Isle of Man Government

Reiltys Ellan Vannin

DEPARTMENT OF HOME AFFAIRS

Consultation on legislation to implement the Criminal Justice Strategy

11th July 2016

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STATEMENT BY THE MINISTER FOR HOME AFFAIRS

It is now over three years since I brought the Criminal Justice Strategy to Tynwald in December 2012. The Strategy was the first time the various parts of the Criminal Justice System had come together to share their expertise and issues in order to improve efficiency. The criminal justice system is not something that has been consciously designed, but is a series of processes undertaken by quite separate agencies in order to achieve different things. The police investigate and gather evidence, which is then passed to the Attorney General's Chambers who make a decision based on the evidence to charge and prosecute, the defence advocates advise and represent their clients, the courts then hear the case and, where a person is convicted, hand down a sentence. Where a person is sentenced, the Prison and Probation Service will apply the appropriate penalty and also seek to change or challenge the offending behaviour so the whole cycle doesn't start again.

It is recognised that each of the parts of the criminal justice system have separate roles that have developed over time. As a consequence of this separation and diversity it has been difficult in the past for the parties to work together to identify efficiencies or improvements that may be made not only to the benefit of their own particular role in the system but also result in a better service for everyone. One success so far of the Strategy has been in convening a Criminal Justice Board[1] that brings together the heads of all the different criminal justice agencies where they are able to discuss and recommend changes at a strategic level.

Much work has been done at the operational level to make small but significant improvements to processes, but the time has now come to make further progress in relation to criminal justice policy by ensuring the legislation we have in place will help agencies to deal with problems earlier, promote rehabilitation and break the cycle of re-offending behaviour in the future. Given the fact we are dealing with the serious matter of criminal justice, there are quite properly matters governed by Primary legislation, which can only be changed by means of an Act, or Acts, of Tynwald. Due to the technical nature of some of the proposals I have provided a summary of proposals which provide an overview of what the Department seeks to achieve as well as a more technical outline of proposals both to amend existing law and promote new legislation.

There is a desire to give the courts a wider menu of sentencing options or possibilities that may be tailored to the individual offender before that court and will have more far reaching benefits for the individual and the community in the medium to long term. There is also a desire to see efficiencies that will allow greater capacity, shorter lead times from charge to final disposal and a smarter regime that works more effectively to reintegrate offenders back into the community and results in a consistent year on year reduction in re-offending.

[1]The Board includes the Chief Executive of the Department, the Chief Registrar, the Chief Constable, the Director of Business Change at the Cabinet Office, the Director of Prosecutions at the Attorney General's Chambers, the Head of the Prison and Probation Service and a representative from the Law Society.

An Impact Assessment has not been attached as this is a consultation seeking views on the principle of future legislative changes. If you have any views on the proposals outlined within this document and the associated extracts, you are invited to send them to me, via the Department's Legislation Manager, at the Department of Home Affairs, Tromode Road, Douglas, IM2 5PA, by **19th September 2016**.

Hon. Juan Watterson, BA(Hons), FCA, MHK

Minister for Home Affairs

11th July 2016

Background

There are many ways by which we are encouraged to think or to do things differently and not all of them are direct. Changes in the global financial climate have inevitably impacted the Island and, combined with the after effects of adjustments in the revenue sharing arrangement with the United Kingdom, all aspects of work the Government undertakes have had to be reviewed.

Where a function or a service performed by the State is critical, such as the delivery of justice or the protection of the public, the review process has led to consideration of how the service or function may be done better. The Department would wholeheartedly agree with those who would contend that a price cannot and should not be placed on justice. Nevertheless the various processes and administration associated with criminal justice and the system that has grown up in relation to it must legitimately be subject to scrutiny and change to ensure they are both efficient, effective and support the higher purpose of justice at a financial cost that can be sustained. The Department and the Council of Ministers are clear – simply carrying on as we have always done, without reflecting on whether things could be improved, and then taking steps to make those improvements, is no longer sustainable.

