

CHAPTER No. 3

**CRIMINAL JUSTICE, POLICE
COURTS ACT 2007**

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CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

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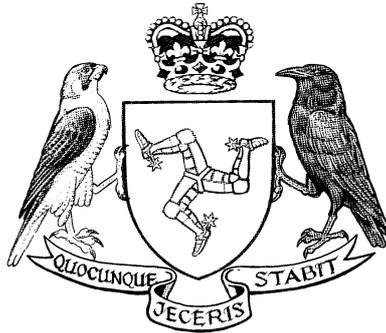
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AN ACT

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

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 AND OFFENDERS

1. In Schedule 1 to the Criminal Justice Act 2001 —

(a) after paragraph 3 insert —

“Travel notification

3A. (1) The Department may by regulations make provision requiring relevant offenders who leave the Island, or any description of such offenders —

- (a) to give in accordance with the regulations, before they leave, a notification under sub-paragraph (2);
- (b) if they subsequently return to the Island, to give in accordance with the regulations a notification under sub-paragraph (3).

Sex offenders : travel notification

[c. 4]

(2) A notification under this sub-paragraph must disclose —

- (a) the date on which the offender will leave the Island;
- (b) the country (or, if there is more than one, all the countries) to which the offender will travel and the offender's point of arrival (determined in accordance with the regulations) in each country;
- (c) any other information prescribed by the regulations which the offender holds about the offender's departure from or return to the Island and the offender's movements and place or places of accommodation while outside the Island.

(3) A notification under this sub-paragraph must disclose any information prescribed by the regulations about the offender's return to the Island.

(4) Regulations under sub-paragraph (1) may make different provision for different categories of person.

(5) Regulations under sub-paragraph (1) shall be laid before Tynwald.”;

(b) in paragraph 4 —

- (i) in sub-paragraph (1) for the words from “he shall be liable” to the end substitute —

“that person shall be liable —

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

(ii) after sub-paragraph (2) insert —

“(3) If a person —

- (a) fails, without reasonable excuse, to comply with sub-paragraph (3A) or regulations under that sub-paragraph; or

- (b) notifies to the police, in purported compliance with sub-paragraph (3A) or regulations under that sub-paragraph, any information which the person knows to be false,

that person shall be liable —

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

(c) in paragraph 5 —

- (i) in sub-paragraph (2), for “3 and 4” substitute “3, 3A and 4 and regulations under paragraph 3A”;
- (ii) in sub-paragraph (2)(a), after “3” insert “and 3A and regulations under that paragraph”;
- (iii) in sub-paragraph (3), after “4(1)” insert “and (3)”.

2. After paragraph 5 of Schedule 3 to the Criminal Justice Act 2001 insert —

Forfeiture of indecent images of children and devices

“Forfeiture in cases where there is no conviction

5A. (1) A court of summary jurisdiction may make a forfeiture order under this paragraph in respect of the following articles —

- (a) any photograph or pseudo-photograph; or
- (b) any computer, electronic device (including a hard drive) or a computer disc on which data is or has been stored and that data is capable of conversion into a photograph or pseudo-photograph of a child,

if the court is satisfied that it is, or the data can be converted into, an indecent photograph or pseudo-photograph of a child.

(2) An application under this paragraph shall be made by the Chief Constable in respect of articles in the custody or possession of the Chief Constable and the articles shall be produced to the court.

(3) The court to which any articles are produced in pursuance of sub-paragraph (2) may issue a summons to the person appearing to the court to be the owner of the articles to appear on a day specified in the summons before a court of summary jurisdiction to show cause why they should not be forfeited.

(4) If the court is satisfied as required by sub-paragraph (1), the court shall order them to be forfeited and shall make such order for the disposal or destruction of the property as the court thinks fit; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.

(5) In addition to the persons summoned, any other person being the owner of, or a person having an interest in, 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.

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

(7) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the Chief Constable to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the articles should not be forfeited.

(8) Costs ordered to be paid under sub-paragraph (7) shall be recoverable as a civil debt.

(9) Where articles falling within sub-paragraph (1)(b) are seized under paragraph 4, and a person is convicted under paragraph 1(1) of offences in respect of the photographs or pseudo-photographs, the court shall order them to be forfeited.

(10) An order made under this paragraph (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.

(11) This paragraph is additional to paragraph 4 and shall not affect the operation of that paragraph.

(12) An order may be made under this paragraph whether or not a person is convicted under paragraph 1(1) of offences in respect of photographs or pseudo-photographs.”.

PART 2

WEAPONS

3. (1) In the Firearms Act 1947 —

Firearms and imitation firearms

(a) after section 23 insert —

[XVI p.586]

“Possession of firearm with intent to cause fear of violence

23A. If any person (“A”) has in A’s possession any firearm or imitation firearm with intent —

- (a) by means thereof to cause, or
- (b) to enable another person by means thereof to cause,

any person (“B”) to believe that unlawful violence will be used against B or another person, A is guilty of an offence and on conviction on information shall be liable to custody for 10 years or to a fine or to both.”;

- (b) in section 26(1)(b), after “firearm” insert “, imitation firearm”;
- (c) in section 26(3), after “firearm” insert “, imitation firearm”.

(2) In the Firearms Act 1968 —

[XX p.464]

- (a) in section 2, for the words from “loaded shot” to “firearm shall” substitute “firearm (whether loaded or not) or any imitation firearm shall”;

(b) in section 3, after “firearm” insert “or imitation firearm”;

(c) in section 4, after “firearm” insert “or imitation firearm”.

[c.9] (3) In section 27(2) of the Police Powers and Procedures Act 1998, after paragraph (i) insert —

“(j) an offence under section 2 of the Firearms Act 1968 (carrying firearm or imitation firearm in public place) in respect of an air weapon or imitation firearm.”.

PART 3

ANTI-SOCIAL BEHAVIOUR

Anti-social
behaviour
orders

[c.4]

4. (1) In section 28 of the Criminal Justice Act 2001 —

(a) in subsection (1)(a), the words “or was likely to cause” are repealed;

(b) in subsection (1)(b), after “in the Island” insert “or a particular area or locality within the Island”;

(c) in subsection (2), after “relevant authority” insert “and the Department of Health and Social Security”;

(d) after subsection (3) insert —

“(3A) On an application made under subsection (1), the court may, pending the determination of the application, make such interim order as the court considers appropriate but only if the court is satisfied as required by subsection (3B).

