

CRIMINAL JUSTICE ACT 2001

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AN ACT

to amend the criminal law; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

PART 1

SEXUAL OFFENCES

1. Sex offenders : registration.

Schedule 1 (which makes provision in relation to the registration with the police of certain sex offenders) shall have effect.

2. Sexual offences committed outside the Island.

Schedule 2 (which makes provision in relation to certain sexual offences committed outside the Island) shall have effect.

3. Indecent photographs of children.

Schedule 3 shall have effect with respect to indecent photographs of children.

4. Abolition of presumption of sexual incapacity.

After section 39 of the Sexual Offences Act 1992 insert —

"39A. Abolition of presumption of sexual incapacity.

Without prejudice to section 1(5), any presumption of criminal law that a boy under the age of 14 years is incapable of sexual intercourse (whether natural or unnatural) is hereby abolished."

5. Unnatural acts: reduction in age of consent.

In the Sexual Offences Act 1992, in section 9 (unnatural offences) —

- (a) in subsection (1)(a) (offence of buggery) for "21" substitute "18";
- (b) in subsection (4)(a) (offence of gross indecency) for "21" substitute "18".

PART 2

OFFENCES AGAINST THE PERSON

6. Ill treatment of residents of nursing homes etc.

After section 14 of the Nursing and Residential Homes Act 1988, insert —

"14A. Ill treatment of residents of nursing homes etc.

(1) It is an offence for any person mentioned in subsection (2) to ill-treat or intentionally neglect a person who is for the time being resident in a nursing home or residential home.

(2) The persons referred to in subsection (1) are —

- (a) the proprietor of the home;
- (b) any manager, officer, employee or any other person employed in the home; and
- (c) any person who is for the time being providing care or services for any resident of the home.

(3) Any person guilty of an offence under this section shall be liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (b) on conviction on indictment, to custody for a term not exceeding 2 years or to a fine, or to both.

(4) No proceedings shall be instituted for an offence under this section except by or with the consent of the Attorney General."

7. Threats to kill or cause serious injury.

In section 31 of the Criminal Code 1872 (sending letters threatening to murder) for the words from "Whosoever" to "any person" substitute "A person who without lawful excuse makes to another a threat to cause the death of, or serious injury to, that other or a third person, intending that other to believe that it will be carried out".

8. Abolition of "year and a day rule".

(1) The rule known as the "year and a day rule" (that is, the rule that, for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person's death if more than a year and a day elapsed before he died) is abolished for all purposes.

(2) Subsection (1) does not apply to a case where the act or omission (or the last of the acts or omissions) which caused the death occurred before the commencement of that subsection.

PART 3

WEAPONS

Chapter I

Marketing, etc. of knives

9. Unlawful marketing of knives.

(1) A person is guilty of an offence if he markets a knife in a way which —

- (a) indicates, or suggests, that it is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) "Suitable for combat" and "violent behaviour" are defined in section 17.

(3) For the purposes of this Chapter, an indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description —

- (a) applied to the knife;
- (b) on the knife or on any packaging in which it is contained; or
- (c) included in any advertisement which, expressly or by implication, relates to the knife.

(4) For the purposes of this Chapter, a person markets a knife if —

- (a) he sells or hires it;
- (b) he offers, or exposes, it for sale or hire; or

- (c) he has it in his possession for the purpose of sale or hire.
- (5) A person who is guilty of an offence under this section is liable —
 - (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
 - (b) on conviction on information to custody for a term not exceeding 2 years or to a fine, or to both.

10. Publications.

(1) A person is guilty of an offence if he publishes any written, pictorial or other material in connection with the marketing of any knife and that material —

- (a) indicates, or suggests, that the knife is suitable for combat; or
- (b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) A person who is guilty of an offence under this section is liable —

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (b) on conviction on information to custody for a term not exceeding 2 years or to a fine, or to both.

11. Exempt trades.

11. (1) It is a defence for a person charged with an offence under section 9 to prove that —

- (a) the knife was marketed —
 - (i) for use by the armed forces of any country;
 - (ii) as an antique or curio; or
 - (iii) as falling within such other category (if any) as may be prescribed;
- (b) it was reasonable for the knife to be marketed in that way; and
- (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) It is a defence for a person charged with an offence under section 10 to prove that —

- (a) the material was published in connection with marketing a knife —
 - (i) for use by the armed forces of any country;

- (ii) as an antique or curio; or
 - (iii) as falling within such other category (if any) as may be prescribed;
- (b) it was reasonable for the knife to be marketed in that way; and
 - (c) there were no reasonable grounds for suspecting that a person into whose possession the knife might come in consequence of the publishing of the material would use it for an unlawful purpose.
- (3) In this section "prescribed" means prescribed by regulations made by the Department of Home Affairs.

12. Other defences.

(1) It is a defence for a person charged with an offence under section 9 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed —

- (a) amounted to an indication or suggestion that the knife was suitable for combat; or
- (b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(2) It is a defence for a person charged with an offence under section 10 to prove that he did not know or suspect, and had no reasonable grounds for suspecting, that the material —

- (a) amounted to an indication or suggestion that the knife was suitable for combat; or
- (b) was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

(3) It is a defence for a person charged with an offence under section 9 or 10 to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

13. Supplementary powers of entry, seizure and retention.

(1) If, on an application made by a constable, a justice of the peace is satisfied that there are reasonable grounds for suspecting —

- (a) that a person ("the suspect") has committed an offence under section 9 in relation to knives of a particular description, and
- (b) that knives of that description and in the suspect's possession or under his control are to be found on particular premises,

the justice may issue a warrant authorising a constable to enter those premises, search for the knives and seize and remove any that he finds.

(2) If, on an application made by a constable, a justice of the peace is satisfied that there are reasonable grounds for suspecting —

- (a) that a person ("the suspect") has committed an offence under section 10 in relation to particular material, and
- (b) that publications consisting of or containing that material and in the suspect's possession or under his control are to be found on particular premises,

the justice may issue a warrant authorising a constable to enter those premises, search for the publications and seize and remove any that he finds.

(3) A constable, in the exercise of his powers under a warrant issued under this section, may if necessary use reasonable force.

(4) Any knives or publications which have been seized and removed by a constable under a warrant issued under this section may be retained until the conclusion of proceedings against the suspect.

(5) For the purposes of this section, proceedings in relation to a suspect are concluded if —

- (a) he is found guilty and sentenced or otherwise dealt with for the offence;
- (b) he is acquitted;
- (c) proceedings for the offence are discontinued; or
- (d) it is decided not to prosecute him.

(6) In this section "premises" includes any place and, in particular, any vehicle, vessel, aircraft or hovercraft and any tent or movable structure.

14. Forfeiture of knives and publications.

(1) If a person is convicted of an offence under section 8 in relation to a knife of a particular description, the court may make an order for forfeiture in respect of any knives of that description —

- (a) seized under a warrant issued under section 13; or
- (b) in the offender's possession or under his control at the relevant time.

(2) If a person is convicted of an offence under section 10 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which —

- (a) have been seized under a warrant issued under section 13; or
- (b) were in the offender's possession or under his control at the relevant time.

(3) The court may make an order under subsection (1) or (2) —

- (a) whether or not it also deals with the offender in respect of the offence in any other way; and
- (b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make an order, the court must have regard —

- (a) to the value of the property; and
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section "relevant time", means the time of his arrest for the offence or of the issue of a summons in respect of it.

15. Effect of a forfeiture order.

(1) An order under section 14 (a "forfeiture order") operates to deprive the offender of his rights, if any, in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).

(3) The court may, on an application made by a person who —

- (a) claims property to which a forfeiture order applies, but
- (b) is not the offender from whom it was forfeited,

make an order (a "recovery order") for delivery of the property to the applicant if it appears to the court that he owns it.

(4) No application may be made after the end of the period of 6 months beginning with the date on which the forfeiture order was made.

(5) No application may succeed unless the claimant satisfies the court —

- (a) that he had not consented to the offender having possession of the property; or
- (b) that he did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) If a person has a right to recover property which is in the possession of another in pursuance of a recovery order, that right —

- (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the date on which the order is made; but
- (b) is lost at the end of that period.

(7) The Department of Home Affairs may make regulations, in relation to property forfeited under this section, for disposing of the property and dealing with the proceeds in cases where —

- (a) no application has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
- (b) no such application has succeeded.

(8) The regulations may also provide for investing money and auditing accounts.

(9) In this section, "application" means an application under subsection (3).

16. Offences by bodies corporate.

(1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) For the purposes of subsection (1), "body corporate" includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company's manager and registered agent.

17. Interpretation : Chapter I

In this Chapter —

"the court" means the Court of General Gaol Delivery or a court of summary jurisdiction;

"knife" means an instrument which has a blade or is sharply pointed;

"marketing" and related expressions are to be read with section 9(4);

"publication" includes a publication in electronic form and, in the case of a publication which is, or may be, produced from electronic data, any medium on which the data are stored;

"suitable for combat" means suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury;

"violent behaviour" means an unlawful act inflicting injury on a person or causing a person to fear injury.

Chapter II

Amendments relating to weapons

18. Powers to stop and search for knives or offensive weapons.

(1) Section 3 of the Police Powers and Procedure Act 1998 (powers to stop and search in anticipation of violence) is amended as follows.

(2) For subsection (1) substitute —

"(1) If a police officer of or above the rank of inspector reasonably believes —

- (a) that incidents involving serious violence may take place in any locality, and that it is expedient to give an authorisation under this section to prevent their occurrence, or
- (b) that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,

he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding 24 hours."

(3) Subsection (2) (exercise by chief inspector or inspector of power to give authorisation) is repealed.

(4) In subsection (3) (continuation of authorisation) —

- (a) for "incident" substitute "activity";
- (b) for "6" substitute "24".

(5) After subsection (3) insert —

"(3A) If an inspector gives an authorisation under subsection (1) he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed."

(6) In subsection (9) (matters to be specified in authorisations) after "specify" insert "the grounds on which it is given and".

(7) After subsection (10) add —

"(11) A person who is searched by a constable under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which he was searched.

(12) For the purposes of this section, a person carries a dangerous instrument or an offensive weapon if he has it in his possession."

19. Sale and possession of knives, etc.

(1) After section 27A of the Criminal Justice Act 1991 insert —

"27B Offence of having article with blade or point (or offensive weapon) on school premises

(1) Any person who has an article to which section 27A applies with him on school premises shall be guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1954 with him on school premises shall be guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.

(4) Without prejudice to the generality of subsection (3), it shall be a defence for a person charged with an offence under subsection (1) or (2) to prove that he had the article or weapon in question with him —

- (a) for use at work,
 - (b) for educational purposes,
 - (c) for religious reasons, or
 - (d) as part of any national costume.
- (5) A person guilty of an offence —

- (a) under subsection (1) above shall be liable —
 - (i) on summary conviction to custody for a term not exceeding 6 months, or a fine not exceeding £5,000, or both;
 - (ii) on conviction on information, to custody for a term not exceeding 4 years, or a fine, or both;
- (b) under subsection (2) above shall be liable —
 - (i) on summary conviction, to custody for a term not exceeding 6 months, or a fine not exceeding £5,000, or both;
 - (ii) on conviction on information, to custody for a term not exceeding 4 years, or a fine, or both.