It is in that light, that the Criminal Justice Strategy, referred to by the Minister in his Foreword, was conceived, consulted on and debated by Tynwald in December 2012. It has four key priorities of prevention, appropriate response, rehabilitation and new ways of working[2]. Over the last three and a half years work has been undertaken to make some changes where that could be done administratively or through existing legislation. That work will continue into the future, however, more substantial developments do require existing legislation to be amended or new legislation enacted.

This Paper sets out some of the proposed changes considered necessary to address policy priorities and seeks views on any possible additional proposals or legislative measures that may be appropriate and helpful at this time. It is recognised these proposals, if converted or transferred into a Bill, would only constitute a part of the process of implementing the Strategy, which in itself is meant to be a dynamic, rather than a static, undertaking.

[2]As stated within page 14 of the Criminal Justice Strategy document.

Proposals

PART 1 Early Intervention/Diversion from Criminalisation

The Police are the front line response service for all types of events:- disputes, anti-social behaviour, 'high-jinks', criminal activity, missing persons, providing assistance, road traffic duties... the list goes on. A part of the contract the Police make with the community is the ability to deal with matters using their discretion. It is in no-one's interest for people to be subject to the full weight of criminal prosecution for minor or low level offences. People with previously unblemished records may find their short and long term job prospects are affected and the impact a criminal record has can be far reaching. Where the nature or circumstances of the offence so require, offenders are prosecuted, but where matters can be handled early with openness and fairness and via a different course of action then, as a community, we should provide the police, working alone or in partnership with other professionals, with the option of dealing with the matter proportionately, for the benefit of a safe and just society. The following are measures which could achieve this:-

Cautions

Cautions are one such option for the police and have been used for a long time as an effective method of policing, however they are not currently based in statute. The proposal is therefore to provide in law for cautions and in doing so to provide for them to become 'spent' under the Rehabilitation of Offenders Act 2001.

Conditional Cautions

Similarly the introduction of cautions "with conditions" is proposed which will enable a matter to be dealt with, but would empower the police to set certain conditions, such as: to make reparation (repair or pay for the damage caused to property, or take other steps to make amends for the offence) or be referred to a drug or alcohol referral programme. There are criteria which must be met before a conditional caution is granted and a code of practice would guide police officers in the exercise of this provision.

Fixed Penalties for Disorderly Behaviour

As part of the "Appropriate Response" section in the Criminal Justice Strategy a proposal was put forward to introduce fixed penalty tickets and penalty notices for minor disorder offences which will allow 'low level' offences to be dealt with by financial penalty. This was introduced in early 2014 for some road traffic offences and has meant over 180 traffic offences have been dealt with via an endorsable fixed penalty notice (EFPN) and so removed the need for a court appearance. An important part of the introduction of EFPN's is the meeting of strict criteria (driver must agree to EFPN, must meet conditions re insurance and licence and is able to elect a court appearance should they change their mind). The proposal here is simply to extend the fixed penalty regime to cover instances of minor anti-social behaviour including liquor related offences.

One of the effects of this will be fewer people criminalised for first offences, enabling them to learn their lesson and integrate more effectively back into society, thus reducing their chances of re-offending. It is important to note that the current intelligence-led policing approach will identify repeat or concerning behaviour and ensure such behaviour is escalated and dealt with early.

PART 2 Youth Justice

The multi-agency Youth Justice Team works to prevent offending and reoffending by children and young people. The team is based within the Department of Health and Social Care (Murray House, Douglas) and brings together officers of the Isle of Man Constabulary and professionals from Health & Social Care and Prison and Probation. In recent years the work of the Youth Justice Team has shown excellent results and has resulted in young people being diverted, where possible, to alternative outcomes, who would otherwise have traversed through the criminal justice system.