(3B) Before making an interim order, the court must be satisfied —

(a) that subsection (1)(a) would be fulfilled if the acts complained of in the application were established; and

(b) that an interim order is necessary for the purpose mentioned in subsection (1)(b); and

(c) that the person in respect of whom the interim order is to be made has received notice that the court may, pending the determination of the application, make an interim order.”;

- (e) in subsection (10), after “anti-social behaviour order” insert “or an interim order under subsection (3A)”;
- (f) in subsection (12) (authorities that may apply for an order), at the end add “or such other persons or bodies as the Department of Home Affairs may by order specify”;
- (g) after subsection (12) add —

“(13) An order under subsection (12) shall not come into operation unless approved by Tynwald.

(14) For the purposes of any enactment conferring rights of appeal in criminal cases, an anti-social behaviour order is a sentence passed by the court.”.

(2) In Schedule 3 to the Legal Aid Act 1986, after entry 1 [c.23] insert —

<p>1A. Proceedings in a court of summary jurisdiction under section 28 of the Criminal Justice Act 2001.</p>	<p>The court of summary jurisdiction.</p>	<p>The person against whom the order may be or has been made.</p>
<p>1B. Appeal to the Staff of Government Division against a decision of a court of summary jurisdiction under section 28 of the Criminal Justice Act 2001.</p>	<p>The Staff of Government Division.</p>	<p>The appellant.</p>

[c. 4]

[c. 4]

5. After section 28 of the Criminal Justice Act 2001 insert —

Anti-social behaviour sentence

“Anti-social behaviour sentence

28A. (1) The court by or before which a person (“the defendant”) is convicted of an offence (not being an offence the sentence for which is fixed by law) may, in addition to any penalty or sentence prescribed for the offence by the enactment creating the offence, make an order (“an anti-social behaviour sentence”) under this section if subsection (2) applies.

[c. 4]

(2) The court may make an anti-social behaviour sentence if it is satisfied —

- (a) that the offence was committed in circumstances in which harassment, alarm or distress was caused by the defendant to one or more persons not of the same household as the defendant; and
- (b) that an anti-social behaviour sentence is necessary to protect any person in the Island or in a particular area or locality within the Island from such further anti-social acts by the defendant; and
- (c) that the offence was committed after the date on which this section comes into operation.

(3) An anti-social behaviour sentence may prohibit the defendant from doing anything described in the sentence.

(4) The prohibitions that may be imposed by an anti-social behaviour sentence are those necessary for the purpose of protecting persons in the Island or in a particular area or locality within the Island from further anti-social acts by the defendant.

(5) An anti-social behaviour sentence shall have effect for a period (not exceeding 3 years) specified in the sentence.

(6) The defendant may apply by complaint to the court which made an anti-social behaviour sentence for it to be varied or discharged by order of the court.

(7) If without reasonable excuse a person does anything which that person is prohibited from doing by an anti-social behaviour sentence, that person 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.

(8) Where a person is convicted of an offence under subsection (7), it shall not be open to the court by or before which the person 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.

(9) A conviction of an offence under subsection (7) is in addition to and does not affect the conviction in respect of which the anti-social behaviour sentence was imposed.

(10) For the purposes of any enactment conferring rights of appeal in criminal cases, an anti-social behaviour sentence is a sentence passed on the offender by the court for the offence for which the anti-social behaviour sentence was passed.”.

6. In section 7 of the Protection from Harassment Act 2000, for subsection (2) substitute — Harassment :
course of
conduct

“(2) A “course of conduct” involves conduct on at least two occasions unless the person undertaking the conduct has been convicted of an offence under either section 2 or 4, in which case the course of conduct need only involve conduct on one occasion if the person towards whom the conduct is directed is a person who was harassed or put in fear by the conduct to which the conviction relates.”. [c.12]

PART 4

AMENDMENTS TO LICENSING ACT 1995

7. In section 8 of the Licensing Act 1995 (in this Part referred to as “the 1995 Act”) (licences granted to companies) — Licences
granted to
companies

(a) for subsection (1) substitute — [c. 8]

“(1) Subject to subsection (1A), a licence may not be granted to a company in respect of any premises unless a person nominated by the applicant, being an individual resident in the Island and either —

- (a) a director or other officer of the applicant; or
- (b) the manager of the business carried on or to be carried on, on the premises,

is approved by the court; and a person so approved is in this Act referred to as a “designated official”.”;

(b) after subsection (1) insert —

“(1A) The court may, on the application of the Chief Constable, for good cause refuse to grant a licence to a company unless —

- (a) such number of qualifying persons as the court considers appropriate have been nominated by the applicant; and
- (b) at least one of the nominated persons is a person mentioned in subsection (1); and
- (c) the court has approved the nominated persons as designated officials under subsection (1).

(1B) In subsection (1A), a qualifying person is an individual —

- (a) mentioned in subsection (1); or
- (b) who is an employee of the applicant.

(1C) In a case where there is more than one designated official, at least one of the officials shall be a person mentioned in subsection (1).

(1D) The court may, on the application of the Chief Constable or on its own motion, direct the Chief Constable to supply the court with a report as to the management of any premises in respect of which the licensee is a company and on receipt of such report the court may for good cause direct the licensee to nominate one or more individuals to be approved by the court as designated officials in addition to or in place of the existing designated official.

(1E) Where there is more than one designated official in respect of any premises the holder of the licence shall cause a record to be kept of the designated official that is in charge of the premises at any time.

(1F) Any record maintained in accordance with subsection (1E) shall be kept in the possession of the licensee for at least 3 years.

(1G) The court may direct the licensee to produce to it any record maintained under subsection (1E).

