

ADMINISTRATION OF JUSTICE ACT 2008

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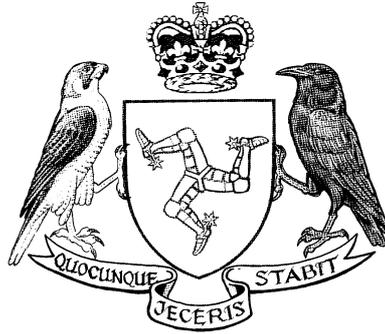
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Isle of Man } Signed in Tynwald: 21st October 2008
 tu Wit } Received Royal Assent: 21st October 2008
 Announced to Tynwald: 21st October 2008

AN ACT

to make new provision with respect to the judges of the High Court; to modernise the law relating to the admission of hearsay evidence in civil proceedings; to amend enactments relating to civil proceedings and the administration of justice; and for connected purposes.

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

PART 1

THE HIGH COURT

1. (1) For section 2(2) of the High Court Act 1991 (in this Act referred to as “the 1991 Act”) substitute — Judges of the High Court

“(2) Subject to subsection (3), —

[c.12]

(a) a Deemster may sit in any division;

(b) a Judicial Officer may sit in any of the Civil Divisions.”.

(2) For section 3 of the 1991 Act substitute —

“Judges of the High Court **3.** (1) The following shall be the judges of the High Court —

- (a) the First Deemster;
- (b) the Second Deemster;
- (c) the Judge of Appeal;
- (d) a Deemster appointed under section 3B; and
- (e) Judicial Officers.

(2) The First Deemster shall be the president of the High Court.

(3) Subject to any express provision in this Act or in rules of court —

- (a) all the judges of the High Court shall have in all respects equal jurisdiction; and
- (b) any jurisdiction conferred on a Deemster under this Act or under any other statutory provision passed or made before this section comes into operation may be exercised by a Judicial Officer.

(4) But subsection (3) shall not apply in respect of jurisdiction conferred specifically on —

- (a) the First Deemster; or
- (b) the Second Deemster; or
- (c) the First and Second Deemsters acting jointly.

(5) Provision may be made by rules of court to —

- (a) reserve specified matters to specified judges or classes of judge;
- (b) limit the jurisdiction of Judicial Officers.

(6) All the judges of the High Court shall be addressed in such manner as the First Deemster may direct.

(7) Every judge of the High Court shall, before entering on the execution of the office, take the oath of allegiance and the Deemster's oath.

First
Deemster,
Second
Deemster
and Judge
of Appeal

3A. (1) Whenever the office of First Deemster, Second Deemster or Judge of Appeal is vacant, Her Majesty may appoint a qualified person to that office.

(2) The First Deemster, the Second Deemster and the Judge of Appeal shall hold office at the pleasure of Her Majesty.

(3) Subject to subsection (2), the First Deemster and the Second Deemster shall vacate office on attaining the age of 70 years.

(4) Subject to subsection (2), the Judge of Appeal may be appointed for a period not exceeding 5 years, but the holder may be re-appointed.

(5) No person shall be qualified for appointment as Judge of Appeal unless that person is an English barrister and one of the Counsel of Her Majesty the Queen.

(6) The person who holds the office of First Deemster for the time being shall also be the Clerk of the Rolls.

(7) Whenever —

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

(b) the office of First Deemster is vacant,

the functions which attach to the offices of First Deemster and the Clerk of the Rolls shall be exercised by the Second Deemster.

Deemsters

3B. (1) The Governor may, on the recommendation of the First Deemster, appoint one or more Deemsters in addition to the First Deemster and the Second Deemster.

(2) A Deemster appointed under this section shall hold office for such period and subject to such conditions as the Governor may specify.

Judicial
Officers

3C. (1) The High Bailiff and the Deputy High Bailiff are Judicial Officers.

(2) The Governor may, on the recommendation of the First Deemster, appoint one or more additional Judicial Officers, to hold office for such period and subject to such conditions as the Governor may specify.

(3) Subsection (1) does not affect the jurisdiction exercisable by the High Bailiff and the Deputy High Bailiff immediately before the date on which this section comes into operation.”.

(3) After section 4 of the 1991 Act insert —

“Acting
judges :
implied
knowledge

4A. (1) A judge of the High Court who is an advocate shall not be incapable of acting as such in any proceedings by reason only that some fact or circumstance material to the proceedings comes to the knowledge of any of the persons specified in subsection (2).

(2) Those persons are —

- (a) a partner or employee of the advocate;
- (b) a former partner or employee of the advocate;
- (c) an officer, manager, member or employee of a body corporate of which the advocate is or has been an officer, member or employee; or
- (d) a former officer, manager, member or employee of a body corporate of which the advocate is or has been an officer, member or employee.

(3) For the purposes of this section it is irrelevant whether the information comes to the knowledge of such a person before or after the commencement of the proceedings in question.

(4) This section shall have effect in respect of any proceedings in the High Court that take place after the commencement of this section.”.