Age of Juveniles

Current law, set out in the Summary Jurisdiction Act 1989, means 17 year olds are subject to adult proceedings in the criminal courts. This is contrary to international norms that define a child as a person under the age of 18 and additionally is at odds with the work of the Youth Justice Team and police practice. An amendment is required to correct the anomaly and ensure that 17 year olds who appear in court are treated as juveniles.

Future changes in respect of Youth Justice are being researched as the prevalence of offending tends to increase from late childhood, peak in the late teenage years and then decline in the early 20's. The holistic approach from the Youth Justice Team, which addresses offending behaviour and associated issues so successfully, could be extended and eventually used as the model for all offending behaviour.

Statutory Basis for the Youth Justice Team & Duty to Cooperate

The multi-agency approach of the Youth Justice Team not only deals with the criminal aspects of offending but also the environmental issues such as education, training, health, drug and alcohol issues. It is therefore essential that the various agencies involved in addressing youth offending are engaged in providing the support needed to change offending behaviour. In order to ensure there are no legal or other barriers to agencies working together, it is proposed to place a "duty to cooperate" on relevant parties, which will ensure the holistic approach is encouraged by law.

PART 3 Offender Management

The current scope of the probation service comes from the Criminal Justice Act 1963. The demands on the probation service have changed and it is proposed in law to formalise, and so recognise, the services carried out and in doing so widen the scope of probation services being provided to reflect current priorities. The provisions will allow probation officers to be involved in assisting the police with cautions and conditions, become more involved in reparation, mediation and restorative justice and have more input into strategies designed to divert persons from courts or Prison. The vision is that placing persons before the courts will become a much more serious matter and will be done by the relevant authorities only after other actions have either been considered and discounted, or tried and found to be inadequate. It is also proposed to place a requirement on probation officers to keep victims informed. In this case, "victim" will include an "alleged victim".

PART 4 Amendments Relating to Sentencing Matters

Sub Part A – General

An important part of the Criminal Justice Strategy is to expand the powers and options available not just for dealing with offenders but also to address their behaviour. Simply locking people up, whilst effective in stopping their criminal offending for the duration of their time in custody, is not enough because what is important is to change behaviour and prevent further offending. By increasing the range of sentencing options available to the courts, the most appropriate response for that individual can be used to greater effect. Over time, legislation has introduced various options and this Bill seeks to amend or add to what is available to allow an even greater 'menu', or combination, of options to be available.

Removal of Restrictions

Current legislation restricts the use of community sentence orders from being used in connection with other sentences and it is proposed to remove the restrictions that are placed on suspended sentence and reparation orders being used in conjunction with other options such as treatment programmes or restorative justice work. Reparation Orders in particular are not frequently used as current legislation restricts the maximum period of the order to 24 hours in total. By increasing this to, say, a maximum of 240 hours the courts and the probation service will have greater flexibility when designing reparation programmes that will work best with each offender and victim.

Same Household Orders

Anti-Social behaviour orders were first introduced in 2001, and are made by the court on application by a relevant authority. The original legislation prevented the use of these orders where the complainant was in the same household. They could not therefore be used in certain domestic situations. By removing the restriction, the police, local (housing) authorities, the Department of Health and Social Care and other relevant authorities will have another tool that may assist in addressing the harm and upset caused in the domestic setting through anti-social behaviour.

Deferred sentencing, conversion of short custodial sentences and intermittent custody

Deferred sentencing is the 'last chance option' and comes after the courts have imposed a sentence, but since the offence, the offender has shown remorse and agreed to try to repair the harm. The sentence can be deferred until certain conditions have been met (reparation to the victim, repair to the property, treatment options undertaken, etc) and the Court are satisfied and the sentence will be discharged without being served, but will still be on their record.

Sentencing for offences is laid down in law, but where a custodial sentence is imposed by the court of less than 12 months, research has shown that there is a higher likelihood of reoffending. It is suggested that this be automatically converted to a community sentence with intensive work being carried out by offender management agencies in lieu of a prison term. This will allow rehabilitation work to be carried out rather than a prison stay and means that budgets can be spent on changing offender behaviour rather than housing them.