(6) In this section and section 27C, "school premises" means land used for the purposes of a primary, junior or secondary school, a college or other educational establishment or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944, excluding any land occupied solely as a dwelling by a person employed at the school, college or establishment.

27C Power of entry to search for articles with a blade or point and offensive weapons

(1) A constable may enter school premises and search those premises and any person on those premises for —

- (a) any article to which section 27A applies, or
- (b) any offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1954,

if he has reasonable grounds for believing that an offence under section 27B is being, or has been, committed.

(2) If in the course of a search under this section a constable discovers an article or weapon which he has reasonable grounds for suspecting to be an article or weapon of a kind described in subsection (1), he may seize and retain it.

(3) The constable may use reasonable force, if necessary, in the exercise of the power of entry conferred by this section."

(2) In section 27(2) of the Police Powers and Procedures Act 1998, after paragraph (d) add —

- "(e) an offence under section 1(1) of the Prevention of Crime Act 1954;
- (f) an offence under section 27A of the Criminal Justice Act 1991;
- (g) an offence under section 27B(1) or (2) of the Criminal Justice Act 1991."

20. Air weapons.

In section 32 of the Firearms Act 1947, after subsection (2) add —

"(3) For the purpose of this Act, any reference to an air gun, air rifle or air pistol shall include a reference to a gun, rifle or pistol which is powered by any gas or combination of gases and any other enactment which defines an air weapon, air gun, air rifle or air pistol by reference to any provision of this Act shall have effect accordingly."

PART 4

DRUGS

21. Mail : search for illegal drugs.

For section 49(3) of the Post Office Act 1993 substitute —

- "(3) Subsection (1) does not apply —
- (a) to a power conferred by an enactment for the time being in force relating to customs in its application by virtue of section 15 of this Act or any regulations under that section to goods contained in postal packets, or
 - (b) to postal packets which are suspected to contain a controlled drug or a scheduled substance within the meaning of the Misuse of Drugs Act 1976;
 - (c) the powers conferred by sections 16 and 28(6)."

PART 5

DISHONESTY

22. Amendment of Theft Act 1981 : money transfers, etc.

(1) After section 15 of the Theft Act 1981 insert —

"15A Money transfers etc.

(1) A person is guilty of an offence if by any deception he dishonestly obtains a money transfer for himself or another.

(2) A money transfer occurs when —

- (a) a debit is made to one account,
- (b) a credit is made to another, and
- (c) the credit results from the debit or the debit results from the credit.

(3) References to a credit and to a debit are to a credit of an amount of money and to a debit of an amount of money.

(4) It is immaterial (in particular) —

- (a) whether the amount credited is the same as the amount debited;
- (b) whether the money transfer is effected on presentment of a cheque or by another method;
- (c) whether any delay occurs in the process by which the money transfer is effected;
- (d) whether any intermediate credits or debits are made in the course of the money transfer;
- (e) whether either of the accounts is overdrawn before or after the money transfer is effected.

(5) A person guilty of an offence under this section shall be liable on conviction on information to custody for a term not exceeding 10 years.

15B Section 15A: supplementary

(1) In section 15A of this Act —

"deception" has the same meaning as in section 15 of this Act;

"account" means an account kept with —

- (a) a bank; or
- (b) a person carrying on a business which falls within subsection (2).

(2) A business falls within this subsection if—

- (a) in the course of the business money received by way of deposit is lent to others; or

- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit,

and "deposit" here has the same meaning as it has for the purposes of section 25 of the Banking Act 1998 (fraudulent inducement to make a deposit).

- (3) For the purposes of subsection (2) —

- (a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and

- (b) "money" includes money expressed in a currency other than sterling or in the European currency unit (as defined in Council Regulation No 3320/94/EC or any Community instrument replacing it)."

(2) Nothing in subsection (1) has effect in relation to anything done before the day on which this section comes into operation.

- (3) After section 24 of the Theft Act 1981 insert —

"24A Dishonestly retaining a wrongful credit

- (1) A person is guilty of an offence if —

- (a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;

- (b) he knows or believes that the credit is wrongful; and

- (c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

(2) References to a credit are to a credit of an amount of money.

(3) A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A.

(4) A credit to an account is also wrongful to the extent that it derives from —

- (a) theft;

- (b) an offence under section 15A;

- (c) blackmail; or

- (d) stolen goods.

(5) In determining whether a credit to an account is wrongful, it is immaterial (in particular) whether the account is overdrawn before or after the credit is made.

(6) A person guilty of an offence under this section shall be liable on conviction on information to custody for a term not exceeding 10 years.

(7) Subsection (8) applies for purposes of provisions of this Act relating to stolen goods (including subsection (4)).

(8) References to stolen goods include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(9) In this section "account" and "money" shall be construed in accordance with section 15B."

(4) Subsection (3) applies to wrongful credits made on or after the day on which this section comes into operation.

(5) In section 16 of the Theft Act 1981, after subsection (3) insert

—
"(4) Without prejudice to the generality of subsection (2), it is an obtaining of services where the other is induced to make a loan, or to cause or permit a loan to be made, on the understanding that any payment (whether by way of interest or otherwise) will be or has been made in respect of the loan."

(6) Nothing in subsection (5) has effect in relation to anything done before the day on which this section comes into operation.

23. Possession or supply of anything for fraudulent purpose in connection with the use of telecommunications systems.

In the Telecommunications Act 1984 —

(a) after section 29 insert —

"29A. Possession or supply of anything for fraudulent purpose in connection with the use of telecommunications systems.

(1) Subsection (2) applies if a person has in his custody or under his control anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 29(1) applies.

(2) If the person intends —

(a) to use the thing —

(i) to obtain such a service dishonestly; or

(ii) for a purpose connected with the dishonest obtaining of such a service;

(b) dishonestly to allow the thing to be used to obtain such a service; or

(c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,

he shall be guilty of an offence.

(3) Subsection (4) applies if a person supplies or offers to supply anything which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 29(1) applies.

(4) If the person supplying or offering to supply the thing knows or believes that the person to whom it is supplied or offered intends, or intends if it is supplied to him —

- (a) to use the thing —
 - (i) to obtain such a service dishonestly; or
 - (ii) for a purpose connected with the dishonest obtaining of such a service;
- (b) dishonestly to allow the thing to be used to obtain such a service; or
- (c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,

he shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable —

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both; and
- (b) on conviction on indictment, to custody for a term not exceeding 5 years or to a fine or to both.

(6) In this section, references to use of a thing include, in the case of a thing which is used to record any data, use of any of the data.";

(b) in section 29(1)(b) (penalty for fraudulent use of telecommunications system), for "2 years" substitute "5 years".

24. Procuring disclosure of, and selling, computer-held personal information.

(1) In section 5 of the Data Protection Act 1986 (prohibitions in relation to personal data), after subsection (5) add —

"(6) A person who procures the disclosure to him of personal data the disclosure of which to him is in contravention of subsection (2) or (3), knowing or having reason to believe that the disclosure constitutes such a contravention, shall be guilty of an offence.

(7) A person who sells personal data shall be guilty of an offence if, in contravention of subsection (6), he has procured the disclosure of the data to him.

(8) A person who offers to sell personal data shall be guilty of an offence if, in contravention of subsection (6), he has procured or subsequently procures the disclosure of the data to him.

(9) For the purposes of subsection (8), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(10) For the purposes of subsections (7) and (8), "sell" and "offer to sell", in relation to personal data, includes selling, or offering to sell, information extracted from the data.

(11) In determining for the purposes of subsection (6), (7) or (8) whether a disclosure is in contravention of subsection (2) or (3), section 33(5)(d) shall be disregarded."

(2) In subsection (5) of that section, for "other provisions" substitute "provisions of subsections (2) to (4)".

(3) In section 27 of that Act (exemptions : crime and taxation), in subsection (3) —

(a) after "5(2)(d)" insert "or (6)";

(b) after "make" insert "or, in the case of section 5(6), to procure".

PART 6

TRESPASS

25 Trespassers

In section 4 of the Criminal Justice Act 1996 —

(a) in subsection (1) —

(i) for paragraph (a) substitute —

"(a) that any person or persons have entered premises as trespassers and that person or, if there is more than one, any of them, are present there with the purpose of residing there for any period; and";

(ii) in paragraph (c), for "any of those persons" substitute —

"such person or, if there is more than one, any such person";

(b) for subsection (3) substitute —

"(3) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without warrant and section 20 of the Police Powers and Procedures Act 1998 (power of entry to effect arrest) shall apply for the purpose of arresting a person for an offence under this section as it applies for the purpose of arresting a person for an arrestable offence."

PART 7

PREPARATORY OFFENCES

26. Conspiracy, etc.

Schedule 4 (which makes provision in relation to conspiracy in the Island to undertake certain criminal acts outside the Island) shall have effect.

27. Attempts to commit offences.

In section 9 of the Criminal Law Act 1981 —

(a) at the beginning insert "(1)";

(b) at the end add —

"(2) A person attempts to commit an offence if he does an act which is more than merely preparatory to the commission of the offence.

(3) A person may be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible.

(4) In any case where —

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence, but

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of subsection (1), he shall be regarded as having had an intent to commit that offence."

PART 8

SENTENCING, CUSTODY ETC.

Sentencing

28. Anti-social behaviour orders.

(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely —

(a) that the person has acted, after the date on which this section comes into operation, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

(b) that such an order is necessary to protect any person in the Island from further anti-social acts by him.

(2) A relevant authority shall not make such an application without consulting each other relevant authority.

(3) Such an application shall be made by complaint to a court of summary jurisdiction.

(4) If, on such an application, it is proved that the conditions mentioned in subsection (1) are fulfilled, the court may make an order under this section (an "anti-social behaviour order") which prohibits the defendant from doing anything described in the order.

(5) For the purpose of determining whether the condition mentioned in subsection (1)(a) is fulfilled, the court shall disregard any act of the defendant which he shows was reasonable in the circumstances.

(6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting persons in the Island from further anti-social acts by the defendant.

(7) An anti-social behaviour order shall have effect for a period (not exceeding 3 years) specified in the order or until further order.

(8) A court may make anti-social behaviour orders in respect of any person who has previously been the subject of such an order or orders.

(9) The applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.

(10) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, he shall be liable

(a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both; or

(b) on conviction on information, to custody for a term not exceeding 5 years or to a fine, or to both.

(11) Where a person is convicted of an offence under subsection (10), it shall not be open to the court by or before which he is so convicted to make an order under section 6(1)(b) (conditional discharge) of the Criminal Justice Act 1963 in respect of the offence.

(12) In this section, "relevant authority" means the Department of Local Government and the Environment, the Department of Education, a local authority or the Chief Constable.

29 Curfew orders

Schedule 5 (which confers powers on criminal courts to impose curfew orders) shall have effect.

30. Probation orders.

(1) After section 2(4) of the Criminal Justice Act 1963 insert—

"(4A) Without prejudice to the generality of subsections (3) and (4), a probation order may in addition —

- (a) require the person to remain for periods specified in the order at a place so specified, and paragraphs 1(3) to (8) and 2 of Schedule 5 to the Criminal Justice Act 2001 and rules made under paragraph 5 of that Schedule shall apply to such requirements as they apply to a curfew order;
- (b) include the requirements which are authorised by Schedule 1A."

(2) After Schedule 1 of that Act insert the new Schedule 1A set out in Schedule 6 to this Act.