(4) Any person who, immediately before the commencement of this section, holds the office of —

- (a) Deputy Deemster, or
- (b) Acting Deemster;

shall continue in office as a Deemster appointed under section 3B of the 1991 Act (as inserted by this Act) for such period and subject to such conditions as are specified in his or her appointment.

2. For section 12(4) of the 1991 Act substitute —

Distribution
of business
amongst
Judges of
the High
Court

“(4) The First Deemster may give directions for the distribution of the business of the court among the judges of the High Court.

(5) The power conferred on the First Deemster by subsection (4) —

- (a) does not apply in respect of the Judge of Appeal; and
- (b) must be exercised in a manner consistent with rules of court.”.

3. For section 16 of the 1991 Act substitute —

Arbitration
proceedings

“Reference to small claims adjudication

16. (1) Rules of court —

1983/25/4;
P1984/28/64

- (a) may prescribe cases in which proceedings in the court are (without any order of the court) to be referred to small claims adjudication by a Judicial Officer;
- (b) may prescribe the manner in which and the terms on which cases are to be so referred; and
- (c) where cases are so referred, may require other matters within the jurisdiction of the court and in dispute between the parties also to be referred to adjudication.

(2) Rules of court may —

- (a) prescribe cases in which proceedings may be referred to small claims adjudication by order of the court;
- (b) authorise the court also to order other matters within the jurisdiction of the court and in dispute between the parties to be so referred;

- (c) prescribe the procedures and rules of evidence to be followed in any reference under subsection (1) or this subsection;
- (d) make provision with respect to the manner of taking and questioning evidence;
- (e) regulate legal representation in any small claims adjudication proceedings;
- (f) authorise the Judicial Officer to make such award of costs as the Judicial Officer thinks fit, subject to such limit as may be prescribed, at any stage of the proceedings, including after the proceedings have concluded, if a party applies for such an award within 28 days of their conclusion.

(3) On a reference under subsection (1) or (2) the award of the Judicial Officer shall be entered as a judgment in the proceedings and, subject to subsection (4), shall be as binding and effectual to all intents as if given by the court.

(4) The court may if it thinks fit, on an application made within such time as may be prescribed by rules of court, set aside an award referred to in subsection (3) or may, with the consent of the parties, revoke the reference or order another such reference to be made.

[c.24]

(5) Part I of the Arbitration Act 1976 does not apply to adjudication under this section.

(6) In this section —

“award” includes an interim award;

“court” means the Civil Divisions.

(7) This section is without prejudice to section 15.”.

Appeals

4. (1) After section 19A of the 1991 Act insert —

“Powers in relation to appeals

19B. (1) Subject to rules of court, where the High Court has finally determined an appeal, it may reopen its determination.

(2) In subsection (1) “appeal” includes an application for leave to appeal.

(3) Rules of court may provide that, where a court or other tribunal (“the tribunal”) states a case on a question of law for determination by the High Court, the court may —

- (a) amend the case,
- (b) order it to be sent back to the tribunal for amendment, or
- (c) order it to be sent back to the tribunal for it to hear further evidence.

(4) This section does not prejudice any other power to make rules of court.”.

(2) After section 21 of the 1991 Act insert —

“Power of Appeal Division to award damages

21A. (1) Rules of court may provide for the Appeal Division, in such classes of case as may be specified in the rules, to have the power, in place of ordering a new trial, to substitute for the sum awarded by the jury such sum as appears to the Appeal Division to be proper.

(2) In subsection (1) “case” means any case where the Appeal Division has the power to order a new trial on the ground that the damages awarded by a jury are excessive or inadequate.

(3) This section does not prejudice any other power to make rules of court.”.

5. After section 27 of the 1991 Act insert —

“Practice directions

27A. (1) The Deemsters may give directions (“practice directions”) for the purpose of supplementing rules of court with respect to the practice and procedure to be adopted in proceedings in the High Court.

(2) Practice directions must be consistent with rules of court.

(3) A practice direction shall cease to have effect on 31 December in the year following that in which the practice direction is given.

(4) Rules of court may prescribe the manner in which practice directions are to be published.

Forms

27B. (1) The Deemsters may prepare or approve forms for use in proceedings in the High Court.

Practice directions and forms

- (2) Rules of court may —
- (a) prescribe the manner in which such forms are to be published, and
 - (b) require the use, in such circumstances or for such purposes as are specified in the rules, of a relevant form so published (including a form published after the making of the rules)."

Powers of
High Court

6. (1) In section 34(2) of the 1991 Act (powers exercisable before commencement of action), the words "in which a claim in respect of personal injuries to a person, or in respect of a person's death, is likely to be made" are repealed.

(2) In section 35(1) of the 1991 Act (power to order disclosure of documents, inspection of property), the words from "in which" to the end of the subsection are repealed.