Intermittent custody is a recent progression which comes out of understanding that when offenders are removed into custody there are higher chances of reoffending if accommodation, work or family contacts are lost. The use of intermittent custody removes the offenders' freedom, but ensures that the anchors to a stable life are kept in place and work is undertaken to address offending behaviour.

The proposals have not at this stage been developed and you are invited to comment on the principle of each. These three concepts are mentioned in the technical guide at paragraph 4.3 on page 13.

Sub Part B – Sentencing Powers of the High Bailiff

At the moment, if a matter comes before the High Bailiff and the penalty is likely to be more than 12 months custody, it must be moved to the Court of General Gaol Delivery. Equally, there are cases that come before the Court of General Gaol Delivery where the maximum sentence the Court is likely to hand down would, in any event, be less than two years custody. The changes proposed will instead allow the High Bailiff to deal with cases where the penalty the Court may impose for the offence is up to 2 years in custody or an unlimited fine (or both). It is considered that by increasing the powers of the High Bailiff this will mean more matters are resolved at an earlier stage and ensure only the more serious cases are dealt with in the Court of General Gaol Delivery. If the assessment in a Report undertaken by Lord Leveson into efficiency in criminal proceedings in England and Wales is found in similar cases in the Island, this could impact on between 26% and 34% of cases currently arriving in the Court of General Gaol Delivery per year[3].

Sub Part C – Sentencing Guidelines

It is important for the community to have confidence in the criminal justice service, not least in the manner in which matters are dealt with in terms of sentencing. There is an increased demand in society as a whole for greater information as to how decisions are reached and the factors that are taken into account as part of that decision-making process. In respect of sentencing matters, there is information on the Courts website[4]. It is suggested it might be helpful to spell out in a single point of reference more specific information about likely sentences for common offences. Currently, information has built up over time and is found in diverse places such as the statute books, appeal cases, previous cases, criminal procedure books and cases from other jurisdictions. The point is, for those outside the specialist area of criminal justice, one has currently to know where to look for the information. The proposal is for the creation of publicly accessible sentencing guidance/guidelines/precedents which would have the different offences, the relevant law and the likely sentencing outcomes and parameters for sentencing set out in a central point of reference. This is seen as providing victims, defendants and the general public with clear information as to what kind of sentence or other disposal a person may expect for the relevant offence in question.

[3]Paragraph 66 on page 21 https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf
[4] https://www.courts.im/courtinformation/sentencing.xml

Sub Part D – Non-Custodial Sentences

When the courts impose sentence, either custodial or non-custodial, the details can often be difficult to take in for those in court (not least the convicted person and the victim). As difficult as it may be to believe, at the moment it appears there is nothing given in writing to the offender by the court to confirm what his or her penalty is. Furthermore, when conditions are imposed as part of the bail conditions (on an accused person), they can be quite detailed about curfew times, non-contact of individuals, not to enter certain streets etc. Naturally the court expects not only the accused person but others to comply (or at least to enforce compliance) with its orders. This proposal is currently limited to non-custodial sentences (following the New Zealand model) and is designed to ensure the relevant order of the court is available and given to the offender in very good time. The Department would be interested to receive views not just on the limited proposal but also on extending the requirement for the court to provide copies of orders in respect of other matters such as bail conditions as well. The advantage of the swift delivery of court orders in respect of bail is that it will ensure the person concerned has a clear written record of what their conditions are and the agencies (such as the police) expected to ensure compliance are notified promptly of the latest court order (thus ensuring they enforce the latest bail conditions, rather than the last known bail conditions). Furthermore, if orders are provided in a timely fashion this will enable victims to be informed and help them to feel engaged.