31. Community service orders : age limit.

(1) In Part I of Schedule 3 to the Criminal Law Act 1981 (community service orders in respect of convicted persons) —

- (a) in paragraph 1(1), for "fourteen" substitute "thirteen";
- (b) for paragraph 4 substitute —

"4. The functions conferred by the subsequent provisions of this Schedule on the relevant officer shall be discharged—

- (a) in the case of a person of or over 17 years of age, by a person nominated by the Department of Home Affairs; and
- (b) in the case of a person under 17 years of age, by a person nominated by the Department of Health and Social Security."

(2) In Schedule 2 to the Criminal Law (Amendment) Act 1985, paragraph 9 is repealed.

32. Default in payment of fines, etc : community service

After section 95 of the Summary Jurisdiction Act 1989 insert —

"95A. Fine defaulters: community service orders

(1) Subsection (2) applies in any case where a court of summary jurisdiction has power under this Part to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction of such a court.

(2) The court may, subject to subsections (3) to (5), make a community service order, in respect of the person in default instead of issuing a warrant of commitment.

(3) The court may postpone the making of an order under subsection (2) if it thinks it expedient to do so subject to such conditions, if any, as it thinks just.

(4) In this section "community service order" has the same meaning as in the Criminal Law Act 1981 and the provisions of Schedule 3 to that Act shall have effect in relation to an order under subsection (2) as it has effect in relation to an order in respect of an offender.

(5) In the case of an amount in default which is described in the first column of the following table, the period of community service specified in an order under subsection (2) shall not be less than the number of hours set out opposite that amount in the second column of the table nor more than the number of hours in the third column of the table.

AMOUNT	MINIMUM HOURS	MAXIMUM HOURS
Not exceeding £200	20 hours	40 hours
Exceeding £200 but not exceeding £500	40 hours	60 hours
Exceeding £500	60 hours	100 hours."

33. Combination orders : increase in maximum hours.

In section 7(3)(b) of the Criminal Justice (Penalties, Etc.) Act 1993 (limitation of combination orders to 100 hours), for "100" substitute "120".

34. Compensation orders.

In Schedule 6 to the Criminal Law Act 1981 (compensation orders against convicted persons) —

- (a) paragraph 3 (limitation of compensation for loss by dependants as a consequence of death, etc) is repealed;
- (b) in paragraph 5 (maximum amount of compensation), for "£2,000" substitute "£5,000".

35. Reparation orders.

(1) This section applies where a person is convicted of an offence other than one for which the sentence is fixed by law.

(2) Subject to the provisions of this section and section 36, the court by or before which the offender is convicted may make an order (a "reparation order") which requires the offender to make reparation as specified in the order —

- (a) to a person or persons so specified; or
- (b) to the community at large;

and any person so specified must be a person identified by the court as a victim of the offence or a person otherwise affected by it.

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(3) The court shall not make a reparation order unless it has been notified by the Department of Home Affairs that arrangements for implementing such orders are available and the notice has not been withdrawn.

(4) The court shall not make a reparation order in respect of the offender if it proposes—

(a) to pass on him a custodial sentence or a sentence under section 8 of the Custody Act 1995; or

(b) to make in respect of him a community service order under Schedule 3 to the Criminal Law Act 1981, a combination order under section 7 of the Criminal Justice (Penalties, Etc.) Act 1993, or a compensation order under Schedule 6 to the Criminal Law Act 1981.

(5) The court shall not make a reparation order in respect of the offender without the offender's consent.

(6) A reparation order shall not require the offender —

(a) to work for more than 24 hours in aggregate; or

(b) to make reparation to any person without the consent of that person.

(7) Subject to subsection (8), requirements specified in a reparation order shall be such as in the opinion of the court are commensurate with seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(8) Requirements so specified shall, as far as practicable, be such as to avoid —

(a) any conflict with the offender's religious beliefs; and

(b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment.

(9) Any reparation required by a reparation order —

(a) shall be made under the supervision of a relevant officer; and

(b) shall be made within a period of 3 months from the date of the making of the order.

(10) In this section "the relevant officer" means —

(a) in the case of a person of or over 17 years of age, by a person nominated by the Department of Home Affairs; and

(b) in the case of a person under 17 years of age, by a person nominated by the Department of Health and Social Security.

36. Reparation orders : supplemental.

(1) Before making a reparation order, a court shall obtain and consider a written report by a relevant officer (within the meaning given in subsection (10) of section 35) indicating —

- (a) the type of work that is suitable for the offender; and
- (b) the attitude of the victim or victims to the requirements proposed to be included in the order.

(2) Before making a reparation order, a court shall explain to the offender in ordinary language —

- (a) the effect of the order and of the requirements proposed to be included in it; and
- (b) the consequences which may follow under subsection (3) if he fails to comply with any of those requirements.

(3) Any person who is the subject of a reparation order and who fails to comply with its requirements shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.

37. Attendance centre orders.

Schedule 7 (which confers powers on criminal courts to impose attendance centre orders) shall have effect.

Custody etc.

38. Sentences extended for licence purposes.

(1) This section applies where a court which proposes to impose a custodial sentence for a sexual or violent offence considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation.

(2) Subject to subsections (3) to (5), the court may pass on the offender an extended sentence, that is to say, a custodial sentence the term of which is equal to the aggregate of —

- (a) the term of the custodial sentence that the court would have imposed if it had passed a custodial sentence otherwise than under this section ("the custodial term"); and
- (b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose mentioned in subsection (1).

(3) The extension period shall not exceed —

- (a) 10 years in the case of a sexual offence; and

(b) 5 years in the case of a violent offence.

(4) The term of an extended sentence passed in respect of an offence shall not exceed the maximum term permitted for that offence.

(5) In this section —

"licence" means a licence under Schedule 2 to the Custody Act 1995;

"sexual offence" means an offence under paragraph 2(1) of Schedule 1;

"violent offence" means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

39. Effect of extended sentences.

After paragraph 13 of Schedule 2 to the Custody Act 1995 insert —

"Extended sentences for serious criminal offenders.

13A. (1) This paragraph applies to a detainee serving an extended sentence within the meaning of section 37 of the Criminal Justice Act 2001.

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

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

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

(a) he shall be released on licence; and

(b) the licence shall, subject to any revocation under paragraph 10(1) or (2), remain in force until the end of the extension period.

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

(a) for the purpose of sub-paragraph (3), on the date given by paragraph 8(1);

(b) for the purposes of sub-paragraph (4), on the date on which, apart from that sub-paragraph, the detainee would have been released unconditionally.

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

(7) For the purposes of —

(a) paragraphs 8(6) and 10(1) and (2); and

(b) where the detainee is recalled to an institution under paragraph 10(1) or (2), paragraph 6(1),

the question whether the detainee is a long-term or short-term detainee shall be determined by reference to the term of the extended sentence.

(8) In this paragraph, "extension period" has the same meaning as in section 38 of the Criminal Justice Act 2001."

40. Re-release of prisoners serving extended sentences.

After paragraph 13A of Schedule 2 to the Custody Act 1995 insert —

"Re-release of prisoners serving extended sentences.

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

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

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

(4) On a reference —

(a) under this paragraph; or

(b) under paragraph 10(4),

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

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

41. Restrictions on unconditional release of certain sex offenders.

After paragraph 2 of Schedule 2 to the Custody Act 1995 insert —

"Restrictions on unconditional release of certain sex offenders.

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

(2) The following offences are sexual offences for the purposes of sub-paragraph (1) —

(a) offences under the following provisions of the Sexual Offences Act 1992 —

(i) section 1 (rape);

(ii) section 2 (procurement by threats or lies);

(iii) section 3 (administering drugs to obtain or facilitate sexual act);

(iv) section 4 (intercourse with young people);

(v) section 5 (sexual act with subnormal person);

(vi) section 6 (sexual act with a mental patient);

(vii) section 7 (incest);

(viii) an offence under section 8 (incitement to commit incest);

(ix) section 9 (unnatural offences);

(x) section 11 (assault with intent to commit buggery);

(xi) section 12 (bestiality);

(xii) section 13 (indecent assault);

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- (xiii) an offence under section 14 (indecent conduct towards young people);
 - (xiv) section 18 (procurement of a young person);
 - (xv) section 19 (procurement of subnormal person);
 - (xvi) section 23 (causing or encouraging prostitution of, intercourse with, or indecent assault on, young people);
 - (xvii) section 24 (causing or encouraging prostitution of subnormal person);
 - (xviii) section 25 (living on or controlling prostitution);
 - (xix) section 28 (keeping a brothel);
- (b) an offence under Schedule 3 to the Criminal Justice Act 2001 (indecent photographs of children).".

42. Conditions of release of detainees on licence.

In Schedule 2 to the Custody Act 1995, after paragraph 8(4) insert —

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

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

43. Amendment of Custody Act 1995.

After section 19 of the Custody Act 1995 insert —

"19A. Testing of prisoners for drugs or alcohol

(1) Any officer of an institution may, at the institution, in accordance with custody rules, require any detainee who is detained in the institution to provide one or more samples, not being intimate samples, for the purpose of ascertaining whether he has any drug or alcohol in his body.

(2) In this section —

"drug" means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1976;

"intimate sample" has the same meaning as in Part V of the Police Powers and Procedures Act 1998."

PART 9

PROCEEDS OF CRIME

44. Confiscation of proceeds of crime : amendments.

(1) In section 1 of the Criminal Justice Act 1990 —

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- (a) in subsection (2)(b), the word "and" at the end of paragraph (i), and sub-paragraph (ii) are repealed;
 - (b) in subsection (3)(b), the word "and" at the end of sub-paragraph (i), and sub-paragraph (ii) are repealed;
 - (c) in subsection (6), for "must be at least the minimum amount, but must not exceed" substitute "shall be equal to";
 - (d) subsection (7) is repealed;
 - (e) in subsection (7A) —
 - (i) in paragraph (a), for "as mentioned in subsection (2)(b)(i)" substitute "from any offence";
 - (ii) paragraph (b) is repealed;
 - (f) subsection (8) is repealed.
- (2) In section 2(1) of that Act, for the words from ",were the court" to the end substitute "it would be appropriate for the court to determine whether it ought to make a confiscation order".
- (3) In section 2A(1) of that Act —
- (i) in paragraph (a), for "as mentioned in subsection 1(2)(b)(i)" substitute "from any offence";
 - (ii) paragraph (b) is repealed.
- (4) After section 17I of the Criminal Justice Act 1990, insert —

"17J Investigations

Sections 52 to 54 of the Drug Trafficking Act 1996 shall apply for the purpose of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct as they apply for the purpose of an investigation into drug trafficking and accordingly —

- (a) references in those sections to a person who has benefited from drug trafficking shall be construed as including a reference to a person who has benefited from any criminal conduct; and
- (b) in section 53(4)(b) as so applied, the words "relating to the specified person or to drug trafficking" shall be omitted."

45. Increase in penalties for breach of money laundering codes.

In section 17F(1)(d), of the Criminal Justice Act 1990 for the words from "on summary" to the end of the subsection substitute —

"—

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for 6 months or to both; and

- (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both."

46. Repeal of requirement for Attorney General's consent to disclosure of certain information.

In section 17I of the Criminal Justice Act 1990 —

- (a) subsection (1)(a);
- (b) subsection (4); and
- (c) in subsection (5), the words "(1) or",

are repealed.