Costs

7. In section 53 of the 1991 Act, for subsection (3) substitute —

"(3) In any proceedings mentioned in subsection (1), the court may disallow, or (as the case may be) order the advocate or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

(4) In subsection (3), "wasted costs" means any costs incurred by a party —

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.
- (5) Rules of court may make provision —
- (a) for regulating matters relating to the costs of those proceedings;
 - (b) for prescribing scales of costs to be paid to advocates;
 - (c) that any functions specified in the rules and relating to the assessment of costs (including

functions of the Chief Registrar) may be exercised by —

- (i) the court, or
- (ii) an officer of the court or other person authorised for the purpose.”.

8. After section 57 of the 1991 Act, insert the following section —

Salaries
of certain
Crown
Appointments

“**57A.** (1) The salaries of the judges of the High Court and the Attorney General shall be determined by the Governor in Council and shall be charged on, and paid out of, the General Revenues of the Island.

(2) Any salary payable under this section may be increased, but not reduced, by a determination or further determination under this section.”.

PART 2

ADMISSIBILITY OF HEARSAY EVIDENCE

9. (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

Admissibility
of hearsay
evidence

(2) In this Part —

P1995/38/1

(a) “hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and

(b) references to hearsay include hearsay of whatever degree.

(3) Nothing in this Part affects the admissibility of evidence admissible apart from this section.

(4) Sections 10 to 21 do not apply in relation to hearsay evidence admissible apart from this section, even though it may also be admissible by virtue of this section.

Safeguards in relation to hearsay evidence

10. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to this section, give to the other party or parties to the proceedings —

Notice of
proposal
to adduce
hearsay
evidence

(a) such notice (if any) of that fact, and

P1995/38/2

(b) on request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling them to deal with any matters arising from its being hearsay.

- (2) Provision may be made by rules of court —
 - (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and
 - (b) as to the manner in which (including the time within which) the duties imposed by that subsection are to be complied with in the cases where it does apply.
- (3) Subsection (1) may be excluded by agreement of the parties.
- (4) Compliance with the duty to give notice under subsection (1) may in any case be waived by the person to whom notice is required to be given.
- (5) A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court —
 - (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
 - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 12.

Power to call witness for cross-examination on hearsay statement

P1995/38/3

11. Rules of court may provide that where a party (“A”) to civil proceedings adduces hearsay evidence of a statement made by a person (“B”) and does not call B as a witness, any other party to the proceedings may, with the leave of the court, call B as a witness and cross-examine B on the statement as if B had been called by A and as if the hearsay statement were B’s evidence in chief.

Considerations relevant to weighing of hearsay evidence

P1995/38/4

12. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

- (2) Regard may be had, in particular, to the following —
 - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
 - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Supplementary provisions as to hearsay evidence

13. (1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time the statement was made was not competent as a witness.

Competence
and credibility
P1995/38/5

(2) In subsection (1), “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if the child satisfies the requirements of section 77(6)(a) and (b) of the Children and Young Persons Act 2001 (conditions for reception of unsworn evidence of child).

[c.20]

(3) Where hearsay evidence is adduced in civil proceedings and the maker (“A”) of the original statement, or of any statement relied upon to prove another statement, is not called as a witness —

- (a) evidence which if A had been so called would be admissible for the purpose of attacking or supporting A’s credibility as a witness is admissible for that purpose in the proceedings; and
- (b) evidence tending to prove that, whether before or after A made the statement, A made any other statement inconsistent with it is admissible for the purpose of showing that A had contradicted himself or herself.

(4) Evidence may not be given under subsection (3) of any matter of which, if A had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

14. (1) The provisions of this Part as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.

Previous
statements
of witnesses
P1995/38/6

(2) Subsection (1) is subject to subsections (3) to (8).

(3) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except —

- (a) with the leave of the court, or
- (b) for the purpose of rebutting a suggestion that the evidence has been fabricated.

(4) Subsection (3) shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as the evidence of the witness.

[III p.501] (5) Where in the case of civil proceedings section 10, 11 or 12 of the Evidence Act 1871 applies which make provision as to —

- (a) how a party may contradict his own witness,
- (b) the proof of contradictory statements made by a witness, and
- (c) cross-examination as to previous statements in writing,

sections 9 to 13 and this section do not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with section 10, 11 or 12 of the Evidence Act 1871.

(6) Subsection (5) is without prejudice to any provision made by rules of court under section 11.

(7) Nothing in sections 9 to 13 and this section affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by the witness to refresh his or her memory, that document may be made evidence in the proceedings.

(8) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 9 as evidence of the matters stated.

Evidence
formerly
admissible at
common law

P1995/38/7

[c.18]

15. (1) The common law rule effectively preserved by subsections (1) and (2)(a) of section 9 of the Civil Evidence Act 1973 (evidence formerly admissible at common law) is superseded by sections 9 to 13.

(2) The common law rules effectively preserved by subsections (1) and (2)(b) to (d) of section 9 of the Civil Evidence Act 1973, that is, any rule of law whereby in civil proceedings —

- (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,
- (b) public documents (for example, public registers and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them, or
- (c) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them,

shall continue to have effect.

