection (6), the following do not constitute the taking of a plea —
- (a) asking the accused whether (if the offence were to proceed to trial) he or she would plead guilty or not guilty;
 - (b) an indication by the accused of how he or she would plead.

15B Intention as to plea: absence of accused

- (1) This section has effect if —
- (a) a person who has attained the age of 17 years appears or is brought before a court of summary jurisdiction charged with an offence specified in Schedule 2 or an offence triable either way;
 - (b) the accused is represented by an advocate;
 - (c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for proceedings under section 15A to be conducted in his or her presence; and
 - (d) the court considers that it should proceed in the absence of the accused.
- (2) In such a case —
- (a) the court must cause the charge to be written down, if this has not already been done, and to be read to the advocate;
 - (b) the court must ask the advocate whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty.
- (3) If the advocate indicates that the accused would plead guilty the court must proceed as if —
- (a) the proceedings constituted a summary trial of the information from the beginning; and
 - (b) section 8(1) were complied with and the accused had pleaded guilty under it.

- (4) If the advocate indicates that the accused would plead not guilty the court must proceed as set out in section 16 or section 18 as appropriate.
- (5) If the advocate fails to indicate how the accused would plead, the advocate is taken to indicate that the accused would plead not guilty.
- (6) Subject to subsection (3), the following do not constitute the taking of a plea —
 - (a) asking the advocate whether (if the offence were to proceed to trial) the accused would plead guilty or not guilty;
 - (b) an indication by the advocate of how the accused would plead.

15C Intention as to plea: adjournment

A court of summary jurisdiction proceeding under section 15A or 15B may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and must remand him or her if —

- (a) on the occasion on which the accused first appeared, or was brought, before the court to answer to the charge he or she was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) he or she has been remanded at any time in the course of proceedings on the charge,

and if the court remands the accused, the time fixed for the resumption of proceedings is that at which the accused is required to appear or be brought before the court in pursuance of the remand. **22**.

6 Section 17 amended – committal for sentence

For section 17(1) and (2) substitute —

- (1) A court of summary jurisdiction may, instead of dealing with a person who has attained the age of 17 in any manner in which the court has power to deal with him or her, commit him or her in custody or on bail to a Court of General Gaol Delivery for sentence if the conditions set out in subsection (1A) or subsection (1B) are satisfied.
- (1A) The conditions are —
 - (a) the person has been convicted (whether or not following a trial) by a court of summary jurisdiction of an offence specified in Schedule 2 or an offence triable either way; and

- (b) having obtained further information as to the circumstances of the offence during the trial (if any) or information as to the person's character and antecedents, the court thinks that greater punishment should be inflicted than it has power to inflict.
- (1B) The conditions are —
- (a) the person has been charged before a court of summary jurisdiction with an offence specified in Schedule 2 or an offence triable either way;
 - (b) the person or the person's advocate has indicated under section 15A or 15B as the case may be that the person would plead guilty were the offence to proceed to trial;
 - (c) the court proceeds as if section 8(1) were complied with and the person had pleaded guilty under it; and
 - (d) the court thinks that greater punishment should be inflicted than it has power to inflict or the circumstances make the offence one of a serious character or for other reasons make it unsuitable for summary trial.
- (2) If a person committed for sentence under subsection (1) is, prior to being dealt with by a Court of General Gaol Delivery, convicted of any offence whatsoever that could be dealt with by a court of summary jurisdiction, a court of summary jurisdiction may also commit the person in custody or on bail to a Court of General Gaol Delivery, either at the same time as the original committal or subsequently.
- (2A) Subsections (1) and (2) apply to any corporation as if the corporation were a person who has attained the age of 17 and as if the words "in custody or on bail" were omitted. **22**.