(1H) If the holder of the licence fails to comply with subsection (1E) or (1F), the holder of the licence shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000.”;

(c) for subsection (3) substitute —

“(3) If the court withdraws its approval of a designated official, or a designated official —

- (a) dies; or
- (b) ceases to be resident in the Island; or
- (c) ceases to be a director or other officer of the holder of the licence; or
- (d) ceases to be the manager of the business carried on, on the premises,

the holder of the licence shall —

- (i) notify the Chief Constable of the change in circumstances; and
- (ii) apply to the court for the approval of another person, being such an individual as is mentioned in subsection (1), in place of that designated official.”;

(d) after subsection (3) insert —

“(3A) Where the designated official referred to in subsection (3) was the only designated official in respect of particular premises, the holder of the licence shall nominate a person who will personally supervise the licensed premises pending the approval by the court of a replacement designated official and shall notify the Chief Constable accordingly.”;

(e) for subsection (4) substitute —

“(4) If —

- (a) the holder of the licence fails to comply with subsection (3) within the period of 2 weeks beginning with the event referred to in that subsection, or
- (b) before the end of the relevant period the court refuses an application under subsection (3) without specifying a period within which a further application may be made,

the licence is suspended and of no effect from the end of the relevant period until another designated official is approved by the court.

In this subsection “the relevant period” means the period of 2 weeks referred to in paragraph (a) as extended (or further extended) by a period specified under paragraph (b).”;

(f) after subsection (4) insert —

“(4A) The court may, on the application of the Chief Constable, for good cause order the holder of a licence to nominate such further persons (each such person being an individual as is mentioned in subsection (1)) as the court considers appropriate for approval by the court as designated officials.

(4B) If —

- (a) the holder of the licence fails to comply with subsection (4A) within the period of 2 weeks beginning with the order referred to in that subsection, or
- (b) before the end of the relevant period the court refuses an application under subsection (4A) without specifying a period within which a further application may be made,

the licence is suspended and of no effect from the end of the relevant period until such further designated officials are approved by the court.

In this subsection “the relevant period” means the period of 2 weeks referred to in paragraph (a) as extended (or further extended) by a period specified under paragraph (b).”;

(g) for subsection (5) substitute —

“(5) The name and address of each designated official shall be endorsed on the licence.”.

Absence of
licensee

8. In section 25 of the 1995 Act (absence of licensee) —

(a) for subsection (2) substitute —

“(2) The court shall not give permission under subsection (1) unless —

(a) the holder of the licence —

- (i) has notified the Chief Constable of the absence; and

(ii) has nominated a person who will personally supervise the licensed premises during the absence of the responsible person; and

(b) the court has approved that person for the purpose.”;

(b) for subsection (6) substitute —

“(6) In this section “the responsible person”, in relation to on-licensed premises, means —

(a) where the holder of the licence is an individual or individuals, the holder of the licence;

(b) where the holder of the licence is a company, the designated official or, where there is more than one designated official, every such designated official.”.

9. (1) After section 25 of the 1995 Act (absence of licensee) insert — Passenger vessels

“Passenger vessels **25A.** (1) In relation to any licensed premises which is a passenger vessel, each of the following persons —

(a) where the holder of the licence is an individual or individuals, the holder of the licence; or

(b) where the holder of the licence is a company, the designated official or, where there is more than one designated official, every such designated official,

is personally responsible for the conduct of the licensed premises.

(2) If, at any time when licensed premises comprising passenger vessels are open for the sale or supply of liquor, neither the holder of the licence nor any designated official is present on the licensed premises, then —

(a) the holder of the licence is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000, and

(b) whether or not the holder of the licence is convicted of an offence under paragraph (a), the court may by order suspend the licence for such period, or until the happening of such event, as may be specified in the order.

(3) Where the court has power under subsection (2)(b) to suspend a licence, and has already suspended the licence under any provision of this Act at least twice in the previous 5 years, it may by order cancel the licence.

(4) Before suspending or cancelling a licence under this section the court shall, unless it determines that it is not practicable to do so, give the holder of the licence an opportunity to make representations as to why the licence should not be suspended or cancelled, as the case may be.”.

(2) In section 80(1) of the 1995 Act (interpretation) —

(a) before the definition of “canteen licence” insert —

““business”, in relation to a passenger vessel, means the sale by retail of liquor on the vessel, for consumption on the vessel, to any passenger on the vessel while it is plying from place to place, but not when in harbour;”;

(b) before the definition of “registered” insert —

““premises” includes a passenger vessel;”.

Designated
officials

10. (1) In each of the following provisions of the 1995 Act —

(a) paragraph (a) of section 9(5B) (conditions and undertakings); and

(b) paragraph (b) of section 66(1) (suspension or cancellation of licence),

for “the designated official” substitute “a designated official”.

(2) In section 80 of the 1995 Act (interpretation), for the definition of “the designated official” substitute —

““a designated official”, in relation to licensed premises, means a person for the time being approved under section 8 in respect of the premises;”.

PART 5

POLICE

- 11.** After section 2(4) of the Police Act 1993 insert — Chief Constable to swear oath of office [c.11]
- “(4A) A person appointed to be the Chief Constable shall be sworn and empowered to act as a constable for preserving the peace, preventing the commission of offences and apprehending offenders against the public peace.”.
- 12.** In section 8 of the Police Act 1993, at the end add — Police regulations
- “(4) In relation to the pay and conditions of service of the police force, regulations under this section may, subject to subsection (3), authorise or require provision to be made by, or confer discretionary powers on, the Department.”.

PART 6

POLICE POWERS AND PROCEDURES

- 13.** In section 58 of the Police Powers and Procedures Act 1998 (intimate searches) — Drug offence searches [c. 9]
- (a) after subsection (3) insert —
- “(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.
- (3B) Where it is proposed that a drug offence search be carried out, a constable shall inform the person who is to be subject to it —
- (a) of the giving of the authorisation for it;
- (b) of the grounds for giving the authorisation;
- (c) that the person may withhold consent under subsection (3A) and the effect of refusing such consent without good cause.”;
- (b) after subsection (11) insert —
- “(11A) If the intimate search is a drug offence search, the custody record relating to that person shall also state —

- (a) the authorisation by virtue of which the search was carried out;
 - (b) the grounds for giving the authorisation; and
 - (c) the fact that the appropriate consent was given.”;
- (c) in subsection (12), for “subsection (11)” substitute “subsections (11) and (11A)”;
- (d) after subsection (14) insert —

“(14A) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence —

- (a) the court, in determining whether there is a case to answer;
- (b) a Deemster, in deciding whether to grant an application made by the accused for the charge or any of the charges in the case to be dismissed; and
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.”.