(3) The common law rules effectively preserved by subsections (3) and (4) of section 9 of the Civil Evidence Act 1973, that is, any rule of law whereby in civil proceedings —

- (a) evidence of a person's reputation is admissible for the purpose of proving the good or bad character of that person, or
- (b) evidence of reputation or family tradition is admissible —
 - (i) for the purpose of proving or disproving pedigree or the existence of a marriage, or
 - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as they authorise the court to treat such evidence as proving or disproving that matter.

(4) Where the rule mentioned in subsection (3) applies, reputation or family tradition shall be treated for the purposes of this Part as a fact and not as a statement or multiplicity of statements about the matter in question.

(5) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

Other matters

16. (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved —

- (a) by the production of that document, or

Proof of
statements
contained in
documents

P1995/38/8

- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

- (2) It is immaterial for this purpose how many removes there are between a copy and the original.

Proof of
records of
business
or public
authority

P1995/38/9

17. (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

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

- (a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given and signed by such an officer; and
- (b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of that person's signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(5) In this section—

“records” means records in whatever form;

“business” includes any activity regularly carried on over a period of time, whether for profit or not, by any person;

“officer” includes any individual occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

“public authority” includes any Department or Statutory Board, any local authority or joint board, any department or office of the government of the Island or the government of the United Kingdom, and any person holding office under Her Majesty.

(6) The court may, having regard to the circumstances of the case, direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

18. (1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the Government Actuary's Department in the United Kingdom are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.

Admissibility
and proof of
actuarial
tables

P1995/38/10

(2) They may be proved by the production of a copy published by Her Majesty's Stationery Office.

(3) For the purposes of this section —

(a) “personal injury” includes any disease and any impairment of a person's physical or mental condition; and

(b) “action for personal injury” includes an action brought by virtue of the Law Reform (Miscellaneous Provisions) Act 1938 or the Fatal Accidents Act 1981.

[XV p.26]
[c.13]

19. (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect this Part.

Provisions
as to rules
of court

P1995/38/12

(2) Any rules of court made for the purposes of this Part as they apply in relation to proceedings in the High Court apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Part applies, subject to such modifications as may be appropriate.

(3) Any question arising as to what modifications are appropriate under subsection (2) shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

Supplemental

20. (1) In this Part, “civil proceedings” means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties.

Meaning
of civil
proceedings

P1995/38/11

(2) References in this Part to “the court” and “rules of court” shall be construed in accordance with subsection (1).

21. In this Part —

Interpretation :
Part 2

“document” means anything in which information of any description is recorded, and “copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

P1995/38/13

“hearsay” shall be construed in accordance with section 9(2);

“oral evidence” includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“the original statement”, in relation to hearsay evidence, means the underlying statement (if any) by —

(a) in the case of evidence of fact, a person having personal knowledge of that fact, or

(b) in the case of evidence of opinion, the person whose opinion it is; and

“statement” means any representation of fact or opinion, however made.

Savings

P1995/38/14

22. (1) Nothing in this Part affects the exclusion of evidence on grounds other than that it is hearsay.

(2) Subsection (1) applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

(3) Nothing in this Part affects the proof of documents by means other than those specified in section 16 or 17.

(4) Nothing in this Part affects the operation of the following —

[c.37] (a) section 2 of the Documentary Evidence Act 1868 (an Act of Parliament) as it has effect in respect of the Island (mode of proving certain official documents);

[III p.501] (b) sections 17 to 19 of the Evidence Act 1871 (proof of Acts);

[c.9] (c) section 2 of the Documentary Evidence Act 1882 (an Act of Parliament) as it has effect in respect of the Island (documents printed under the superintendence of Stationery Office);

[c.27] (d) section 5 of the Oaths and Evidence (Overseas Authorities and Countries) Act 1963 (an Act of Parliament) as it has effect in respect of the Island (public registers of other countries);

[c.15] (e) sections 1 to 4 of the Evidence Act 1976 (evidence of certain legislation).

23. (1) The enactments specified in Part 1 of Schedule 1 are amended in accordance with that Part. Consequential amendments and repeals

(2) The enactments specified in column 1 of Part 2 of Schedule 1 are repealed to the extent specified in column 3 of that Part.

PART 3

PRESERVATION OF EVIDENCE AND OATHS

24. After section 33 of the 1991 Act insert —

Power of court to make orders for preserving evidence, etc

“Power of court to make orders for preserving evidence, etc.
P1997/12/7

33A. (1) The High Court may make an order under this section for the purpose of securing, in the case of any existing or proposed proceedings in the court —

- (a) the preservation of evidence which is or may be relevant, or
- (b) the preservation of property which is or may be the subject matter of the proceedings or as to which any question arises or may arise in the proceedings.

(2) A person who is, or appears to the court likely to be, a party to proceedings in the court may make an application for such an order.

(3) Such an order may direct any person to permit any person described in the order, or secure that any person so described is permitted —

- (a) to enter premises in the Island, and
- (b) while on the premises, to take in accordance with the terms of the order any of the following steps —
 - (i) to carry out a search for or inspection of anything described in the order, and
 - (ii) to make or obtain a copy, photograph, sample or other record of anything so described.