7 Sections 93 and 94 substituted and sections 94A to 94G inserted – enforcement of payment orders

For sections 93 and 94 substitute —

93 Recovery of periodical payments by Chief Registrar

- (1) If —
- (a) a periodical payments order has been made by any court;
 - (b) payments are required to be made to the Chief Registrar;
 - (c) any sums payable are in arrears; and
 - (d) the person for whose benefit the payment should have been made so requests in writing,

the Chief Registrar, unless it appears unreasonable to him or her in the circumstances to do so, must proceed in his or her own name for the recovery of those sums.

- (2) However, the person for whose benefit the payment should have been made has the same liability for all the costs properly incurred in consequence of the proceedings as if the person had taken those proceedings.
- (3) This section does not affect any right of a person to proceed in his or her own name for the recovery of sums payable under a periodical payments order.

94 Methods of enforcement

- (1) A court of summary jurisdiction may grant an execution order for the amount of any sum —
 - (a) ordered to be paid by a court of summary jurisdiction;
 - (b) in the case of any other sum ordered to be paid to the Chief Registrar under section 1 of the *Collection of Fines etc. Act 1985*, on an application by the Chief Registrar under section 4(1) of that Act.
- (2) The execution order may be enforced in accordance with Part II of the *Administration of Justice Act 1981* or —
 - (a) in the case of a periodical payments order, in accordance with Part III of that Act;
 - (b) in any other case in accordance with sections 94A to 94F.

94A Enforcement by attachment of earnings or application for benefit deductions

P2003/39/Sch 5 para 7-9

- (1) If the conditions set out in subsections (3) and (4) are met a court of summary jurisdiction may make —
 - (a) an order directing a person's employer to make such payments out of the person's earnings as the order may specify (an "attachment of earnings order"); or
 - (b) subject to section 94E(1), an application to the Department of Social Care requesting deductions from any amounts payable by way of the benefit to a person (an "application for benefit deductions"),

whether or not an execution order has been granted under section 94.

- (2) Subsection (1) does not limit the possibility of making, at a later date, whichever of the order or application mentioned in subsection (1)(a) or (b) was not made earlier.
- (3) The conditions are that it appears to the court —
 - (a) the person liable to pay a sum adjudged to be paid by conviction or order of a court is in employment or entitled to a specified benefit as the case may be; and
 - (b) it is not impracticable or inappropriate to make the order or application as the case may be.
- (4) The conditions are —
 - (a) that the person liable to pay the sum consents to the court's making the order or application; or
 - (b) if the person liable to pay the sum does not consent, the court considers that it is in the interests of justice to make the order or application.
- (5) When making an order or application under this section the court may include in it any amount outstanding in respect of any sum previously adjudged to be paid by conviction or order of any court in the Island on or after the commencement of this section.
- (6) Where, on or after the commencement of this section, a sum is adjudged to be paid by conviction or order of a court but no order or application has been made under this section, the Chief Registrar may apply to a court of summary jurisdiction for such an order or application to be made and no previous decision in respect of the matter shall bind the court.
- (7) A court of summary jurisdiction must direct —
 - (a) that an order or application under this section is to take effect immediately; or
 - (b) that it is to take effect only if so directed by the Chief Registrar.
- (8) If a person in respect of whom the court has made a direction under subsection (7)(b) is paying a sum by instalments and misses an instalment, the Chief Registrar may, in his or her discretion, direct that an order or application is to take effect.
- (9) An order or application under this section may be varied by a court of summary jurisdiction and the court has the power to revoke or suspend the order or application or substitute an alternative sentence or method of enforcement of the sum.
- (10) But despite section 114(8), if the other method of enforcement is to issue a warrant committing the person to custody under section

95 (committal in default of payment), this power is not exercisable by a single justice.

94B Duty of employer under attachment of earnings order

1981/8/31

A person to whom an attachment of earnings order is directed (the “employer”) must —

- (a) comply with the order;
- (b) give to the person liable to pay the sum in question a statement in writing specifying any payment made by the employer pursuant to the order and any sums deducted, in accordance with rules of court made under section 94G in respect of clerical and administrative expenses; and
- (c) immediately inform the Chief Registrar that the person is no longer in the employer’s employment if —
 - (i) at the time of the service on the employer of a copy of the order, the person is not so employed and the employer is satisfied that the absence from employment of that person is not merely of a temporary nature; and
 - (ii) at any time after the service on the employer of a copy of the order, the person has ceased to be so employed.