PART 5 Pre-recording and other means of giving evidence

This proposal is seen as a significant change for the treatment of vulnerable people within the courts. At the moment, vulnerable victims and witnesses have to wait for the criminal justice system to go through its various processes and timescales before the trial takes place. Too often the trial can be up to 12 months or even more after the original incident. The impact of this lengthy period of waiting on victims and other witnesses cannot be overestimated and can be detrimental, ultimately, to justice itself.

In other parts of the world (for example, New Zealand), this has been recognised and it is possible for vulnerable victims and witnesses to give their evidence, and be cross-examined, within a shorter period of time with the record being kept for use in the eventual trial. Not only does this ensure evidence is fresher, but can allow the court process to be dealt with and enable the witness to be released from attending court again. When the trial does take place the video (or other means of recording evidence visually) can then be played in court.

The term "vulnerable person" is used to extend the powers of the court so special provision is no longer limited to those under a certain age or public interest matters but includes their age or maturity, physical or other impairment, the trauma suffered, fear of intimidation or any number of other factors. The aim being to ensure a fair trial takes place where all the relevant evidence is enabled to be heard and examined.

Further issues

The Department would be grateful for your views on the following issues -

- To clarify what a sentence to a term of custody means (i.e. how long will a person actually spend in Prison/Secure Care (Cronk Sollysh)?)

The law regarding parole or early release for a person serving a sentence of custody has, over time, become very complex. The reasons for this situation are many but will have included a desire to distinguish between persons sentenced to a long period in Prison and those who receive a shorter sentence, the desire to keep sexual and other kinds of serious or violent offender for longer under supervision and changes to reflect the needs of the time or developments in neighbouring jurisdictions.

The Department considers the law needs to simplified and to do that it would be necessary to repeal Schedule 2 of the Custody Act 1995[5] entirely in order to re-enact it in a form that is easier to read, understand and follow correctly. The point has been reached where it is not possible, on passing a sentence of imprisonment, for an indication to be given as to exactly how long the offender will be in custody for and when they are likely to be eligible for early release (currently termed "parole"). This means neither the offender nor the victim or other interested parties can be sure, for example, what a sentence to a term of custody of 1, 2, between 2 and 4 years or a period of 4 years or more actually means (and still less what happens between early release and the formal end of their sentence). It is also the case that the provisions relating to the consideration of early release (not least by the Parole Committee) could be set out in a clearer manner.

The Department thinks now is a reasonable time to consider whether there is an appetite for more radical change than merely tidying up current law and early release procedures. Whilst the Department has not developed any proposals as such in relation to this issue, your thoughts on the following would be appreciated:-

1. *should a term of custody be in real time (i.e. the term handed down by the court is the minimum actual time served in Prison)? or*
2. *should a person sentenced to a term of custody be entitled to apply for early release on parole at the halfway point of their sentence?*

   The advantage of this is that everyone can know a person will spend a minimum of half their sentence in custody. The person will have an incentive to positively engage with the Prison, probation and other agencies during that period as the question of whether or not and when they are to be released will depend on the level of their co-operation whilst in prison custody.
3. *If option 2 above is preferred what conditions do you think will have to be satisfied before the person can be considered for release early?*
4. *do nothing (leave the system for early release as it is). The disadvantage of this option is that the law will continue to be confusing.*

If none of the above seems right the Department would appreciate your views on how to improve, or what should replace, the current parole and early release system.

[5] https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0001/CustodyAct1995_3.pdf

Technical guide to the proposals

This consultation document reflects proposals that are in various stages of development. Extracts of proposed legislation have been provided in order to assist consultees in relation to what is proposed. The themes of early intervention, youth justice, offender management, amendments relating to sentencing matters and alternative ways of giving evidence are set out in five Parts below.

PART 1 Early Intervention/Diversion from criminality

1.1 It is an established objective in the Department's Policing Plans not only to sustain the lowest levels of crime in the British Isles per 1,000 population, but also achieve a year on year reduction in the number of repeat offenders[6]. The Department recognises there are a number of strategies that need to be deployed in order to achieve these objectives; not all of which lie with the police, or solely with the police.