(4) The order may also direct the person concerned —

- (a) to provide any person described in the order, or secure that any person so described is provided, with any information or article described in the order, and

- (b) to allow any person described in the order, or secure that any person so described is allowed, to retain for safe keeping anything described in the order.

(5) An order under this section shall have effect subject to such conditions as are specified in the order.

(6) This section does not affect any right of a person to refuse to do anything on the ground that to do so might tend to expose that person or that person's spouse to proceedings for an offence or for the recovery of a penalty.

(7) In this section, "premises" includes any place and, in particular, includes —

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installations, and
- (c) any tent or moveable structure,

within the Island or within the seaward limits of the territorial sea of the Island.

(8) An order under this section may describe anything generally, whether by reference to a class or otherwise."

Oaths and affirmations

[XI p.264]

25. (1) In the Oaths Act 1922 —

- (a) at the end of section 2 add —

"(3) If a person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, that person shall be permitted to do so, and the officer shall administer the oath in that form and manner without question.

- (4) Where —

- (a) an oath may lawfully be administered to any person, and
- (b) it has been administered in a form and manner other than that prescribed by law,

that person is bound by it as if it had been administered in such form, and with such ceremonies, as that person may have declared to be binding.

(5) Where an oath has been duly administered and taken, the fact that the person to whom it was administered had, at the time of taking it, no religious belief shall not for any purpose affect the validity of the oath.”;

(b) after section 2 insert —

“Affirmations **2A.** (1) Any person who objects to being sworn shall be permitted to make a solemn affirmation instead of taking an oath.

(2) Where it is not reasonably practicable without inconvenience or delay to administer an oath in the manner appropriate to a person’s religious belief, that person may be permitted or required to make a solemn affirmation instead of taking an oath.

(3) A solemn affirmation shall be of the same force and effect as an oath.

(4) An oral affirmation shall be —

“I [name] do solemnly, sincerely and truly declare and affirm that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth”.

(5) A written affirmation shall —

(a) commence *“I, [name] of [address], do solemnly, sincerely and truly affirm ...”*; and

(b) end *“Affirmed at [place] this [date], Before me... [officer taking the affirmation]”.*

(2) Sections 43 and 44 of the Evidence Act 1871 are repealed. [III p.501]

PART 4

MISCELLANEOUS PROVISIONS

26. In section 27 of the 1991 Act (particular matters for which rules of court may provide), for subsection (8) substitute — Witness statements

“(8) Rules of court may make provision —

(a) requiring, in specified circumstances, any party to civil proceedings to serve on the other parties a written statement of the oral evidence

which the former intends to adduce on any issue of fact to be decided at the trial;

- (b) enabling the court to direct any party to civil proceedings to serve such a statement on the other party; and
- (c) prohibiting a party who fails to comply with such a requirement or direction from adducing oral evidence on the issue of fact to which it relates.

(8A) Where a party to proceedings has refused to comply with such a requirement or direction, the fact that the refusal was on the ground that the required statement would have been a document which was privileged from disclosure shall not affect any prohibition imposed by virtue of subsection (8)(c).”

Interest on
judgment
debts

27. (1) For section 9 of the Administration of Justice Act 1981 substitute —

[c.8]

“Interest on judgment debts **9.** (1) Any sum outstanding under a judgment debt shall carry interest in accordance with this section.

(2) Liability to interest shall arise from the time prescribed by rules of court until the debt is satisfied.

(3) Liability shall not in any case arise in respect of any time on or before the date of the relevant judgment.

(4) The High Court may order —

- (a) that a judgment debt shall not carry interest under this section;
- (b) that all or part of any interest otherwise payable under this section shall be disallowed in such cases as are provided for by rules of court.

(5) A coroner may, if requested by the judgment creditor, levy interest while enforcing an execution.

(6) Interest shall be computed with half-yearly rests.

(7) In this section —

“interest” means interest charged at —

- (a) the rate of 4% per year;

- (b) such other rate as may be prescribed by rules of court; or
- (c) where the judgment is expressed in a currency other than sterling, such rate as the High Court orders;

“judgment” includes any order of the High Court for the payment of money and any process but does not include —

- (a) a maintenance order;
- (b) a fine; or
- (c) a judgment for a sum continuing until payment.”.

(2) The following are repealed —

- (a) section 9A of the Administration of Justice Act 1981;
- (b) section 28(1) and (2) of the Law Reform Act 1997; [c.1]
- (c) section 4 of the Transfer of Deemsters’ Functions Act 2003. [c.1]

(3) This section shall not apply in respect of any judgment made before the commencement of this Act.

28. After section 5(3) of the Legal Aid Act 1986 add the following subsection —

“(4) No rule of law that limits the costs recoverable by a party to proceedings to the amount which that party is liable to pay shall affect the entitlement of a person receiving legal aid to costs on the same basis as if the person were not receiving legal aid.”.

Provision with respect to costs in civil legal aid cases

[c.23]

29. After section 42 of the Criminal Jurisdiction Act 1993 insert —

“Criminal appeals in respect of pre-trial rulings

42A. (1) In this section a ruling is a pre-trial ruling if it relates to a trial on information and the ruling is given —

- (a) after the information is issued; but
- (b) before the start of the trial.