94C Statement of earnings

1981/8/32

- (1) If an attachment of earnings order is about to be made or revived, a court of summary jurisdiction may, at any time before making or varying the order —
 - (a) direct the person liable to pay the sum in question to furnish, within such time as may be specified in the direction, a statement of —
 - (i) the name and address of the person’s employer, or of each of his or her employers if more than one;
 - (ii) such particulars as to the person’s earnings as may be so specified; and
 - (iii) such other particulars as may be so specified for the purpose of enabling the person to be identified by any of his or her employers; and
 - (b) direct any person appearing to be an employer of the person to furnish, within such time as may be specified in the direction, a statement signed by or on behalf of that

employer of such particulars as may be so specified of all the earnings of the person that fall to be paid by the employer during such period as may be so specified.

- (2) The power of the court under subsection (1) may be exercised by the Chief Registrar.
- (3) A document purporting to be any such statement as is referred to in subsection (1) shall, in proceedings before the court, be received in evidence and be taken to be such a statement, without further proof, until the contrary be shown.

94D Offences in relation to attachment of earnings orders

1981/8/33

A person who —

- (a) without reasonable excuse, fails to comply with any provision of section 94B or with any direction under section 94C;
- (b) gives any statement or information required to be given under section 94B or section 94C, knowing that such statement or information is false in a material particular; or
- (c) recklessly gives such a statement or such information which is false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

94E Recovery of sums due by deductions from benefit

P1991/53/24

- (1) Before making an application for benefit deductions, a court of summary jurisdiction —
 - (a) must make an enquiry as appears appropriate as to the person's means;
 - (b) may require the person to provide prescribed information in connection with an application.
- (2) If a court of summary jurisdiction has made an application for benefit deductions, the Department of Social Care must, in accordance with regulations under subsection (3), deduct sums from any specified benefit payable to the person and pay them to the Chief Registrar towards the satisfaction of any sum adjudged to be paid by conviction or order of a court.
- (3) The Department of Social Care may make regulations —
 - (a) specifying the social security benefits for the purposes of this section;

- (b) as to the circumstances and manner in which and the times at which sums are to be deducted and paid;
 - (c) as to the calculation of such sums (which may include provision to secure that amounts payable to the offender by way of social security benefit do not fall below prescribed figures);
 - (d) as to any amount of social security benefit to be disregarded in making the calculation;
 - (e) as to the prioritisation of deductions where other deductions are being made at source;
 - (f) as to the circumstances in which it is to cease making deductions;
 - (g) allowing or requiring adjudication as regards an application, and provision as to appeals to appeal tribunals constituted under Chapter I of Part I of the Social Security Act 1998 (of Parliament) as it applies to the Island and decisions under section 9 or 10 of that Act.
- (4) The Department of Social Care must notify the person, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification.
- (5) If the whole amount to which the application relates has been paid, the Chief Registrar must give notice of that fact to the Department of Social Care.
- (6) A person who fails to provide information as required by subsection (1)(b) commits an offence.
- (7) A person who, in providing information as required by subsection (1)(b) —
- (a) makes a statement which he or she knows to be false in a material particular;
 - (b) recklessly provides a statement which is false in a material particular; or
 - (c) knowingly fails to disclose any material fact, commits an offence.
- (8) A person guilty of an offence under subsection (6) or subsection (7) is liable on summary conviction to a fine not exceeding £5,000.
- (9) In this section “prescribed” means prescribed by regulations made by the Department of Social Care.
- (10) Regulations under this Act shall not have effect unless approved by Tynwald.