Skin
impressions

P2001/16/80

[c. 9]

14. In section 66 of the Police Powers and Procedures Act 1998 (samples) after subsection (7) insert —

“(7A) An officer shall not give an authorisation under subsection (3) for the taking from any person of a non-intimate sample consisting of a skin impression if —

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.”.

Skin
impressions :
supplementary

15. In section 69 of that Act (Part V : supplementary) —

- (a) at the beginning insert “(1)”;

(b) in subsection (1) —

(i) before the definition of “appropriate consent” insert —

““analysis”, in relation to a skin impression, includes comparison and matching;”;

(ii) in the definition of “non-intimate sample”, for paragraph (e) substitute —

“(e) a skin impression;”;

(iii) after the definition of “registered dentist” insert —

““skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of that person’s foot or of any other part of that person’s body;”;

(c) at the end add —

“(2) References in this Part to a sample proving insufficient include references to where, as a consequence of —

(a) the loss, destruction or contamination of the whole or any part of the sample;

(b) any damage to the whole or part of the sample; or

(c) the use of the whole or part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.”.

16. In Part VIII of the Police Powers and Procedures Act 1998 before section 77 insert — Footwear impressions, etc

“Footwear impressions, etc **A77.** (1) Where any footwear has been seized in accordance with section 22 or 57 on the grounds that [c. 9]

they are evidence relating to an offence, a constable may make an image of the seized footwear.

(2) If an image of footwear is made under this section, in connection with the investigation of an offence and the person concerned is cleared of the offence, the image must be destroyed as soon as practicable after the conclusion of the proceedings.

(3) If an image of footwear is made under this section in connection with such an investigation, and it is decided that the person concerned shall not be prosecuted for the offence and that person has not admitted it and been dealt with by way of being cautioned by a constable, the image must be destroyed as soon as is practicable after that decision is taken.

(4) If an image of footwear is made under this section, in connection with such an investigation and the person concerned is not suspected of having committed the offence, the image must be destroyed as soon as they have fulfilled the purpose for which they were taken.

(5) Where images are required to be destroyed under subsection (2), (3) or (4), the image and information derived from the image shall not be used —

- (a) in evidence against the person concerned; or
- (b) for the purposes of any investigation of an offence.

(6) Proceedings which are discontinued are to be treated as concluded for the purposes of this section.

(7) If an image is required to be destroyed under this section —

- (a) any copies or records of the image shall also be destroyed; and
- (b) the Chief Constable shall cause any access to computer data relating to the images to be made impossible, as soon as it is practicable to do so.

(8) In this section —

“footwear” means the whole of the footwear or any part of it;

“image” means an impression, copy, photograph, digital image or other record, made or taken by any means.

(9) The powers conferred by this section are in addition to any power otherwise conferred.”.

17. In section 67(1) of the Police Powers and Procedures Act 1998, after “fingerprints”, in both places where the word occurs, insert “, impression of footwear”.

Footwear impressions, etc : supplementary

[c. 9]

PART 7

SUMMARY COURTS

18. In section 16(5) of the Summary Jurisdiction Act 1989 (summary trial of offences triable on information), for “6 months” substitute “12 months”.

Summary Courts : maximum sentence for summary trial of offences triable on information [c.15]

19. In section 24 of the Summary Jurisdiction Act 1989 (consecutive sentences) —

Consecutive terms of imprisonment

(a) in subsection (1), for “6 months” substitute “12 months”;

[c.15]

(b) subsection (2) is repealed;

(c) in subsection (3), for the words “and (2) do” substitute “does”.

20. For section 33 of the Summary Jurisdiction Act 1989 substitute —

Power of court of summary jurisdiction to re-open cases to rectify mistakes etc

“Power of court of summary jurisdiction to re-open cases to rectify sentencing etc, mistakes

33. (1) A court of summary jurisdiction may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so.

[c.15]

(2) The power in subsection (1) extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

(3) The power conferred on a court of summary jurisdiction by subsection (1) shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if —

P1980/43/
142(1)-
(1A)

- (a) the High Court has determined an appeal against —
 - (i) that sentence or order;
 - (ii) the conviction in respect of which that sentence or order was imposed or made; or
 - (iii) any other sentence or order imposed or made by the court of summary jurisdiction when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or
- (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

(4) Where a sentence or order is varied under subsection (1), the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

Power of court of summary jurisdiction to re-open cases to rectify mistaken convictions

P1980/43/142(2), (2A), (3) & (5)

33A.(1) A court of summary jurisdiction (“a reviewing court”) may vary or revoke a conviction of a person by another court of summary jurisdiction (“the convicting court”) if —

- (a) it appears to the convicting court that it would be in the interests of justice that the case be heard again by a reviewing court; and
- (b) the convicting court has directed that the case be so heard.

(2) The members of the reviewing court must be different to the members of the convicting court.

(3) A convicting court shall not make a direction under subsection (1)(b) nor shall a reviewing court hear a case under subsection (1) if —

- (a) the High Court has determined an appeal against —

- (i) the conviction;
 - (ii) any sentence or order imposed or made by the convicting court when dealing with the offender in respect of that conviction; or
- (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.”.

21. After section 36 of the Summary Jurisdiction Act 1989 insert —

Summary
Courts :
alternative
verdicts

“Alternative verdicts **36A.**(1) Where, on the trial of a person before a court of summary jurisdiction for any offence —

[c.15]

- (a) the court finds that person not guilty of the offence specifically charged in the complaint; but
- (b) the allegations in the complaint amount to or include (expressly or by implication) an allegation of another offence,

the court may find that person guilty of that other offence or of an offence of which that person could be found guilty on a complaint specifically charging that other offence.