Criminal appeals in respect of pre-trial rulings

[c.9]

(2) Where a judge of the High Court has made a pre-trial ruling in respect of any question, an appeal against the ruling shall lie to the Appeal Division but only with the leave of the Appeal Division.

(3) Notwithstanding that leave to appeal has been granted under subsection (2), the jury may be sworn and the trial continued unless the Appeal Division orders otherwise.

(4) On the termination of the hearing of an appeal, the Appeal Division may confirm, reverse or vary the ruling appealed against.

(5) There is no appeal to the Privy Council from a decision of the Appeal Division under subsection (4).

(6) Subsection (5) does not —

- (a) prevent an appeal against conviction; or
- (b) affect the right of the Attorney General to make a reference under section 40.

(7) For the purposes of this section the start of a trial on information occurs when a jury is sworn to consider the issue of guilt or fitness to plead or, if the court accepts a plea of guilty before a jury is sworn, when that plea is accepted.

(8) This section applies in relation to pre-trial rulings made on or after the day on which this section comes into operation.”.

Rules of court
: Tynwald
procedure
[XX p.452]

30. (1) In section 3 (rules of court) of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968, for subsection (3) substitute —

“(3) Rules of court under this section shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

[c.24] (2) In section 12 (special referees) of the Arbitration Act 1976, for subsection (3) substitute —

“(3) Rules under subsections (1) and (2) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

[c.11] (3) In section 16 (rules of procedure of court of survey) of the Merchant Shipping (Passenger Ships’ Survey) Act 1979 —

- (a) at the beginning insert “(1)”;
- (b) the words from “, but no such” to the end of the section are repealed;
- (c) at the end add —

“(2) Rules of court under subsection (1) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

- (4) In section 23 (enforcement rules) of the Administration of Justice Act 1981, for subsection (2) substitute — [c.8]

“(2) Rules under subsection (1) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

- (5) In section 53 (orders, rules and regulations) of the Adoption Act 1984 — [c.14]

- (a) at the beginning insert “(1)”;
- (b) the word “, rule” is repealed;
- (c) at the end add —

“(2) Rules under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

- (6) In section 21 (rules) of the Coroners of Inquests Act 1987, for subsection (2) substitute — [c.6]

“(2) Rules under subsection (1) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.”.

- (7) The following enactments are repealed —

- (a) section 13 of the Charities Act 1962; [XIX p.632]

- (b) section 11 (rules of court) of the Tourist Premises (Compensation for Tenants’ Improvements) Act 1970; [XXI p.524] [c.1]

(c) in Schedule 1 of the Governor's General Functions (Transfer) Act 1980 —

- (i) entry 259 relating to section 13 of the Charities Act 1962 and its cross-heading;
- (ii) entry 301(b) relating to section 3(3) of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968.

Jury lists

31. (1) In the Jury Act 1980, for sections 5, 6 and 7 substitute —

[c.9]

“Revision
of lists

5. (1) Not later than the 30th June in each year or such other day or days in each year as may be prescribed, the Chief Registrar shall give notice to every person who has made an objection under section 9(1)(c) of the Registration of Electors Act 2006 in respect of a list of electors prepared in that year, requiring that person within 7 days of service of the notice —

[c.12]

- (a) to make, if the objector so wishes, written representations in support of their objection; and
- (b) to state in writing whether or not the objector wishes to make oral representations to the Clerk of the Rolls.

(2) If any such objector within the said period of 7 days states that they wish to make oral representations, the Chief Registrar shall give that person notice of the time and place at which the objector may appear before the Clerk of the Rolls for that purpose.

(3) The Clerk of the Rolls shall, not later than the 15th August in each year or such other day or days in each year as may be prescribed, following the giving of notice under subsection (1), consider every objection made under the said section 9(1)(c) and any written representations made in support thereof, and hear in chambers any oral representations made pursuant to subsection (2), and —

- (a) if the Clerk of the Rolls is satisfied that the objector is ineligible or disqualified for jury service, the Clerk of the Rolls shall delete such name from the list of jurors, or
- (b) if the Clerk of the Rolls is satisfied that the objector's attendance as a juror will cause exceptional hardship by reason of his business, professional or family responsibilities and

interests, the Clerk of the Rolls may order that the objector be exempted from jury service for such period, not exceeding 3 years, as the Clerk of the Rolls considers appropriate, either unconditionally or subject to conditions, and shall make a minute of such order opposite the objector's name in the list of jurors.

(4) The Clerk of the Rolls may, not later than 22nd August in each year, or not later than 7 days after such other day or days as may have been prescribed under subsection (3), make such corrections to the lists of jurors as appear appropriate to ensure that the lists are, as far as possible, completed in accordance with this Act.

(5) The lists of jurors, revised and corrected in accordance with subsections (3) and (4) if required, shall be the lists of persons liable to be summoned for jury service for the year beginning on the 1st September next following, or such other day or days as may be prescribed.