earnings or application for benefit deductions

P2003/39/Sch 5 para 9A-9C

- (1) The Chief Registrar may apply to the Treasury or the Department of Social Care, as the case may be, for an information direction to facilitate the court's deciding whether or not it is practicable or appropriate to make an order or application under section 94A in respect of a person liable to pay a sum.
- (2) An information direction is a direction for the disclosure of some or all of the following information in relation to that person, namely the person's —
 - (a) full name;
 - (b) address (or any of the person's addresses);
 - (c) date of birth;
 - (d) national insurance number;
 - (e) details of earnings declared or benefit status, as the case may be.
- (3) On receiving an information direction the Treasury or the Department of Social Care, as the case may be, must disclose the information requested to the Chief Registrar.
- (4) The Chief Registrar may apply to a court of summary jurisdiction for an order for the purposes of obtaining information from the police or other bodies as to the whereabouts or address of a person liable to pay a sum adjudged to be paid by conviction or order of the court for the purposes of the court's deciding whether or not it is practicable or appropriate to make an order or application under section 94A in respect of that person, and the court must grant the application if satisfied that it is in the interests of justice to do so.
- (5) A person may disclose the information mentioned in subsection (2) or subsection (4) to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an order or application under section 94A.
- (6) A person to whom such information is disclosed who —
 - (a) discloses or uses the information; and
 - (b) the disclosure is not authorised by subsection (5) or its use is not for the purpose of facilitating the making of a decision mentioned in that subsection,commits an offence and is liable on summary conviction to a fine not exceeding £5,000.
- (7) However, it is not an offence under subsection (6) —

- (a) to disclose any information in accordance with any enactment or order of a court or for the purpose of any proceedings before a court; or
 - (b) to disclose any information that has previously been lawfully disclosed to the public.
- (8) It is a defence for a person charged with an offence under subsection (6) to prove that he or she reasonably believed that the disclosure or use was lawful.
- (9) Nothing in this section authorises the making of a disclosure that contravenes the *Data Protection Act 2002*.
- (10) In this section —
- “benefit status”, in relation to a person liable to pay a sum adjudged to be paid by conviction or order of the court, means whether or not the person is in receipt of any specified benefit and if so (in the case of each benefit) —
- (a) which benefit it is;
 - (b) where it is already subject to deductions under any enactment, the nature of the deductions concerned; and
 - (c) the amount received by the person by way of the benefit, after allowing for any such deductions;
- “information” means information in any form.

94G Rules of court

1981/8/34

- (1) Rules of court may make provision relating to attachment of earnings orders and applications for benefit deductions and their variation.
- (2) In the case of attachment of earnings orders the rules may make provision in particular —
 - (a) as to the prioritisation of deductions where other deductions are being made at source;
 - (b) the sums that may be deducted, by the employer to whom an attachment of earnings order is directed, from a person’s earnings in connection with that employer’s clerical and administrative costs in complying with that order. **22**.

8 Section 101A inserted

After section 101 insert —

101A Register of sums adjudged to be paid on conviction

P2003/39/98

- (1) The Chief Registrar is to maintain a register, in accordance with rules of court, of sums to be paid to him or her under section 1 of the *Collection of Fines etc. Act 1985* and the names and addresses of persons who have defaulted in their payment.
- (2) The rules may —
 - (a) provide exemptions from the requirement of sums (or classes of them) to be registered;
 - (b) prescribe circumstances in which an entry in the register is to be cancelled; and
 - (c) provide for sums to be registered only in such circumstances or subject to such conditions as the rules may prescribe.
- (3) The Treasury may fix charges to be made for —
 - (a) making information in an entry in the register available for inspection;
 - (b) carrying out an official search of the register;
 - (c) supplying a certified copy of information in an entry in the register.
- (4) The proceeds of those charges are to be applied in paying the expenses incurred in maintaining the register; and any surplus is to be paid into the General Revenue of the Island. **22**.