47. Disclosure of suspicion of money laundering.

After section 17I of the Criminal Justice Act 1990 insert —

"17J. Failure to disclose knowledge or suspicion of money laundering.

- (1) A person is guilty of an offence if —
 - (a) he knows or suspects that another person is engaged in laundering the proceeds of criminal conduct;
 - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and
 - (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable —
 - (a) his suspicion or belief that another person is engaged in laundering the proceeds of criminal conduct, or
 - (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

- (5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he

disclosed the information or other matter in question to his employer or, where his employer has established a procedure for the making of such disclosures, to the appropriate person in accordance with the procedure.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this section "laundering the proceeds of criminal conduct" means doing any act —

- (a) which constitutes an offence under section 17A, 17B or 17C; or
- (b) in the case of an act done otherwise than in the Island, which would constitute such an offence if done in the Island.

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him —

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person —
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose."

48. Import and export of proceeds of crime in cash.

After Part I of the Criminal Justice Act 1990 insert —

"PART IA

**PROCEEDS OF CRIMINAL CONDUCT IMPORTED OR
EXPORTED IN CASH**

23A. Seizure and detention

(1) A customs officer or constable may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Island if he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds

of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by the High Bailiff.

(3) No order shall be made under subsection (2) unless the High Bailiff is satisfied —

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Island or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(4) An order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding 3 months beginning with the date of the order, as may be specified in the order.

(5) The High Bailiff, if satisfied as to the matters mentioned in subsection (3), may by order authorise the further detention of the cash but so that —

- (a) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
- (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(6) An order under subsection (2) shall provide for notice to be given to persons affected by the order.

(7) Any application for an order under subsection (2) or (5) shall be made by the Attorney General.

(8) At any time while cash is detained under this section the High Bailiff may direct its release if satisfied —

- (a) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds for its detention as are mentioned in subsection (3); or
 - (b) on an application made by any other person, that detention of the cash is not for that or any other reason justified.
- (9) A customs officer or constable —
- (a) may release the cash if satisfied that its detention is no longer justified;

- (b) shall release the cash if directed by the Attorney General,

but shall first notify the High Bailiff.

(10) If at a time when any cash is being detained under this section —

- (a) an application for its forfeiture is made under section 23B; or
- (b) proceedings are instituted (whether in the Island or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(11) Cash seized under this section and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

23B Forfeiture

(1) The High Bailiff may order the forfeiture of any cash which has been seized under section 23A if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of criminal conduct, or is intended by any person for use in any criminal conduct.

(2) Any application for an order under this section shall be made by the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.

(4) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

23C. Appeal against forfeiture order made by High Bailiff

(1) This section applies where an order for the forfeiture of cash ("the forfeiture order") is made under section 23B by the High Bailiff.

(2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the High Court.

(3) On an application made by the appellant to the High Bailiff at any time, he may order the release of so much of the cash to which the forfeiture order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(4) The High Court when hearing an appeal under this section may make such order as it considers appropriate.

(5) If it upholds the appeal, the High Court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(6) Section 23B(3) applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

23D Rules of court

(1) Provision may be made by rules of court under section 91 of the Summary Jurisdiction Act 1989 with respect to applications to the High Bailiff under this Part, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Bailiff.

(2) Provision may be made by rules of court under section 25 of the High Court Act 1991 with respect to appeals to the High Court under this Part, for the giving of notice of such appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the High Court.

(3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules.

23E Receipts

Any money representing cash forfeited under this Part or accrued interest thereon shall be paid into the General Revenue but not

- (a) where an appeal is made under section 23C, before the appeal is determined or otherwise disposed of; and
- (b) in any other case where the forfeiture was ordered by the High Bailiff, before the end of the period of 30 days mentioned in section 23C(2).

23F Interpretation of Part IA

(1) In this Part —

"cash" includes coins and notes in any currency;

"criminal conduct" and "proceeds of criminal conduct" have the same meaning as in Part I;

"exported", in relation to any cash, includes its being brought to any place in the Island for the purpose of being exported.

(2) For the avoidance of doubt, references in this Part to importation into or export from the Island include references to removal into the Island from the United Kingdom and removal from the Island to the United Kingdom."

PART 10

POWERS OF LAW ENFORCEMENT OFFICERS

49. Power to seize vehicle licences.

After section 14 of the Licensing and Registration of Vehicles Act 1985 (forgery etc. of vehicle licences) insert —

"14A. Power to seize vehicle licences.

(1) If a constable has reasonable grounds to believe that a vehicle on a public road is exhibiting a vehicle licence in relation to which an offence has been committed under section 14, the constable may enter the vehicle and seize the licence.

(2) When a licence is seized under subsection (1), the owner of the vehicle, the person keeping the vehicle or the person using the vehicle may be summoned before a court of summary jurisdiction to account for the presence of the licence on the vehicle unless the licence has been previously returned or he has been previously charged with an offence in relation to it.

(3) The court shall make such order respecting the disposal of a seized vehicle licence and award such costs as the justice of the case may require."

50. Access to computer material by constables and other enforcement officers.

(1) In section 10 of the Computer Security Act 1992 (law enforcement powers not to be prejudiced), at the end add —

"and nothing designed to indicate the withholding of consent to access to any program or data from persons as enforcement officers shall have effect to make access unauthorised for the purposes of section 1(1).

In this section, "enforcement officer" means a constable or other person charged with the duty of investigating offences; and withholding consent from a person as an enforcement officer of any description includes the operation, by the person entitled to control access, of rules whereby enforcement officers of that description are, as such, disqualified from membership of a class of persons who are authorised to have access."

(2) In section 14(5) of that Act, at the end add "but this subsection is subject to section 10."

51. VAT and excise duties : access orders.

(1) In paragraph 13 of Schedule 12 to the Value Added Tax Act 1996 (access to information in cases of fraud), at the end add —

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"(6) Without prejudice to any other provision of this Act or any public document made under it, in this paragraph "an offence in connection with VAT" means —

- (a) any act or omission which constitutes an offence in relation to value added tax charged under or by virtue of this Act or any other statutory provision; and
- (b) any act or omission which constitutes an offence under or in relation to value added tax charged under or by virtue of an Act of Parliament or any legislation of a member State of the European Community if that act or omission would constitute an offence if it had occurred in the Island."

(2) In section 124D of the Customs and Excise Management Act 1986, at the end add —

"(6) Without prejudice to any other provision of this Act, in this section "an offence in connection with a duty of excise" means —

- (a) any act or omission which constitutes an offence in relation to duties of excise charged under or by virtue of this Act or any other statutory provision; and
- (b) any act or omission which constitutes an offence under or in relation to excise duty charged under or by virtue of an Act of Parliament or any legislation of a member State of the European Community if that act or omission would constitute an offence if it had occurred in the Island."

52. Special constables : powers under Licensing Act 1995.

In section 80(1) of the Licensing Act 1995 (interpretation) for the definition of "police officer substitute" —

"police officer" means a member of the Isle of Man Constabulary and includes a special constable appointed under section 5(2) of the Police Act 1993;" .

PART 11

CRIMINAL JUSTICE

Evidence

53. Evidence in criminal proceedings - convictions.

(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the British Isles shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in the British Isles, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence by or before any court in the British Isles he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice —

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

54. Provisions supplementary to section 53.

(1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 53, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based —

(a) the contents of any document which is admissible as evidence of the conviction; and

(b) the contents of the complaint, information or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in section 9 of the Criminal Justice Act 1963 (under which a conviction leading to probation or discharge is to be disregarded except as mentioned in that section) shall affect the operation of section 44.

(4) Nothing in section 53 shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

(5) Nothing in section 53 shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

55. Imputations on character.

In section 1(f)(ii) of the Criminal Evidence Act 1946 (imputations on the character of the prosecutor or witnesses), before "; or" insert "or the deceased victim of the alleged crime".

56. Abolition of corroboration rules.

(1) Any requirement whereby at a trial on information it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is —

- (a) an alleged accomplice of the accused, or
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

(2) In section 29(2) of the Criminal Justice Act 1990, (abolition of requirement of corroboration warning in respect of evidence of a child) the words from "in relation to" to the end are repealed.

- (3) Any requirement that —
 - (a) is applicable at the summary trial of a person for an offence, and
 - (b) corresponds to the requirement mentioned in subsection (1) above or that mentioned in section 29(2) of the Criminal Justice Act 1990,

is hereby abrogated.

- (4) Nothing in this section applies in relation to —
 - (a) any trial, or
 - (b) any committal proceedings before a court of summary jurisdiction,

which began before the commencement of this section.

Procedure

57. Committal proceedings.

In section 70 of the Summary Jurisdiction Act 1989 —

- (a) in subsection (3), after paragraph (b) add —
 - "or
 - (c) the court is satisfied that there are exceptional reasons which make it impracticable for the accused to be present and that —

- (i) the accused has consented to the evidence being given or the deposition being read in his absence; and
 - (ii) he is represented by an advocate; and
 - (iii) no prejudice is likely be caused to the accused by his absence";
- (b) for subsection (5) substitute —
- "(5) In respect of statements made outside the Island —
- (a) subsection (4)(a) shall not apply if the statement has been obtained pursuant to a letter of request issued under section 20 of the Criminal Justice Act 1991; and
 - (b) sub-paragraphs (i) and (ii) of subsection (4)(b) shall not apply."

58. Remand in custody before hearing.

In section 84 of the Summary Jurisdiction Act 1989 —

- (a) in section 84(4), after "sections" insert "84A,";
- (b) after section 84 insert —

"84A. Remand in custody for more than eight days

(1) A court of summary jurisdiction may remand a person in custody for a period exceeding 8 days if —

- (a) it has previously remanded him in custody for the same offence; and
- (b) he is an adult; and
- (c) he consents.

(2) A person shall not be remanded in custody under subsection (1) for a period exceeding 28 days.

(3) The court shall not exercise the power conferred by subsection (1) unless the accused person is before the court.

(4) A consent under subsection (1) may be withdrawn at any time by giving written notice of the withdrawal to the person in charge of the institution in which the accused is detained and that person shall forthwith cause the notice to be delivered to the clerk.

(5) On receipt of a notice of withdrawal of consent the clerk shall make arrangements for the accused person to appear before a court of summary jurisdiction as soon as is practicable and in any event not later than 72 hours after receipt of the notice."

59. Remand for reports after conviction.

- (1) In the Summary Jurisdiction Act 1989 —

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- (a) in section 22(2) (remand for social inquiry reports), for "4 weeks" substitute "6 weeks";
 - (b) in section 23(1) (remand for medical reports), for "4 weeks" substitute "6 weeks".
- (2) In section 24(2) of the Criminal Jurisdiction Act 1993 (remand for reports), for "4 weeks" substitute "6 weeks".

60. Effect of sealed orders.

After section 56 of the Criminal Jurisdiction Act 1993 insert —

"56A Sealed orders

(1) Any document purporting to be sealed or stamped with the seal of the court shall have the same effect as if such document were signed by a Judge of the Court and such a document shall be received in evidence in the Island without further proof.

(2) The seal of the court shall be the same as the seal of the High Court."

Miscellaneous

61. Abolition of whipping.

(1) The power of the Court of General Gaol Delivery to sentence a person to be whipped is abolished.

(2) The following enactments (which deal with the sentence of whipping) are repealed —

- (a) sections 14, 15 and 20 of the Criminal Justice Act 1963; and
- (b) section 31(8) of the Criminal Jurisdiction Act 1993.