(6) In this section "list of jurors" means a list prepared under section 6(5)(a) of the Registration of Electors Act 2006 in the year in question.

(7) The Clerk of the Rolls may direct that any of the functions of the Clerk of the Rolls under this section shall, in any particular case, be exercised by a Deemster.

(8) In this section, "prescribed" means prescribed by order made by the Clerk of the Rolls after consultation with the Council of Ministers.

(9) An order under this section shall be laid before Tynwald.

Delivery
of lists
of jurors

6. The Chief Registrar shall deliver or cause to be delivered to the Coroner of each Sheading on or before the first day of September in each year, or such other day or days prescribed under section 5(5), a copy of the new list of jurors for the Sheading.

Commence-
ment of
lists of
jurors

7. Each new list of jurors shall be considered as commencing at the place left off on the preceding list and all notes or minutes as to any juror who may be exempted from service shall be entered on the new list by the Coroner."

(2) In the Jury Act 1980, for section 10 substitute —

“Jurors to be taken in order name appears on lists

10. (1) Subject to subsections (2) to (4), when and as often as jurors are required and shall be ordered by a Deemster, or other person having authority in that behalf, the number of jurors required shall be summoned and returned by the Coroners in the order in which the names appear on the list of jurors.

(2) The first jury required on and after the first day in September in each year, or such other day or days prescribed under section 5(5), shall be taken from the new list of jurors, beginning at the place in such list where the same shall be considered as commencing.

(3) The Coroners respectively shall mark on the lists the date when any juror shall be returned to serve on a jury.

(4) In all subsequent returns the Coroners shall commence with the name immediately after the last in the preceding return and the subsequent names shall be taken in the order in which they are entered on the lists, and so to the end of the lists respectively.

(5) When the list shall have been gone through to the end, the Coroner shall proceed again, beginning at the commencement of the list, and proceed regularly to the end thereof in accordance with this section.”.

(3) In section 6(5) of the Registration of Electors Act 2006 —

(a) the words “to the coroner of each sheading and” shall cease to have effect; and

(b) for the first reference to “such sheading” in paragraph (a), substitute “each sheading”.

Power of court of summary jurisdiction to remit the payment of certain arrears

[c.7]
[c.15]

32. (1) For section 45(2) of the Matrimonial Proceedings Act 2003 substitute —

“(2) Section 58 and Part VIII of the Summary Jurisdiction Act 1989, so far as they relate to the enforcement of an order for, or the recovery of, periodical payments, apply to payments to be made to the Chief Registrar by virtue of an order under subsection (1) as they apply to payments to be so made by virtue of an order under section 54(1) of that Act.”.

[c.20]

(2) For paragraph 12(2) of Schedule 1 to the Children and Young Persons Act 2001 substitute —

“(2) Section 58 and Part VIII of the Summary Jurisdiction Act 1989, so far as they relate to the enforcement of an order for, or the recovery of, periodical payments, apply to payments to be made to the Chief Registrar by virtue of an order under subsection (1) as they apply to payments to be so made by virtue of an order under section 54(1) of that Act.”.

33. The enactments specified in Schedule 2 are amended in accordance with that Schedule. Minor amendments

34. (1) This Act may be cited as the Administration of Justice Act 2008. Short title and commencement

(2) This Act shall come into force on such day as the Council of Ministers 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 Council of Ministers may consider necessary in connection with any provision brought into force by the order.

Section 23(1)

SCHEDULE 1

AMENDMENTS AND REPEALS

PART 1

AMENDMENTS

Evidence Act 1983 (c.7)

1. For section 5(1) and (2) substitute —

“(1) In this Part “civil proceedings” means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties; and references to “the court” shall be construed accordingly.

(2) The rules of court made for the purposes of the application of sections 2 and 4 of this Act to proceedings in the High Court apply, except in so far as their application is excluded by agreement, to proceedings before tribunals other than the ordinary courts of law, subject to such modifications as may be appropriate.

(3) Any question arising as to what modifications are appropriate under subsection (2) shall be determined, in default of agreement, by the tribunal.”.

Road Traffic Act 1985 (c.23)

2. For section 58(2) substitute —

“(2) In subsection (1) —

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“document” means anything in which information of any description is recorded; and

“statement” means any representation of fact, however made.”.

Highways Act 1986 (c.17)

3. For section 114(2) substitute —

“(2) In subsection (1) —

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“document” means anything in which information of any description is recorded; and

“statement” means any representation of fact, however made.” SCH. 1

Customs and Excise Management Act 1986 (c.34)

4. In section 77A, for subsection (6) substitute —

“(6) A statement contained in a document produced by a computer shall not by virtue of subsection (3) be admissible in evidence in criminal proceedings except in accordance with Chapter I of Part 1 of the Criminal Justice Act 1991.”

[c.25]

5. In section 174 —

(a) in subsection (1) —

- (i) for “Part 1 of the Civil Evidence Act 1973” substitute “Part 2 of the Administration of Justice Act 2008”;
- (ii) for “section 10(2)” substitute “section 20”;

(b) in subsection (3), for “Part 1 of the Civil Evidence Act 1973” substitute “Part 2 of the Administration of Justice Act 2008”.