(2) Before the court convicts the person of another offence under subsection (1) it must —

- (a) tell the person that the court is considering convicting that person of the offence; and
- (b) explain that offence to the person; and
- (c) give that person or that person’s counsel the opportunity to address the court in respect of that offence.

(3) For the purposes of subsection (1) an allegation of an offence shall be taken as including an allegation of attempting to commit that offence.

(4) If on the trial of a person before a court of summary jurisdiction for an arrestable offence the court is satisfied that the offence charged (or some

other offence of which the defendant might on that charge be found guilty) was committed, but find the defendant not guilty of it, the court may find the defendant guilty of any offence under section 7(1) of the Criminal Law Act 1981 (act to impede apprehension or prosecution of offender) of which it is satisfied that the offender is guilty in relation to the offence charged (or that other offence).

(5) On the trial of a person before a court of summary jurisdiction of attempting to commit an offence, that person may be convicted of the offence charged even though shown to be guilty of the completed offence, but that person is not afterwards liable to be prosecuted for the completed offence.

(6) Subsection (5) is without prejudice to the power of the Attorney General, at any time before a verdict, to enter a *nolle prosequi*.

(7) Subsections (1) to (4) apply to a complaint containing more than one charge as if each were a separate complaint.

(8) This section is additional to but does not prejudice any other statutory provision that provides for alternative verdicts in specific cases.”.

Summary
Courts :
contempt
[c.15]

22. In section 90 of the Summary Jurisdiction Act 1989 (power to commit and fine for contempt), for “7 days” substitute “14 days”.

Driving
disqualification
where vehicle
used for crime

[c.20]

23. In section 17 of the Criminal Law Act 1981 (driving disqualification where vehicle used for crime) —

(a) for subsection (1) substitute —

“(1) This section applies where a person is convicted before a Court of General Gaol Delivery or a court of summary jurisdiction of an offence which if tried on information is punishable on conviction with custody for a term of 2 years or more.”;

(b) in subsection (2), for “the Court of General Gaol Delivery” substitute “the court”.

Confiscation
of uninsured
vehicles
[c.23]

24. After section 36 of the Road Traffic Act 1985 (third-party liability) insert —

“Confiscation of uninsured vehicles

36A. (1) The court before which any person is convicted of an offence under paragraph 1(1) of Part I of Schedule 5 may, in addition to any other punishment, order the confiscation of the vehicle used in the commission of the offence.

(2) Regulations may make provision for the disposal or destruction of any vehicle confiscated under this section.

(3) For the purposes of any enactment conferring rights of appeal in criminal cases, an order under subsection (1) is a sentence passed by the court.”.

PART 8

PROTECTION OF WITNESSES AND JURORS

Witnesses, jurors, etc protection

25. (1) A person (“A”) commits an offence if —

- (a) A does an act which intimidates, and is intended to intimidate, another person (“the victim”);
- (b) A does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and
- (c) A does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

Intimidation :
police
investigations,
etc

P1994/33/51

(2) A person (“A”) commits an offence if —

- (a) A does an act which harms, and is intended to harm, another person, or, intending to cause another person to fear harm, A threatens to do an act which would harm that other person;
- (b) A does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person, has assisted in an investigation into an offence or, given evidence or particular evidence in proceedings for an offence, has acted as a juror or concurred in a particular verdict in proceedings for an offence; and
- (c) A does or threatens to do it because of that knowledge or belief.

(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made —

- (a) otherwise than in the presence of the victim; or
- (b) to a person other than the victim.

(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.

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

- (a) on conviction on information, to custody for a term not exceeding 7 years or a fine or both;
- (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.

(7) If, in proceedings against a person for an offence under subsection (1), it is proved that the person did an act falling within paragraph (a) with the knowledge or belief required by paragraph (b), the person shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (c) of that subsection.

(8) If, in proceedings against a person ("A") for an offence under subsection (2), it is proved that within the relevant period —

- (a) that A did an act which harmed, and was intended to harm, another person; or
- (b) intending to cause another person fear of harm, A threatened to do an act which would harm that other person,

and that A did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (b), A shall be presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by paragraph (c) of that subsection.

(9) In this section —

“investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

“offence” includes an alleged or suspected offence;

“potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

“the relevant period” —

- (a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal, of the conclusion of the appeal;
- (b) in relation to a person who has, or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of that person, or any act believed by the accused to be an act of that person, assisting in the investigation; and
- (c) in relation to a person who both has, or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of that person, or any act believed by the accused to be an act of that person, assisting in the investigation and ending with the anniversary mentioned in paragraph (a).

(10) For the purposes of the definition of the relevant period in subsection (9) —

- (a) proceedings for an offence are instituted at the earliest of the following times —
 - (i) when a justice of the peace issues a summons or warrant under section 4 of the Summary Jurisdiction Act 1989 in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an information is preferred by virtue of section 2(3)(b) or (c) of the Criminal Jurisdiction Act 1993;

- (b) proceedings at a trial of an offence are concluded with the occurrence of any of the following; the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which the accused was convicted; and
- (c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

(11) This section is in addition to, and not in derogation of, any other offence.

Intimidation
of witnesses

P2004/44/39

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

- (b) that A did that act knowing or believing that that other person was or might be a witness in any relevant proceedings that had already commenced,

A shall be presumed, unless the contrary is shown, to have done the act with the intention of causing the course of justice to be obstructed, perverted or interfered with.

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

- (a) on conviction on information, to custody for a term not exceeding 7 years or to a fine, or to both;
- (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(5) References in this section to a witness, in relation to any proceedings, include references to a person who provides, or is able to provide, any information or any document or other thing which might be used as evidence in those proceedings or which (whether or not admissible as evidence in those proceedings) —

- (a) might tend to confirm evidence which will be or might be admitted in those proceedings;
- (b) might be referred to in evidence given in those proceedings by another witness; or
- (c) might be used as the basis for any cross examination in the course of those proceedings.

(6) References in this section to doing an act include references to issuing any threat (whether against a person or a person's finances or property or otherwise), or making any other statement.

(7) This section is in addition to, and not in derogation of, any other offence.