62. Criminal Code 1872: definition of "felony".

In section 422 of the Criminal Code 1872, before the definition of "misdemeanor" insert —

"The word "felony" means any offence which is by any Act specifically declared to be a felony."

Prosecution of offences

63. Prosecution of offences.

Schedule 8, which makes provision for the prosecution of offences, shall have effect.

PART 12

GENERAL

64. Short title and commencement.

- (1) This Act may be cited as the Criminal Justice Act 2001.
- (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.

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Section 1

SCHEDULE 1

REGISTRATION OF SEX OFFENDERS

Notification Requirements for Sex Offenders

Sex offenders subject to notification requirements

1. (1) A person becomes subject to the notification requirements of this Schedule (in this Schedule referred to as "the notification requirements") if, after the commencement of this Schedule —

- (a) he is —
 - (i) convicted of an offence specified in paragraph 2 (in this Schedule referred to as a "scheduled offence"); or
 - (ii) found not guilty of a scheduled offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; and
- (b) the court by which he is convicted has by order directed that he is subject to the notification requirements.

(2) A person becomes subject to the notification requirements if, after the commencement of this Schedule —

- (a) in the Island, he is cautioned by a constable in respect of a scheduled offence which, at the time when the caution is given, he has admitted; and
- (b) at the time when the caution is given, he is served with a notice, in such form as is prescribed by an order made by the Department of Home Affairs, which directs that he is subject to the notification requirements.

(3) A person falling within sub-paragraphs (1) and (2) shall continue to be subject to the notification requirements for such period as is directed by —

- (a) the court under sub-paragraph (1)(b); or
- (b) by the notice under sub-paragraph (2)(b),

but that period shall not exceed the maximum period set out opposite a person of his description in the second column of the following Table.

TABLE

Description of person	Maximum applicable period
A person who, in respect of the offence, is or has been sentenced to custody for life or for a term of 30 months or more	An indefinite period
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period
A person who, in respect of the offence, is or has been sentenced to custody for a term of more than 6 months but less than 30 months	A period of 10 years beginning with the relevant date
A person who, in respect of the offence, is or has been sentenced to custody for a term of 6 months or less	A period of 7 years beginning with the relevant date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	A period of 7 years beginning with the relevant date
A person of any other description	A period of 5 years beginning with the relevant date

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(4) Sub-paragraph (5) applies where a person falling within sub-paragraph (1)(a) is or has been sentenced, in respect of two or more scheduled offences —

- (a) to consecutive terms of custody; or
- (b) to terms of custody which are partly concurrent.

(5) In cases to which this sub-paragraph applies, sub-paragraph (3) shall have effect as if the person were or had been sentenced, in respect of each of the offences, to a term of custody which —

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
- (b) in the case of concurrent terms, is equal to the aggregate of those terms after making such deduction as may be necessary to secure that no period of time is counted more than once.

(6) Where a person found to be under a disability, and to have done the act charged against him in respect of a scheduled offence, is subsequently tried for the offence, the finding, and any order made in respect of the finding, shall be disregarded for the purposes of this paragraph.

(7) In this Schedule "the relevant date" means —

- (a) in a case of a person falling within sub-paragraph (1)(a)(i), the date of the conviction;
- (b) in a case of a person falling within sub-paragraph (1)(a)(ii), the date of the finding;
- (c) in a case of a person falling within sub-paragraph (2)(b), the date of the caution.

(8) A direction by the court under sub-paragraph (1)(b) shall be treated for the purposes of any enactment relating to appeals to be a sentence passed on conviction.

(9) A person who is the subject of a notice under sub-paragraph (2)(b) may by complaint appeal against the direction to the High Bailiff.

(10) On the determination of a complaint under sub-paragraph (9), the High Bailiff may cancel, vary or uphold the declaration.

(11) A determination of the High Bailiff under sub-paragraph (10) may be appealed against in the same manner as an appeal against sentence passed on conviction and any enactment relating to appeals shall apply accordingly.

(12) An order under sub-paragraph (2)(b) shall be laid before Tynwald.

Serious offences which are "scheduled offences".

2. (1) The following offences are scheduled offences —

- (a) offences under the following provisions of the Sexual Offences Act 1992 —
 - (i) section 1 (rape);
 - (ii) section 2 (procurement by threats or lies);
 - (iii) section 3 (administering drugs to obtain or facilitate sexual act);
 - (iv) section 4 (intercourse with young people);
 - (v) section 5 (sexual act with subnormal person);
 - (vi) section 6 (sexual act with a mental patient);
 - (vii) section 7 (incest);
 - (viii) an offence under section 8 (incitement to commit incest);
 - (ix) section 9 (unnatural offences);
 - (x) section 11 (assault with intent to commit buggery);
 - (xi) section 12 (bestiality);
 - (xii) section 13 (indecent assault);

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- (xiii) an offence under section 14 (indecent conduct towards young people);
- (xiv) section 18 (procurement of a young person);
- (xv) section 19 (procurement of subnormal person);
- (xvi) section 23 (causing or encouraging prostitution of, intercourse with, or indecent assault on, young people);
- (xvii) section 24 (causing or encouraging prostitution of subnormal person);
- (xviii) section 25 (living on or controlling prostitution);
- (xix) section 28 (keeping a brothel);
- (b) an offence under Schedule 3 to this Act (indecent photographs of children);
- (c) subject to sub-paragraph (2)(b), an offence under section 178 of the Customs and Excise Management Act 1986 (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions) (an Act of Parliament) as it has effect in the Island;
- (d) offences under section 2 of the Obscene Publications and Indecent Advertisements Act 1907 (printing, selling, etc. indecent or obscene publications);
- (e) an offence under section 9 of the Theft Act 1981 of burglary with intent to commit rape;
- (f) an offence of conspiracy to commit any of those offences;
- (g) an offence of attempting to commit any of those offences; and
- (h) an offence of inciting another to commit any of those offences.
- (2) In sub-paragraph (1)—
 - (a) head (a)(iv) and (viii) do not apply in respect of a first offence committed by an offender who, at the time of the offence, was under 18; and
 - (b) head (c) does not apply where the prohibited goods did not include indecent photographs or pseudo photographs of a person which give the impression or predominant impression that the person shown is a child.
- (3) For the purposes of sub-paragraph (2)(b), paragraph 7 of Schedule 3 to this Act (interpretation) shall apply as it applies for the purposes of that Schedule.

Effect of notification requirements

3. (1) A person who is subject to the notification requirements shall, before the end of the period of 2 days beginning with the relevant date or, if later, the commencement of this Schedule, notify to the police the following information, namely —
- (a) his name and, where he also uses one or more other names, each of those names;
 - (b) his home address;
 - (c) the nature and place of his employment; and
 - (d) the name and business address of his employer.
- (2) A person who is subject to the notification requirements shall also, before the end of the period of 2 days beginning with —
- (a) his using a name which has not been notified to the police under this paragraph;
 - (b) any change of his home address;

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- (c) his having resided or stayed, for a qualifying period, at any premises in the Island, the address of which has not been notified to the police under this paragraph; or
- (d) any change of the nature and place of his employment.

notify that name, the effect of that change or, as the case may be, the address of those premises to the police.

(3) A notification given to the police by any person shall not be regarded as complying with sub-paragraph (1) or (2) unless it also states —

- (a) his date of birth;
- (b) his name on the relevant date and, where he used one or more other names on that date, each of those names; and
- (c) his home address on that date.

(4) For the purpose of determining any period for the purposes of sub-paragraph (1) or (2), there shall be disregarded any time when the person in question —

- (a) is remanded in or committed to custody by an order of a court;
- (b) is serving a sentence of custody or a term of service detention;
- (c) is detained in a hospital; or
- (d) is outside the Island.

(5) A person may give a notification under this section —

- (a) by attending at any police station in the Island and giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station; or
- (b) by sending a written notification to any such police station.

(6) Any notification under this section shall be acknowledged; and an acknowledgement under this sub-paragraph shall be in writing and in such form as the Chief Constable may direct.

(7) In this paragraph —

"home address", in relation to any person, means the address of his home, that is to say, his sole or main residence in the Island or, where he has no such residence, premises in the Island which he regularly visits;

"qualifying period" means —

- (a) a period of 14 days; or
- (b) two or more periods, in any period of 12 months, which (taken together) amount to 14 days.

Offences

4. (1) If a person —

- (a) fails, without reasonable excuse, to comply with paragraph 3(1) or (2); or
- (b) notifies to the police, in purported compliance with paragraph 3(1) or (2), any information which he knows to be false,

he shall be liable on summary conviction to a fine not exceeding £5,000, or to custody for a term not exceeding 6 months, or to both.

(2) A person commits an offence under sub-paragraph (1)(a) on the day on which he first fails, without reasonable excuse, to comply with paragraph 3(1) or (2) and continues to commit it throughout any period during which the failure continues; but a person shall not be prosecuted under that provision more than once in respect of the same failure.

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Young offenders

5. (1) In the case of a person who is under 18 on the relevant date, paragraph 1(3) shall have effect as if for any reference to a period of 10 years, 7 years or 5 years there were substituted a reference to one-half of that period.

(2) In the case of a person who is under 18 on the relevant date, the court may direct that, until he attains that age, paragraphs 3 and 4 shall have effect as if an individual having parental responsibility for him —

(a) were authorised to comply on his behalf with the provisions of paragraph 3 ;
and

(b) were liable in his stead for any failure to comply with those provisions.

(3) In the case of a person who is under 18, paragraph 4(1) shall have effect as if the words "or to custody for a term not exceeding 6 months, or to both" were omitted.

Certificates for purposes of Schedule 1

6. (1) Sub-paragraph (2) applies where, on any date after the commencement of this Schedule, a person —

(a) is convicted of a scheduled offence;

(b) is found not guilty of a scheduled offence by reason of insanity; or

(c) is found to be under a disability and to have done the act charged against him in respect of a scheduled offence.

(2) If the court by or before which the person is so convicted or so found —

(a) states in open court —

(i) that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him; and

(ii) that the offence in question is a scheduled offence; and

(b) certifies those facts (whether at the time or subsequently),

the certificate shall, for the purposes of this Schedule, be evidence of those facts.

(3) Sub-paragraph (4) applies where, on any date after the commencement of this Schedule, a person is in the Island cautioned by a constable in respect of a scheduled offence and which, at the time when the caution is given, he has admitted.

(4) In a case to which this sub-paragraph applies, if the constable —

(a) informs the person that he has been cautioned on that date and that the offence in question is a scheduled offence; and

(b) certifies those facts (whether at the time or subsequently) in such form as the Department of Home Affairs may by order prescribe,

the certificate shall, for the purposes of this Schedule, be evidence of those facts.

(5) An order under this paragraph shall be laid before Tynwald.

Offences committed outside the Island.

7. (1) The Department of Home Affairs may by order provide that this Schedule shall apply, with such modifications as may be specified in the order, to any offences so specified which —

(a) are offences under the law of —

(i) any of the Channel Islands;

(ii) any part of the United Kingdom; or

(iii) any other country or territory specified in the order; and

(b) correspond to any scheduled offence.

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(2) An order under sub-paragraph (1) may make such consequential, incidental, supplementary and transitional provision as the Department considers appropriate.

(3) An order under this paragraph shall not come into operation unless it is approved by Tynwald.