Road Transport Act 2001 (c.27)

6. In section 54, for subsection (2) substitute —

“(2) In subsection (1) —

“copy”, in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“document” means anything in which information of any description is recorded; and

“statement” means any representation of fact, however made.”

Electronic Transactions Act 2000 (c.8)

7. In section 11(3), for paragraph (a) substitute —

“(a) Part 2 of the Administration of Justice Act 2008, or”.

SCH. 1

Section 23(2)

PART 2

REPEALS

<i>Chapter no.</i>	<i>Short title</i>	<i>Extent of repeal</i>
1973 c.18	Civil Evidence Act 1973	Part I.
1982 c.8	Inheritance (Provision for Family and Dependants) Act 1982	Section 21.
1983 c.7	Evidence Act 1983	Section 1. In section 2 — (a) subsections (1) and (2); (b) in subsection (3)(b), the words from “by virtue of section 2” to “out-of-court statements”). In section 3(1), the words “Part I of the 1973 Act or”.
1986 c.34	Customs and Excise Management Act 1986	Section 124A(6)(a).
1996 c.1	Value Added Tax Act 1996	In Schedule 12, paragraph 8(6)(a).

Section 33

SCHEDULE 2

MINOR AMENDMENTS

Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (XXp. 452)

1. After section 4(1) insert the following paragraph —

“(1A) For the avoidance of doubt, for the purposes of subsection (1)(a)(v) of this section it shall be contrary to public policy to enforce a judgment in respect of any action that, had it commenced in the Isle of Man, would have been within the scope of sections 1 to 3 of the Privileges of Tynwald (Publications) Act 1973.”. [c.11]

Interpretation Act 1976 (c.20)

2. In section 3, for the definitions of “court of summary jurisdiction”, “Deemster” and “Deemsters” substitute —

“court of summary jurisdiction” means a court consisting of the High Bailiff (other than when sitting as a judge) or 2 or more justices of the peace, and includes a court consisting of a single justice of the peace in any case where such a justice has power to exercise any function of such a court;

“Deemster” means the First Deemster, the Second Deemster, the Judge of Appeal or a Deemster appointed under section 3B of the High Court Act 1991; [c.12]

“the Deemsters” means the First Deemster and the Second Deemster acting jointly;”.

Advocates Act 1976 (c.27)

3. For section 21(7) substitute —

“(7) In this section, “Deemsters” means —

- (a) the First Deemster and the Second Deemster; or
- (b) either of those Deemsters and any other Deemster.”.

Jury Act 1980 (c.9)

4. For sections 19 and 20 substitute —

“Civil juries **19.** (1) All trials by jury of issues in the High Court shall be tried by a jury of six persons taken from the list of jurors in accordance with section 10.

(2) The jury shall return its verdict in writing.

Trespass
juries

20. In matters of inquiry by order of a Deemster before a Coroner, the jury shall consist of four persons taken from the list of jurors in accordance with section 10.”.

SCH. 2

5. In Part 1 of Schedule 1, in Group B, after “Deemster” insert “Judicial Officer within the meaning of section 3C of the High Court Act 1991.”.

Adoption Act 1984 (c.14)

6. In section 5(2A) —

(a) in paragraph (b), omit “or”;

(b) at the end add —

“or

(d) section 21 of the Adoption and Children Act 2002 (an Act of Parliament), or any corresponding provision having effect in Scotland or Northern Ireland.”.

Summary Jurisdiction Act 1989 (c.15)

7. In section 3 —

(a) in subsection (1), after “may” insert “, in accordance with any directions of the First Deemster,”;

(b) in subsection (2), after “may” insert “, in accordance with any directions of the First Deemster,”.

8. In section 3A —

(a) in subsection (1), after “rules of court” insert “and any directions of the First Deemster”;

(b) in subsection (2), after “rules of court” insert “and any directions of the First Deemster”.

9. In Schedule 5, entry 20(a) shall cease to have effect.

Administration of Estates Act 1990 (c.17)

10. In section 64(1), after the definition of “mortgage” insert —

“non-contentious or common form probate business” means the business of obtaining probate and administration where there is no contention as to the right thereto, including —

(a) the passing of probates and administration through the High Court in contentious cases where the contest has been terminated;

(b) all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action; and

- (c) the business of lodging caveats against the grant of probate or administration;” SCH. 2

High Court Act 1991 (c.12)

- 11.** In section 16A(1), for “small claims arbitration”, substitute “small claims adjudication”.
- 12.** In section 22(1), for “judges of the High Court” substitute “Deemsters”.
- 13.** In section 25(4), for “regulations” substitute “rules”.
- 14.** In section 30, after “summons,” (in each place) insert “judgment,”.

Criminal Jurisdiction Act 1993 (c.9)

- 15.** In section 1(3), after “may” insert “in accordance with any directions of the First Deemster”.

Civil Jurisdiction Act 2001 (c.28)

- 16.** Section 7(1) to (4) shall cease to have effect.