27. (1) A person ("A") commits an offence if, in circumstances falling within subsection (2) —

Harming witnesses etc

- (a) A does an act which harms, and is intended to harm, another person; or
- (b) intending to cause another person to fear harm, A threatens to do an act which would harm that other person.

P2001/4/40

(2) The circumstances fall within this subsection if —

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

(7) References in this section to a witness, in relation to any proceedings, include references to a person who has provided any information or any document or other thing which was or might have been used as evidence in those proceedings or which (whether or not it was admissible as evidence in those proceedings) —

- (a) tended to confirm or might have tended to confirm any evidence which was or could have been given in those proceedings;
- (b) was or might have been referred to in evidence given in those proceedings by another witness; or
- (c) was or might have been used as the basis for any cross examination in the course of those proceedings.

(8) This section is in addition to, and not in derogation of, any other offence.

28. (1) A reference in section 26 or 27 to relevant proceedings is a reference to any proceedings in or before the High Court, the Court of General Gaol Delivery or any court of summary jurisdiction which —

Relevant
proceedings
P2001/4/41

- (a) are not proceedings for an offence; and
- (b) were commenced after the coming into force of that section.

(2) For the purposes of any reference in section 26 or 27 or in this section to the commencement of any proceedings, relevant proceedings are commenced (subject to subsection (5)) at the earliest time at which one of the following occurs —

- (a) a complaint is made or application, petition, summons or other process made or issued for the purpose of commencing the proceedings;
- (b) any other step is taken by means of which the subject matter of the proceedings is brought for the first time (whether as part of the proceedings or in anticipation of them) before the court.

(3) For the purposes of any reference in section 26 or 27 to the time when any proceedings are finally concluded, relevant proceedings are finally concluded (subject to subsection (4)) —

- (a) if proceedings for an appeal against, or an application for a review of, those proceedings or of any decision taken in those proceedings are brought or is made, at the time when proceedings on that appeal or application are finally concluded;

- (b) if the proceedings are withdrawn or discontinued, at the time when they are withdrawn or discontinued; and
 - (c) in any other case, when the court in or before which the proceedings are brought finally disposes of all the matters arising in those proceedings.
- (4) Relevant proceedings shall not be taken to be finally concluded by virtue of subsection (3)(a) where —
- (a) the matters to which the appeal or application relate are such that the proceedings in respect of which it is brought or made continue or resume after the making of any determination on that appeal or application; or
 - (b) a determination made on that appeal or application requires those proceedings to continue or to be resumed.
- (5) Where, after having appeared to be finally concluded, any relevant proceedings continue by reason of —
- (a) the giving of permission to bring an appeal after a fixed time for appealing has expired;
 - (b) the lifting of any stay in the proceedings;
 - (c) the setting aside, without an appeal, of any judgment or order; or
 - (d) the revival of any discontinued proceedings,

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

PART 9

EVIDENCE

Use of live television links at preliminary hearings

P1998/37/57

29. (1) In any proceedings for an offence, a court may, after hearing representations from the parties and with the consent of the accused, direct that the accused shall be treated as being present in the court for any particular hearing before the start of the trial if, during that hearing —

- (a) the accused is held in custody in a prison or other institution; and

- (b) whether by means of a live television link or otherwise, the accused is able to see and hear clearly and to be clearly seen and heard by it.
- (2) A court shall not give a direction under subsection (1) unless —
 - (a) it has been notified by the Department of Home Affairs that facilities are available for enabling persons held in custody in a prison or other institution in which the accused is or is to be so held to see and hear the court and to be seen and heard by it; and
 - (b) the notice has not been withdrawn.
- (3) If in a case where it has power to do so the court decides not to give a direction under subsection (1), it shall give its reasons for not doing so.
- (4) In this section “the start of the trial” shall be taken to occur —
 - (a) when the court begins to hear evidence for the prosecution at the trial; or
 - (b) if the court accepts a plea of guilty without proceeding as mentioned in paragraph (a), when that plea is accepted.
- (5) In this section, “prison or other institution” includes a prison or institution outside the Island.

30. (1) A witness (other than the accused) may, if the court so directs, give evidence through a live link in criminal proceedings (including committal proceedings) before —

Live links
in criminal
proceedings

P2003/44/51

- (a) the Staff of Government Division;
- (b) the Court of General Gaol Delivery; and
- (c) a court of summary jurisdiction.
- (2) A direction may be given under this section —
 - (a) on an application by a party to the proceedings; or
 - (b) of the court’s own motion.
- (3) But a direction may not be given under this section unless —

- (a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link;
 - (b) it has been notified by the Chief Registrar that suitable facilities for receiving evidence through a live link are available in the courtroom in which it appears to the court that the proceedings will take place; and
 - (c) that notification has not been withdrawn.
- (4) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.
- (5) In deciding whether to give a direction under this section the court must consider all the circumstances of the case.
- (6) Those circumstances include in particular —
- (a) the availability of the witness;
 - (b) the need for the witness to attend in person;
 - (c) the importance of the witness's evidence to the proceedings;
 - (d) the views of the witness;
 - (e) the suitability of the facilities at the place where the witness would give evidence through a live link;
 - (f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.
- (7) The court must state in open court its reasons for refusing an application for a direction under this section.

Effect of, and
rescission of,
direction

P2003/44/52

31. (1) Subsection (2) applies where the court gives a direction under section 30 for a person to give evidence through a live link in particular proceedings.

(2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this section).

(3) The court may rescind a direction under section 30 if it appears to the court to be in the interests of justice to do so.

(4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 30 in relation to that person.

(5) A direction under section 30 may be rescinded under subsection (3) —

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(6) But an application may not be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court must state in open court its reasons —

- (a) for rescinding a direction under section 30; or
- (b) for refusing an application to rescind such a direction.

32. (1) This section applies where —

- (a) a court is minded to give a direction under section 30 for evidence to be given through a live link in proceedings before the court; and
- (b) suitable facilities for receiving such evidence are not available at any courtroom in which the court intends to sit.

Courts permitted to sit at other locations

P2003/44/53

(2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available and which has been appointed for the purposes of this section by the Chief Registrar.