Interpretation of Schedule 1.

8. (1) In this Schedule —

"admitted to a hospital" means admitted to a hospital under a hospital order;

"detained in a hospital" means detained in a hospital under Part 3 of the Mental Health Act 1998;

"hospital order" has the meaning given in section 138 of the Mental Health Act 1998;

"notification requirements" has the meaning given in paragraph 1(1);

"parental responsibility" has the meaning given in the Family Law Act 1991;

"scheduled offence" means an offence listed in paragraph 2(1);

"the relevant date" has the meaning given in paragraph 1(7);

"restriction order" means an order under section 54(10) of the Criminal Jurisdiction Act 1993 or paragraph 4(2)(a) of Schedule 2A to the Summary Jurisdiction Act 1989.

(2) In this Schedule any reference to a conviction includes a reference to a finding in summary proceedings, where the court makes an order under paragraph 2(3) of Schedule 2A of the Summary Jurisdiction Act 1989 that the accused did the act charged.

(3) In this Schedule any reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of a scheduled offence includes a reference to his being or having been found —

(a) unfit to be tried for such an offence;

(b) to be insane so that his trial for such an offence cannot or could not proceed; or

(c) unfit to be tried and to have done the act charged against him in respect of such an offence.

Transitional

9. (1) A person becomes subject to the notification requirements if —

(a) at the commencement of this Schedule he has been —

(i) convicted of a scheduled offence but has not been dealt with in respect of the offence; or

(ii) found not guilty of a scheduled offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence, but has not been dealt with in respect of the finding; and

(b) after the commencement of this Schedule the court, when dealing with him in respect of the offence or finding, by order directs that he is subject to the notification requirements.

(2) Where a person becomes subject to the notification requirements under sub-paragraph (1), paragraphs 1(3) to (8) and 2 to 5, 7 and 8 of this Schedule have effect (with the necessary modifications) in relation to that person as if he had become subject to the notification requirements under paragraph 1(1) and for that purpose, in this Schedule —

(a) the reference to "relevant date" in paragraph 3(1) shall be construed as meaning the date of a direction made under sub-paragraph (1)(b) of this paragraph; and

(b) references to a direction by the court under paragraph 1(1)(b) shall be construed as including a reference to a direction under sub-paragraph (1)(b) of this paragraph.

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10. (1) A person becomes subject to the notification requirements if —
- (a) at the commencement of this Schedule he is —
- (i) serving a sentence of custody, or is subject to a community order, in respect of a scheduled offence;
 - (ii) subject to supervision, having been released from custody after serving the whole or part of a sentence of imprisonment in respect of such an offence;
 - (iii) detained in a hospital, or is subject to a guardianship order, having been convicted of such an offence; or
 - (iv) detained in a hospital, having been found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; and
- (b) after the commencement of this Schedule a court of summary jurisdiction consisting of the High Bailiff makes an order directing that the person is subject to the notification requirements.
- (2) A constable may by complaint apply to the court for a direction under sub-paragraph (1)(b).
- (3) An application for a direction under sub-paragraph (1)(b) shall—
- (a) be heard in the presence of the person in respect of whom the declaration is to be made; and
 - (b) be heard in private,
- unless the court otherwise orders.
- (4) Where a person becomes subject to the notification requirements by virtue of sub-paragraph (1), paragraphs 1(3) to (8) and 2 to 5, 7 and 8 of this Schedule have effect (with the necessary modifications) in relation to that person as if he had become subject to the notification requirements under paragraph 1(1) and for that purpose —
- (a) the reference to "relevant date" in paragraph 3(1) shall be construed as meaning the date of a direction made under sub-paragraph (1)(b) of this paragraph; and
 - (b) references to a direction by the court under paragraph 1(1)(b) shall be construed as including a reference to a direction under sub-paragraph (1)(b) of this paragraph.
- (5) A person who would fall within sub-paragraph (1)(a)(i), (iii) or (iv) but for the fact that, at that commencement, he is unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, shall be treated as falling within that paragraph.
- (6) In this paragraph, "community order" means —
- (a) a curfew order under section 28 and Schedule 5 of this Act;
 - (b) a probation order under the Criminal Justice Act 1963;
 - (c) a community service order under Schedule 3 of the Criminal Law Act 1981; or
 - (d) a combination order under section 7 of the Criminal Justice (Penalties, Etc.) Act 1993.

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Section 2

SCHEDULE 2

SEXUAL OFFENCES COMMITTED OUTSIDE THE ISLAND

Extension of jurisdiction

1. (1) Subject to sub-paragraph (2), any act done by a person in a country or territory outside the Island which —

- (a) constituted an offence under the law in force in that country or territory; and
- (b) would constitute a sexual offence to which this Schedule applies if it had been done in the Island,

shall constitute that sexual offence under the law of the Island.

(2) No proceedings shall by virtue of this paragraph be brought against any person unless he was at the commencement of this paragraph, or has subsequently become, resident in the Island.

(3) An act punishable under the law in force in any country or territory constitutes an offence under that law for the purposes of this paragraph, however it is described in that law.

(4) Subject to sub-paragraph (5), the condition in sub-paragraph (1)(a) shall be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice —

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in their opinion satisfied;
- (b) showing their grounds for that opinion; and
- (c) requiring the prosecution to show that it is satisfied.

(5) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under sub-paragraph (4).

(6) In the Court of General Gaol Delivery the question whether the condition is satisfied is to be decided by the judge alone.

Conspiracy to commit certain sexual acts outside the Island

2. (1) Where each of the following conditions is satisfied in the case of any agreement, section 330 of the Criminal Code 1872 (conspiracy) has effect in relation to the agreement falling within that section.

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve —

- (a) an act by one or more of the parties, or
- (b) the happening of some other event,

intended to take place in a country or territory outside the Island.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that country or territory.

(4) The third condition is that the agreement would fall within section 330 of that Code as an agreement relating to the commission of a sexual offence to which this Schedule applies but for the fact that the offence would not be an offence triable in the Island if committed in accordance with the parties' intentions.

(5) The fourth condition is that —

- (a) a party to the agreement, or a party's agent, did anything in the Island in relation to the agreement before its formation, or
- (b) a party to the agreement became a party in the Island (by joining it either in person or through an agent), or

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(c) a party to the agreement, or a party's agent, did or omitted anything in the Island in pursuance of the agreement.

(6) In the application of section 330 of that Code to such an agreement, any reference to an offence is to be read as a reference to what would be the sexual offence in question to which this Schedule applies but for the fact that it is not an offence triable in the Island.

Incitement to commit certain sexual acts outside the Island

3. (1) This paragraph applies where —
- (a) any act done by a person in the Island would amount to the offence of incitement to commit a sexual offence to which this Schedule applies but for the fact that what he had in view would not be an offence triable in the Island,
 - (b) the whole or part of what he had in view was intended to take place in a country or territory outside the Island, and
 - (c) what he had in view would involve the commission of an offence under the law in force in that country or territory.
- (2) Where this paragraph applies —
- (a) what he had in view is to be treated as that sexual offence for the purposes of any charge of incitement brought in respect of that act, and
 - (b) any such charge is accordingly triable in the Island.
- (3) Any act of incitement by means of a message (however communicated) is to be treated as done in the Island if the message is sent or received in the Island.

Paragraphs 2 and 3: supplementary

4. (1) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of paragraphs 2 and 3, however it is described in that law.
- (2) Subject to sub-paragraph (3), a condition in paragraph 2(3) or 3(1)(c) is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice —
- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied,
 - (b) showing their grounds for that opinion, and
 - (c) requiring the prosecution to show that it is satisfied.
- (3) In sub-paragraph (2) "the relevant conduct" means —
- (a) where the condition in paragraph 2(3) is in question, the agreed course of conduct, and
 - (b) where the condition in paragraph 3(1)(c) is in question, what the accused had in view.
- (4) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under sub-paragraph (2).
- (5) In the Court of General Gaol Delivery the question whether the condition is satisfied is to be decided by the judge alone.
- (6) In any proceedings in respect of any offence triable by virtue of paragraph 2 or 3, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.
- (7) References to an offence of conspiracy to commit a sexual offence to which this Schedule applies include an offence triable in the Island as such a conspiracy by virtue of paragraph 2 (without prejudice to sub-paragraph (6) of that paragraph).

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(8) References to an offence of incitement to commit a sexual offence to which this Schedule applies include an offence triable in the Island as such an incitement by virtue of paragraph 3 (without prejudice to sub-paragraph (2) of that paragraph).

(9) Sub-paragraphs (7) and (8) apply to references in any statutory provision, instrument or document (except those in paragraphs 2 and 3 of this Schedule and in section 330 of the Criminal Code 1872).

Interpretation, etc.

5. (1) The following offences are the sexual offences to which this Schedule applies —

(a) offences under the following provisions of the Sexual Offences Act 1992 —

- (i) section 1 (rape);
- (ii) section 4 (intercourse with young people);
- (iii) section 9 (unnatural offences);
- (iv) section 11 (assault with intent to commit buggery);
- (v) section 13 (indecent assault);
- (vi) section 14 (indecentcy with children).

(b) an offence under Schedule 3 to this Act (indecent photographs of children).

(2) Nothing in this Schedule applies to any act done or other event occurring before the coming into operation of this Schedule.

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Section 3

SCHEDULE 3

INDECENT PHOTOGRAPHS OF CHILDREN

Taking, etc. indecent photographs of children

1. (1) It is an offence for a person —
 - (a) to take, or permit to be taken or to make, any indecent photograph or pseudo-photograph of a child; or
 - (b) to distribute or show such indecent photographs or pseudo-photographs; or
 - (c) to have in his possession such indecent photographs or pseudo-photographs; or
 - (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.
- (2) For the purposes of this Schedule, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (3) Proceedings for an offence under this Schedule shall not be instituted except by or with the consent of the Attorney General.
- (4) Where a person is charged with an offence under sub-paragraph (1)(b) or (c), it shall be a defence for him to prove —
 - (a) that he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his possession;
 - (b) that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent; or
 - (c) in the case of an offence under sub-paragraph (1)(c), that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
- (5) References in the Children and Young Persons Act 1966 (except in section 107) to the offences mentioned in Schedule 1 to that Act shall include an offence under sub-paragraph (1)(a).

Evidence

2. In proceedings under this Schedule a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 16.

Offences by corporations

3. (1) Where a body corporate is guilty of an offence under this Schedule and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
 - (2) Where the affairs of a body corporate are managed by its members, sub-paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
 - (3) For the purposes of sub-paragraph (1), "body corporate" includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company's manager and registered agent.

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Entry, search and seizure

4. (1) The following applies where a justice of the peace is satisfied by information on oath, laid by a constable, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child.

(2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises, and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace.

(4) This paragraph and paragraph 5 apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

Forfeiture

5. (1) The justice before whom any articles are brought in pursuance of paragraph 4 may issue a summons to the occupier of the premises to appear on a day specified in the summons before a court of summary jurisdiction to show cause why they should not be forfeited.

(2) If the court is satisfied that the articles are in fact indecent photographs or pseudo-photographs of children, the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.

(3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(4) Where any of the articles are ordered to be forfeited under sub-paragraph (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the High Court.

(5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs or pseudo-photographs should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.

(6) Where indecent photographs or pseudo-photographs of children are seized under paragraph 4, and a person is convicted under paragraph 1(1) of offences in respect of those photographs or pseudo-photographs, the court shall order them to be forfeited.