9 Section 114 amended – interpretation

- (1) In section 114(1) —
 - (a) after the definition of “adult” insert —
 - 23** “**application for benefit deductions**”, in relation to a specified benefit, means an application under section 94A(1)(b);
 - “**attachment of earnings order**” means an order made under section 94A(1)(a); **22**
 - (b) after the definition of “rules” insert —
 - 23** “**social security benefit**” means any benefit payable in accordance with an order made under section 1 or 1A of the *Social Security Act 2000*;
 - “**specified benefit**” means a social security benefit from which the Department of Social Care may make deductions by virtue of regulations made under section 94E(3)(a); **22**.
- (2) After section 114(7) insert —

- █(8) In the following provisions a reference to a court or to a court of summary jurisdiction includes a reference to a single justice —
- (a) section 5;
 - (b) section 9;
 - (c) section 43(5) and (6);
 - (d) section 94(1);
 - (e) section 94A(6) to (9);
 - (f) section 94E(1) and (2);
 - (g) section 94F(4). █.
- (3) As a consequence of subsection (2) —
- (a) in section 5(1) delete “, which for this purpose may consist of a single justice”;
 - (b) in sections 9(1) and 43(5) delete “, and may do so when composed of a single justice”.

PART 3 – MISCELLANEOUS AMENDMENTS

10 Amendment of High Court Act 1991

- (1) The *High Court Act 1991* is amended as follows.
- (2) In section 3A delete subsection (5) (appointment of Queen’s Counsel).
- (3) For the marginal note to section 3B substitute █3B Additional Deemsters█.
- (4) In section 58 —
 - (a) in subsection (1), after the definition of “grant” insert —

█ “Judge of the High Court” see section 3;█;
 - (b) after subsection (1) insert —

█(1A) A reference in this Act to “the Deemsters”, wherever —

 - (a) the person holding the office of Second Deemster is absent, or is otherwise unable to act on account of illness or for any other cause whatsoever; or
 - (b) the office of Second Deemster is vacant,

means the First Deemster only.█.

11 Amendment of Criminal Jurisdiction Act 1993

After section 28 of the *Criminal Jurisdiction Act 1993* insert —

28A Remission of fines

1981/20/27

- (1) Where a court imposes a fine it may, on a subsequent application by the offender and on inquiring into his or her means, remit the whole or any part of the fine if it thinks it just to do so, having regard to any change in the offender's circumstances since the conviction.
- (2) Where the court remits the whole or part of a fine after a term of custody has been fixed in default of payment of the fine, the court must also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole fine, or must remit the whole term, as the case may be.
- (3) In calculating the reduction in a term under subsection (2) a fraction of a day shall be left out of account.
- (4) Subsection (1) does not authorise a court to remit the whole or any part of a sum which an offender is liable to pay under section 119 (recovery of unpaid contributions) or section 120 (proof of previous offences) of the Social Security Administration Act 1992 (of Parliament) as it applies to the Island, and recoverable as a penalty by virtue of section 121(4) of that Act.
- (5) In this section "court" includes the Appeal Division.

12 Amendment of Licensing Act 1995In section 33(4C) of the *Licensing Act 1995* –

- (a) in paragraph (a) for "subsection (1) or (2)" substitute subsections (1), (2) or (5) of this section or under section 75(1), (2)(a) or (b);
- (b) in paragraph (b) for "section 18, 20, 23, 33 or 60" substitute any of sections 18 to 60;
- (c) after paragraph (e) insert –
 - (f) any other offence in which the consumption of alcohol was a significant factor leading to the offence, a constituent part of the behaviour constituting the offence or an aggravating feature of the offence; and
 - (g) such other offences as the Department may by order prescribe.

13 Consequential and minor repeals

The following are repealed –

- (a) section 27 (remission of fines) of the *Criminal Law Act 1981*;
- (b) Schedule 5, paragraph 22(3) of the *Summary Jurisdiction Act 1989*;

- (c) in the *Road Traffic Act 1985*, Schedule 6, Part I in the entry in the table relating to Schedule 2, paragraph 1(5), in column 8 the words “Court must order forfeiture of the mobile telephone unless it finds special reasons not so to do”;
- (d) section 75(5) to (7) of the *Licensing Act 1995*.

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