33. (1) This section applies where, as a result of a direction under section 30, evidence has been given through a live link in proceedings before a court other than a court of summary jurisdiction.

Directions to jury

P2003/44/54

(2) The Deemster may give the jury (if there is one) such direction as the Deemster thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

Oaths made through live links
1990/1/27(5)
[XVIII p.86]

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

Rules of court
P2003/44/55

35. (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Rules of court may in particular make provision —

- (a) as to the procedure to be followed in connection with applications under section 30 or 31; and
- (b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision —

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application under section 30 unless there has been a material change of circumstances;
- (c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 30 or 31 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section is to be taken as affecting the generality of any statutory provision conferring power to make rules of court.

Evidence by video recording
P2003/44/137

36. (1) This section applies where —

- (a) a person is called as a witness in criminal proceedings (including committal proceedings) before —
 - (i) the Staff of Government Division;
 - (ii) the Court of General Gaol Delivery; and
 - (iii) a court of summary jurisdiction;

- (b) the person claims to have witnessed (whether visually or in any other way) —
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
 - (ii) events closely connected with such events;
- (c) the person has previously given an account of the events in question (whether in response to questions asked or otherwise);
- (d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in subsection (b));
- (e) a video recording was made of the account;
- (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and
- (g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, in the oral evidence of the witness in the proceedings, the witness asserts the truth of the statements made by the witness in the recorded account, they shall be treated as if made by the witness in that evidence.

- (3) A direction under subsection (1)(f) —
 - (a) may not be made in relation to a recorded account given by the accused;
 - (b) may be made only if it appears to the court that —
 - (i) the witness's recollection of the events in question is likely to have been significantly better when the witness gave the recorded account than it will be when oral evidence is given in the proceedings; and
 - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

- (4) Those matters are —

- (a) the interval between the time of the events in question and the time when the recorded account was made;
- (b) any other factors that might affect the reliability of what the witness said in that account;
- (c) the quality of the recording;
- (d) any views of the witness as to whether the evidence in chief of the witness should be given orally or by means of the recording.

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

Video
evidence :
further
provisions

P2003/44/138

37. (1) Where a video recording is admitted under section 36, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

(2) The reference in subsection (1)(f) of section 36 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account shall, where appropriate, be read accordingly.

(3) In considering whether any part of a recording should not be admitted under section 36, the court must consider —

- (a) whether admitting that part would carry a risk of prejudice to the accused; and
- (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) A court may not make a direction under section 36(1)(f) in relation to any proceedings unless —

- (a) the Chief Registrar has notified the court that arrangements can be made, in the courtroom in which it appears to the court that the proceedings will take place, for implementing directions under that section; and
- (b) the notice has not been withdrawn.

(5) Nothing in section 36 affects the admissibility of any video recording which would be admissible apart from that section.

38. (1) In this Part —

Interpretation
of Part 9

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

P2003/44/56,
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“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“rules of court” means —

(a) rules made under section 25 of the High Court Act 1991 (as extended by section 57 of the Criminal Jurisdiction Act 1993); and

[c.12]

[c. 9]

(b) rules made under section 91 of the Summary Jurisdiction Act 1989;

[c.15]

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

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

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

(3) They are —

(a) the accused;

(b) the Deemster and the jury (if there is one);

(c) the High Bailiff or the Justices of the Peace hearing the proceedings;

(d) legal representatives acting in the proceedings; and

(e) any interpreter or other person appointed by the court to assist the witness.

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

Saving

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

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

(a) to make an order, give directions or give leave of any description in relation to any witness (including the accused); or

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

Abolition of right of accused to make unsworn statement

P1982/48/72

[c.20]

40. (1) Subject to subsections (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if the accused gives evidence, the accused shall do so (subject to section 77 of the Children and Young Persons Act 2001) on oath and be liable to cross-examination.

(2) This section shall not affect the right of the accused, if not represented by counsel, to address the court or jury otherwise than on oath on any matter on which, if the accused were so represented, counsel could address the court or jury on the accused's behalf.

(3) Nothing in subsection (1) shall prevent the accused making a statement without being sworn —

(a) if it is one which the accused is required by law to make personally; or

(b) if the accused makes it by way of mitigation before the court passes sentence upon the accused.

(4) Nothing in this section applies —

(a) to a trial; or

(b) to committal proceedings before a court of summary jurisdiction,

which began before the commencement of this section.

PART 10

SENTENCING PRINCIPLES

Influence of alcohol : effect on sentence

41. (1) This section applies where a court is considering the seriousness of an offence.

(2) If the defendant was under the influence of alcohol at the time the offence was committed, the court —

- (a) may treat that fact as an aggravating factor; and
- (b) if it does so, must state in open court that the offence was so aggravated.

PART 11

CUSTODY ACT 1995

42. (1) The board of visitors constituted under custody rules made under the Custody Act 1995 is re-named as “the Independent Monitoring Board”.

Functions
of Board
of Visitors

[c. 1]

(2) In the Custody Act 1995 —

- (a) in section 17(1), for “board of visitors”, wherever occurring, substitute “Independent Monitoring Board”;
- (b) in section 18, for “board of visitors” and “board”, wherever occurring, substitute “Independent Monitoring Board”;
- (c) in section 18(2) —
 - (i) after paragraph (a) insert —

“(aa) to inspect any cell or any part of a custody suite in any police station;”;
 - (ii) after “enter the institution,” insert “police station, cell or custody suite”;
 - (iii) at the end add “and every person in police detention”;
- (d) section 23(3) is repealed.

(3) Except as expressly provided by this section, the change of name effected by this section shall not affect the constitution, functions or membership of the the Independent Monitoring Board.

43. (1) After paragraph 8(b) of Schedule 1 to the Custody Act 1995 add —

“and

Suspended
sentence
supervision
orders :
conditions
[c.1]

- (c) comply during the whole or any part of the supervision period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by the offender of the same offence or the commission of other offences but such requirements may not require the payment of sums by way of damages for injury or compensation for loss.”.

(2) In paragraph 10(3) of that Schedule , for “£1,000” substitute “£2,500”.