(7) An order made under sub-paragraph (2) or (6) (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose —

(a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Punishments

6. (1) Offences under this Schedule shall be punishable either on conviction on information or on summary conviction.

(2) A person convicted of any offence under this Schedule shall be liable —

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- (a) on conviction on information to custody for a term of not more than 5 years, or to a fine or to both; and
- (b) on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.

Interpretation

7. (1) The following sub-subparagraphs apply for the interpretation of this Schedule.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children and so as respects pseudo-photographs.

(4) References to a photograph include —

- (a) the negative as well as the positive version; and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.

(5) "Film" includes any form of video-recording.

(6) "Child", subject to sub-paragraph (8), means a person under the age of 16.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudophotograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include —

- (a) a copy of an indecent pseudo-photograph; and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

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Section 26

SCHEDULE 4
CONSPIRACY ETC.

Conspiracy to commit certain acts outside the Island

1. (1) Where each of the following conditions is satisfied in the case of any agreement, section 330 of the Criminal Code 1872 (conspiracy) has effect in relation to the agreement falling within that section.

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve —

- (a) an act by one or more of the parties, or
- (b) the happening of some other event,

intended to take place in a country or territory outside the Island.

(3) The second condition is that that act or other event constitutes an offence under the law in force in that country or territory.

(4) The third condition is that the agreement would fall within section 330 of that Code as an agreement relating to the commission of an offence to which this Schedule applies but for the fact that the offence would not be an offence triable in the Island if committed in accordance with the parties' intentions.

(5) The fourth condition is that —

- (a) a party to the agreement, or a party's agent, did anything in the Island in relation to the agreement before its formation, or
- (b) a party to the agreement became a party in the Island (by joining it either in person or through an agent), or
- (c) a party to the agreement, or a party's agent, did or omitted anything in the Island in pursuance of the agreement.

(6) In the application of section 330 of that Code to such an agreement, any reference to an offence is to be read as a reference to what would be the offence in question to which this Schedule applies but for the fact that it is not an offence triable in the Island.

Incitement to commit certain acts outside the Island

2. (1) This paragraph applies where —

- (a) any act done by a person in the Island would amount to the offence of incitement to commit an offence to which this Schedule applies but for the fact that what he had in view would not be an offence triable in the Island,
- (b) the whole or part of what he had in view was intended to take place in a country or territory outside the Island, and
- (c) what he had in view would involve the commission of an offence under the law in force in that country or territory.

(2) Where this paragraph applies —

- (a) what he had in view is to be treated as that offence for the purposes of any charge of incitement brought in respect of that act, and
- (b) any such charge is accordingly triable in the Island.

(3) Any act of incitement by means of a message (however communicated) is to be treated as done in the Island if the message is sent or received in the Island.

Paragraphs 1 and 2: supplementary

3. (1) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of paragraphs 1 and 2, however it is described in that law.

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(2) Subject to sub-paragraph (3), a condition in paragraph 1(3) or 2(1)(c) is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice —

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied,
- (b) showing their grounds for that opinion, and
- (c) requiring the prosecution to show that it is satisfied.

(3) In sub-paragraph (2) "the relevant conduct" means —

- (a) where the condition in paragraph 1(3) is in question, the agreed course of conduct, and
- (b) where the condition in paragraph 2(1)(c) is in question, what the accused had in view.

(4) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under sub-paragraph (2).

(5) In the Court of General Gaol Delivery the question whether the condition is satisfied is to be decided by the judge alone.

(6) In any proceedings in respect of any offence triable by virtue of paragraph 1 or 2, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.

(7) References to an offence of conspiracy to commit an offence to which this Schedule applies include an offence triable in the Island as such a conspiracy by virtue of paragraph 1 (without prejudice to sub-paragraph (6) of that paragraph).

(8) References to an offence of incitement to commit an offence to which this Schedule applies include an offence triable in the Island as such an incitement by virtue of paragraph 2 (without prejudice to sub-paragraph (2) of that paragraph).

(9) Sub-paragraphs (7) and (8) apply to references in any statutory provision, instrument or document (except those in paragraphs 1 and 2 of this Schedule and in section 330 of the Criminal Code 1872).

Interpretation.

4. (1) The following offences are the offences to which this Schedule applies —
- (a) an offence under section 1 of the Corruption Act 1986 (corrupt transactions);
 - (b) any other offence specified in an order made by the Department of Home Affairs.
- (2) An order under sub-paragraph (1)(b) shall not come into operation unless it is approved by Tynwald.
- (3) Nothing in this Schedule applies to any act done or other event occurring before the coming into operation of this Schedule.

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Section 29

SCHEDULE 5 CURFEW ORDERS

Power for court to impose curfew order.

1. (1) Where a person is convicted of an offence (not being an offence for which the sentence is fixed by law) the court by or before which he is convicted may make a curfew order, that is to say, an order requiring him to remain, for periods specified in the order, at a place so specified.

(2) A curfew order may specify different places or different periods for different days, but shall not specify —

(a) periods which fall outside the period of 6 months beginning with the day on which it is made; or

(b) periods which amount to less than 2 hours or more than 12 hours in any one day.

(3) The requirements in a curfew order shall, as far as practicable, be such as to avoid —

(a) any conflict with the offender's religious beliefs or with the requirements of any community service order, probation order, combination order, attendance centre order or supervision order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or other educational establishment.

(4) A curfew order shall include provision for making a person responsible for monitoring the offender's whereabouts during the curfew periods specified in the order; and a person who is made so responsible shall be of a description specified in an order made by the Department of Home Affairs.

(5) A court shall not make a curfew order unless the court has been notified by the Department of Home Affairs that arrangements for monitoring the offender's whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn.

(6) Before making a curfew order, the court shall explain to the offender in ordinary language —

(a) the effect of the order;

(b) the consequences which may follow if he fails to comply with any of the requirements of the order; and

(c) that the court has power to review the order on the application either of the offender or of the responsible person.

(7) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

(8) The court by which a curfew order is made shall give a copy of the order to the offender and to the person responsible for monitoring the offender's whereabouts during the curfew periods specified in the order.

(9) The Department of Home Affairs may by order direct that sub-paragraph (2) shall have effect with the substitution, for any period there specified, of such period as may be specified in the order.

(10) An order under sub-paragraph (9) shall not come into operation unless it is approved by Tynwald.

Procedural requirements for curfew orders.

2. (1) Where a court makes a curfew order, the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or

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taken together are, the most suitable for the offender and in forming that opinion, a court may take into account any information about the offender which is before it.

(2) Where a court makes a curfew order, the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it and in forming that opinion, a court shall take into account all such information about the circumstances of the offence and any offences associated with it (including any aggravating or mitigating factors) as is available to it.

Enforcement etc of curfew orders.

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

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

(3) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender appears or is brought under this paragraph that he has failed without reasonable excuse to comply with any of the requirements in a curfew order, the court may —

- (a) impose on him a fine not exceeding £5,000;
- (b) if the curfew order was made by a court of summary jurisdiction, revoke the order and deal with the offender, for the offence in respect of which the order was made;
- (c) if the order was made by a Court of General Gaol Delivery, commit him to custody or release him on bail until he can be brought or appear before that court.

(4) A court of summary jurisdiction which deals with an offender's case under sub-paragraph (3)(c) shall send to the Chief Registrar a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements in a curfew order in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before a Court of General Gaol Delivery.

(5) Where, by virtue of sub-paragraph (3)(c) the offender is brought or appears before a Court of General Gaol Delivery and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements in a curfew order, that court may—

- (a) impose on him a fine not exceeding £5,000;
- (b) revoke the order; and
- (c) deal with him, for the offence in respect of which the order was made.

(6) A person sentenced under sub-paragraph (3) or (5) may appeal to the Staff of Government Division against the sentence.

(7) In proceedings before the Court of General Gaol Delivery under sub-paragraph (5), any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the Court without a jury.

Amendment of curfew orders.

4. (1) Where a curfew order is in force and —

- (a) on the application of the offender or the responsible person; or
- (b) on the offender being convicted of an offence before a court of summary jurisdiction,

it appears to a court of summary jurisdiction that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may —

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- (i) if the order was made by a court of summary jurisdiction, revoke the order or revoke it and deal with the offender for that offence in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (ii) if the order was made by a Court of General Gaol Delivery, commit him to custody or release him on bail until he can be brought or appear before such a court,

and, where the court deals with his case under head (ii) it shall send to the Chief Registrar such particulars of the case as may be desirable.

- (2) Where an offender in respect of whom such an order is in force —
 - (a) is convicted of an offence before a Court of General Gaol Delivery; or
 - (b) is committed by a court of summary jurisdiction to a Court of General Gaol Delivery for sentence and is brought or appears before the Court of General Gaol Delivery; or
 - (c) by virtue of sub-paragraph (1)(ii), is brought or appears before a Court of General Gaol Delivery,

and it appears to the Court of General Gaol Delivery to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Court may revoke the order or revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(3) A person sentenced under sub-paragraph (1) or (2) for an offence may appeal to the Staff of Government Division against the sentence.

(4) Where a court of summary jurisdiction proposes to exercise its powers under sub-paragraph (1) otherwise than on the application of the offender, it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Regulation of curfew orders.

- 5. The Department of Home Affairs may make rules for regulating —
 - (a) the monitoring of the whereabouts of persons who are subject to curfew orders; and
 - (b) without prejudice to the generality of paragraph (a), the functions of the responsible person of such persons as are mentioned in that paragraph.

Interpretation.

- 6. (1) In this Schedule —
"responsible person" means —
 - (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision;
 - (b) in relation to an offender who is subject to a curfew order, the person responsible for monitoring his whereabouts during the curfew periods specified in the order.
- (2) References in this Schedule to the offender's being under the age of 17 years are references to his being under that age on conviction.
- (3) For the purposes of paragraphs 3 and 4, the jurisdiction conferred on a court of summary jurisdiction shall be exercised by a juvenile court in the case of a juvenile.

Offenders under the age of 17 years.

- 7. Paragraphs 1 to 6 shall not have effect in relation to offenders who are under the age of 17 years unless paragraph 8 has been brought into operation by an order under section 64.
- 8. (1) A court shall not make a curfew order in respect of offenders who are under the age of 17 years unless the court has been notified by the Department of Health and Social

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Security that arrangements for monitoring the offender's whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn.

(2) Before making a curfew order in respect of an offender who is under the age of 17 years, the court shall obtain and consider information about his family circumstances and the likely effect of such an order on those circumstances.

(3) In relation to an offender who is under the age of 17 years, paragraph 1(2)(a) shall have effect as if the reference to 6 months were a reference to 3 months.

(4) The Department of Home Affairs may by order direct that sub-paragraph (3) shall have effect with such additional restrictions as may be so specified.

(5) An order under this sub-paragraph (4) shall not come into operation unless it is approved by Tynwald.

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Section 30(2)

SCHEDULE 6

PROBATION ORDERS - ADDITIONAL REQUIREMENTS

"SCHEDULE 1A

ADDITIONAL REQUIREMENTS OF PROBATION ORDERS

Requirements as to testing for drugs

1. This Schedule applies where a court proposing to make a probation order is satisfied that the offender is dependent on or has a propensity to misuse drugs.

2. A probation order may include a requirement ("the testing requirement") that the offender submits, during the whole or a specified part of the probation period, to periodic testing for the purpose of ascertaining the presence of drugs in the offender's body.

3. The offender shall, in accordance with the terms of the testing requirement, provide at such times and in such circumstances as may be determined by the probation officer responsible for the supervision of the offender, samples of such description as may be so determined.

4. The probation officer responsible for the supervision of the offender shall make arrangements with a person having the necessary qualifications to take such samples as are appropriate to comply with the testing requirement.

5. The testing requirement shall specify the frequency of testing and the drugs for which the tests are to be undertaken.

6. (1) If at any time during the probation period a sample taken from the offender shows —

(a) the presence in his body of relevant drugs when none were present when the offender was last tested; or

(b) the level of relevant drugs in his body is no less than when last tested,

that shall be treated as constituting a failure to comply with the requirements of the probation order and section 5 shall have effect accordingly.

(2) In this paragraph "relevant drugs" means the drugs for which testing is required under the testing requirement."

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Section 37

SCHEDULE 7

ATTENDANCE CENTRE ORDERS

Provision, regulation and management of attendance centres

1. (1) The Department of Home Affairs (in this Schedule referred to as "the Department") may provide attendance centres.

(2) In this Schedule, "attendance centre" means a place at which offenders may be required to attend and be given under supervision appropriate occupation or instruction, in pursuance of orders made under paragraph 2.

(3) The Department may by make rules for the regulation and management of attendance centres.

(4) For the purpose of providing attendance centres the Department may make arrangements with any person for the use of premises of that person.

(5) Rules under sub-paragraph (3) shall not come into operation unless they are approved by Tynwald.

Attendance centre orders

2. (1) Where a person is convicted by or before a court of an offence punishable with custody (not being an offence the sentence for which is fixed by law) the court may, if it has been notified by the Department that an attendance centre is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

(2) For the purposes of sub-paragraph (1), the reference to an offence punishable with custody shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(3) An order under this paragraph is referred to in this Schedule as an "attendance centre order".

(4) The aggregate number of hours shall not exceed 12.

(5) A court may make an attendance centre order in respect of an offender before a previous attendance centre order made in respect of him has ceased to have effect, and may determine the number of hours to be specified in the order without regard —

(a) to the number specified in the previous order; or

(b) to the fact that that order is still in effect.

(6) An attendance centre order shall not be made unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the person concerned, having regard to his age, the means of access available to him and any other circumstances.

(7) The times at which an offender is required to attend at an attendance centre shall, as far as practicable, be such as to avoid —

(a) any conflict with the offender's religious beliefs or with the requirements of any other court order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(8) The first such time shall be a time at which the centre is available for the attendance of the offender in accordance with the notification of the Department and shall be specified in the order.

(9) The subsequent times shall be fixed by the officer in charge of the centre, having regard to the offender's circumstances.

(10) An offender shall not be required under this paragraph to attend at an attendance centre on more than one occasion on any day, or for more than 3 hours on any occasion.

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(11) Where a court makes an attendance centre order, the clerk of the court shall deliver or send a copy of the order to the officer in charge of the attendance centre specified in it, and shall also deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender's last or usual place of abode.

Discharge and variation of attendance centre orders

3. (1) An attendance centre order may be discharged on an application made by the offender or the officer in charge of the relevant attendance centre.

(2) An application under sub-paragraph (1) shall be made to the Court of General Gaol Delivery or a court of summary jurisdiction in accordance with sub-paragraphs (3) and (4), and the discharge of such an order shall be by order of the court.

(3) Where the court which made the order is the Court of General Gaol Delivery the power shall be exercised by that court.

(4) The power to discharge an attendance centre order shall be exercised by a court of summary jurisdiction where the court which made the order was a court of summary jurisdiction.

(5) Any power conferred by this paragraph on any court includes power to deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

(6) Any attendance centre order may, on the application of the offender or of the officer in charge of the relevant attendance centre, be varied by a court of summary jurisdiction.

(7) The power to vary an attendance centre order is a power by order —

(a) to vary the day or hour specified in the order for the offender's first attendance at the relevant attendance centre; or

(b) to substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.

(8) Where an application is made under this paragraph by the officer in charge of an attendance centre, the court may deal with it without summoning the offender.

(9) It shall be the duty of the clerk to a court which makes an order under this paragraph —

(a) to deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender's last or usual place of abode; and

(b) to deliver or send a copy —

(i) if the order is made by virtue of subparagraph (1) or (7)(a), to the officer in charge of the relevant attendance centre; and

(ii) if it is made by virtue of sub-paragraph (7)(b), to the officer in charge of the attendance centre which the order as varied will require the offender to attend.

(10) In this paragraph, "the relevant attendance centre", in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made under sub-paragraph (7)(b).

(11) Where an attendance centre order has been made on appeal, for the purposes of this paragraph it shall be deemed —

(a) if it was made on an appeal brought from a court of summary jurisdiction, to have been made by that court;

(b) if it was made on an appeal brought from the Court of General Gaol Delivery, to have been made by that Court;

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and sub-paragraph (5) shall have effect in relation to an attendance centre order made on appeal as if the words "if the order had not been made" were omitted.

Breaches of attendance centre orders or attendance centre rules

4. (1) Where an attendance centre order is in force and it appears on complaint to a justice that the offender —

- (a) has failed to attend in accordance with the order; or
- (b) while attending has committed a breach of rules made under paragraph 1(3) which cannot be adequately dealt with under those rules,

the justice may —

- (i) issue a summons requiring the offender to appear at the place and time specified in the summons before a court of summary jurisdiction; or
- (ii) if the information is in writing and substantiated on oath, may issue a warrant for the offender's arrest requiring him to be brought before such a court.

(2) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender appears or is brought under this paragraph that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b), that court may, without prejudice to the continuation of the order, impose on him a fine not exceeding £1,000 or —

- (a) if the attendance centre order was made by a court of summary jurisdiction, may deal with him, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (b) if the order was made by the Court of General Gaol Delivery, may commit him in custody or release him on bail until he can be brought or appear before that Court.

(3) A fine imposed under sub-paragraph (2) shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(4) A court of summary jurisdiction which deals with an offender's case under sub-paragraph (2)(b) shall send to the Court of General Gaol Delivery a certificate signed by a justice of the peace giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules which he has committed, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure or the breach before the Court of General Gaol Delivery.

(5) Where by virtue of sub-paragraph (2)(b) the offender is brought or appears before the Court of General Gaol Delivery and it is proved to the satisfaction of the court that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b), that court may deal with him, for the offence in respect of which the order was made, in any manner in which it could have dealt with him for that offence if it had not made the order.

(6) In dealing with an offender under sub-paragraph (2)(a) or (5), the court concerned —

- (a) shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
- (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence.

(7) Where a court deals with an offender under sub-paragraph (2)(a) or (5), it shall revoke the attendance centre order if it is still in force.

(8) In proceedings before the Court of General Gaol Delivery under this paragraph, any question whether there has been a failure to attend or a breach of the rules shall be determined by the court and not by the verdict of a jury.

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(9) Where an attendance centre order has been made on appeal, for the purposes of this paragraph it shall be deemed —

- (a) if it was made on an appeal brought from a court of summary jurisdiction, to have been made by that court;
- (b) if it was made on an appeal brought from the Court of General Gaol Delivery, to have been made by that Court,

and, in relation to an attendance centre order made on appeal, sub-paragraph (2)(a) shall have effect as if the words "if the order had not been made" were omitted and sub-paragraph (5) shall have effect as if the words "if it had not made the order" were omitted.

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Section 63

SCHEDULE 8

PROSECUTION OF OFFENCES

1. (1) It shall be the duty of the Attorney General —
 - (a) to take over the conduct of all criminal proceedings, other than specified proceedings, instituted on behalf of the police force (whether by a member of that force or by any other person);
 - (b) to take over the conduct of any criminal proceedings instituted by an immigration officer (as defined for the purposes of the Immigration Act 1971 (an Act of Parliament) as that Act has effect in the Island) acting in his capacity as such an officer;
 - (c) to take over the conduct of any criminal proceedings instituted by —
 - (i) any Department or Statutory Board; or
 - (ii) any officer of any such Department or Board acting in his capacity as such an officer;
 - (d) to institute and have the conduct of criminal proceedings in any case where it appears to him that —
 - (i) the importance or difficulty of the case makes it appropriate that proceedings should be instituted by him; or
 - (ii) it is otherwise appropriate for proceedings to be instituted by him; and
 - (e) to take over the conduct of all proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 (forfeiture of obscene, etc. articles).
- (2) In this paragraph, "specified proceedings" means proceedings which fall within any category for the time being specified by order made by the Attorney General for the purposes of this paragraph.
- (3) Orders under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the orders are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.
- (4) This paragraph is additional to, and without prejudice to, the existing status, duties and powers of the office of Attorney General.
2. (1) The Attorney General may at any time authorise an advocate to institute or take over the conduct of such criminal proceedings as the Attorney General may assign to him.
- (2) Any advocate conducting proceedings assigned to him under this paragraph shall have all the powers of the Attorney General as to the institution and conduct of the proceedings but shall exercise those powers subject to any instructions given to him by the Attorney General.
- (3) Any such instructions may be given so as to apply generally.
3. (1) Subject to sub-paragraph (2), nothing in this Schedule shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Attorney General's duty to take over the conduct of proceedings does not apply.
- (2) Where criminal proceedings are instituted in circumstances in which the Attorney General is not under a duty to take over their conduct, he may nevertheless do so at any stage.
4. (1) The Attorney General may designate constables of the rank of sergeant or above for the purposes of this paragraph.
- (2) Subject to such exceptions and conditions as may be specified in the designation, a constable so designated, whether he is the complainant or not, may prosecute

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any criminal proceedings in a court of summary jurisdiction in which a constable is the complainant.

(3) A person so designated shall exercise any such powers subject to instructions given to him by the Attorney General.

(4) Any such instructions may be given so as to apply generally.

(5) This paragraph has effect notwithstanding the provisions of any statutory provision other than this Schedule.

(6) Section 30(1) of the Summary Jurisdiction Act 1989 is repealed.

5. (1) The Attorney General may make regulations requiring the Chief Constable to give to the Attorney General information with respect to every offence of a kind prescribed by the regulations which is alleged to have been committed in the Island and in respect of which it appears to him that there is a prima facie case for proceedings.

(2) The regulations may also require the Chief Constable to give to the Attorney General such information as the Attorney General may require with respect to such cases or classes of case as he may from time to time specify.

(3) Regulations under this paragraph shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

6. (1) For the purposes of this Schedule, proceedings in relation to an offence are instituted —

(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in respect of the offence is made to him;

(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in respect of the offence is made to him;

(c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge,

and where the application of this sub-paragraph would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.

(2) For the purposes of this Schedule, references to the conduct of any proceedings include references to the proceedings being discontinued and to the taking of any steps (including the bringing of appeals and making of representations in respect of applications for bail) which may be taken in relation to them.

(3) For the purposes of paragraph 2, proceedings begun by summons issued under section 3 of the Obscene Publications and Indecent Advertisements Act 1907 (forfeiture of obscene, etc. articles) shall be taken to be criminal proceedings.

(4) For the purposes of this Schedule, binding over proceedings under section 87 and 87A of the Summary Jurisdiction Act 1989 shall be taken to be criminal proceedings.