PART 12

EMERGENCY POWERS

Emergency powers :
amendment
of definition
[XIV p.404]

44. In the Emergency Powers Act 1936, after section 1 insert —

“Meaning of “emergency” **2A.** (1) In this Act “emergency” means —

- (a) an event or situation which threatens serious damage to human welfare in the Island or of a part of the Island;
- (b) an event or situation which threatens serious damage to the environment of the Island or of a part of the Island; or
- (c) war, or terrorism, which threatens serious damage to the security of the Island or a part of the Island.

(2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause —

- (a) loss of human life;
- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;

(g) disruption of facilities for transport; or

(h) disruption of services relating to health.

(3) For the purposes of subsection (1)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause —

(a) contamination of land, water or air with biological, chemical or radio-active matter; or

(b) disruption or destruction of plant life or animal life.

(4) The Governor in Council may by order —

(a) provide that a specified event or situation, or class of event or situation, is to be treated as falling, or as not falling, within any of paragraphs (a) to (c) of subsection (1);

(b) amend subsection (2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service —

(i) it is to be treated as threatening damage to human welfare; or

(ii) it is no longer to be treated as threatening damage to human welfare.

(5) An order under subsection (4) may make consequential amendment of this Act.

(6) An order under subsection (4) shall not come into operation unless it is approved by Tynwald.

(7) The event or situation mentioned in subsection (1) may occur or be inside or outside the Island.”.

45. (1) In the Emergency Powers Act 1936, for section 3(1) substitute —

Provision
supplementary
to s. 44

“(1) If at any time it appears to the Governor in Council that an emergency has arisen or is likely to arise, the Governor in Council may by proclamation (in this Act referred to as a “proclamation of emergency”), declare that a state of emergency exists.”.

(2) Section 1(1) of the Emergency Powers (Amendment) Act 1989 is repealed.

PART 13

MISCELLANEOUS

Breach of
probation
orders

[XIX p.975]

46. In section 5 of the Criminal Justice Act 1963 —

(a) after subsection (1) insert —

“(2) If without reasonable excuse a person fails to comply with any of the requirements of a probation order made in respect of that person, that person shall be liable on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(2A) A conviction for an offence under subsection (2) is in addition to and does not affect the conviction in respect of which the person was placed on probation nor the continuance of the probation order nor the powers that may be exercised by a court in respect of the person, conviction or order.”;

(b) in subsection (3) for the words from the beginning to “or may —” substitute —

“If, on the application of a probation officer, it is proved to the satisfaction of the court before which a probationer appears or is brought under this section that the probationer has failed to comply with any of the requirements of the probation order, that court may —”;

(c) subsection (5) is repealed.

Electronic
monitoring

47. (1) Where a court makes a community order the court may also impose an electronic monitoring requirement if the court —

(a) considers it appropriate to do so in the particular circumstances; and

(b) is not prevented from doing so by subsection (2) or by section 48(2).

(2) A court may not include an electronic monitoring requirement in a community order in respect of an offender unless the court —

- (a) has been notified by the Department of Home Affairs that electronic monitoring arrangements are available in the Island, and
 - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) The Department of Home Affairs may make rules for regulating —
- (a) electronic monitoring in pursuance of an electronic monitoring requirement, and
 - (b) without prejudice to the generality of paragraph (a), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.
- (4) In this section —
- “community order” means —
- (a) an anti-social behaviour order under section 28 of the Criminal Justice Act 2001; [c.4]
 - (b) a curfew order under section 29 of and Schedule 5 to the Criminal Justice Act 2001;
 - (c) a probation order under the Criminal Justice Act 1963; [XIX p.975]
 - (d) a community service order under Schedule 3 of the Criminal Law Act 1981; [c.20]
 - (e) a reparation order under section 35 of the Criminal Justice Act 2001;
 - (f) an attendance centre order under section 37 of and Schedule 7 to the Criminal Justice Act 2001;
 - (g) a combination order under section 7 of the Criminal Justice (Penalties, Etc.) Act 1993; [c.18]
 - (h) a non-molestation order under section 104 of the Matrimonial Proceedings Act 2003; [c.7]
 - (i) an order of a court admitting a person to bail under the Bail Act 1952; [XVIII p.78]
- “electronic monitoring requirement” has the same meaning as in section 48.

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

Electronic monitoring requirement

P2003/44/215

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

(2) Where —

- (a) it is proposed to include in a community order a requirement for securing electronic monitoring in accordance with this section, but
- (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,

the requirement may not be included in the order without that person’s consent.

(3) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Department of Home Affairs.

(4) Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify —

- (a) the offender,
- (b) the person responsible for the monitoring, and
- (c) any person falling within subsection (2)(b),

of the time when the period is to begin.

Sections 47 and 48: supplementary

49. (1) Rules under section 47(3) and orders under section 48(3) or 47(5) shall not come into operation unless approved by Tynwald.

(2) The power for a court to impose an electronic monitoring requirement (as defined in section 48) is additional to and does not prejudice any other powers of the court to deal with persons appearing before the court.

(3) For the purposes of any enactment conferring rights of appeal in criminal cases, an electronic monitoring requirement (as defined in section 48) shall be subject to the same rights of appeal as the relevant community order.

50. (1) In section 4(5) of the Fireworks Act 2004, after paragraph (a) insert — Fireworks Act 2004 : amendment

“(aa) a person for use, in the course of that person’s trade or business, for special effects purposes in the theatre, on film or on television, or” [c. 9]

(2) After section 4(5)(b) of that Act add —

“or

(c) a person or class of persons prescribed in an order made by the Department who complies with such conditions as are imposed by that order.”

(3) After section 4(8) of that Act insert —

“(9) An order under subsection (5)(c) shall not come into operation unless it is approved by Tynwald.”

PART 14

GENERAL

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

52. (1) This Act may be cited as the Criminal Justice, Police and Courts Act 2007. Short title and commencement

(2) This Act shall come into force on such day as the Department of Home Affairs may by order appoint and different days may be so appointed for different provisions and for different purposes.

(3) An order under subsection (2) may make such transitional provisions or savings as the Department may consider necessary in connection with any provision brought into force by the order.