1.2 Crime prevention is a key function of police officers who exercise professional skills in accordance with Constabulary policy and practice. Where they do come into contact with persons alleged to have committed or to have attempted to commit a crime, they have a number of options. One option is to administer a caution to the person. There are those who commit an offence but are only ever likely to be "one off" offenders, or are otherwise considered suitable to receive a caution. It is the experience of the Constabulary that there are persons who, whilst suitable for a caution, would benefit from having certain conditions applied to the caution. The power to add conditions would ensure some do not waste the opportunity to take steps to turn their lives around and divert from a path of criminality. Of course for others the activity for which they have been apprehended merits further action but not necessarily court action, and in these cases the opportunity should be offered to them to discharge their liability for an offence by paying a fixed penalty fine.

1.3 What is proposed is to provide further statutory tools for the police to use in keeping the community safe by reducing crime to an even lower level[7], either acting on their own or with the advice and support of persons such as colleagues in the Youth Justice Team or others performing probation/community rehabilitation services[8].

1.4 There are three legislative adjustments the Department believes will assist and upon which it invites views. The first is to place cautions on a statutory basis and to provide for two types of caution. The second is to empower police officers to issue fixed penalty notices for low level offences relating to drunkenness, wasting police time, minor anti-social behaviour etc. The third involves placing the work performed by probation staff on a modern statutory basis and by listing and expanding the functions that may be performed by or in connection with probation services.

[6]Objective 1 and Measures a and b refer in the current Policing Plan 2016-2017 *[GD No 2016/0039].* The Objective and Measures in this matter have been consistent not only over the current Administration but in Plans prior to the General Election in 2011.
[7]The Annual Reports of the Chief Constable, and his predecessor, show the Island continues to have one of the lowest crime rates in the British Isles and a good detection rate.
[8]Proposals to place the functions performed by probation staff on a modern legal footing are discussed later in this document.

Cautions

1.5 Currently a person who admits an offence may, instead of being prosecuted for the offence, receive a caution. Cautions, or "simple cautions", have been administered for a very long time. However, other than references by necessary implication[9], these cautions have no specific statutory basis. It is therefore proposed to place simple cautions on a statutory basis and by doing so to provide for them to become spent under the Rehabilitation of Offenders Act 2001.

Conditional cautions

1.6 This is a development from the simple caution and is proposed in order to empower the police, in administering a caution, to impose conditions the fulfilment of which will discharge the person from liability for further action on the part of the police in respect of a particular incident. Conditions could include requiring the person to (for example) repair any damage caused by the incident, undertake mediation with the person affected by the incident, be referred in relation to an issue with drugs or alcohol, accepting a financial penalty or any other appropriate condition designed to help the person recognise the seriousness of the incident, the effect it had on others and help the person to reform. There would be five requirements (see Extract 1 on page 24) that must be met before a conditional caution may be given; where there is a victim then the victim must be consulted; in the case of conditional cautions the Department would be required to provide a statutory code of practice and there must be consequences if the person fails to fulfil the conditions of a conditional caution. Conditional cautions may also be given to 16 and 17 year olds and it is proposed to give the Department the power to lower the ages by order.

QUESTION 1

Extract 1 (page 24) contains details of the five requirements and the code of practice it is proposed to place within a Bill. These are in early draft form and your views on those provisions and the principle of the cautions proposals as a whole would be welcome.

Fixed penalties for disorderly behaviour

1.7 The Department considers that, with greater provision being made for the enforcement of fines set out in Part 8 of the Summary Jurisdiction Act 1989, and subject to appropriate enforcement and collection of fines on the part of the Constabulary, there is merit in extending the range of offences which may be dealt with by means of a fixed penalty fine. These matters are set out in Extract 1D. It is proposed entries may be amended, added to or removed, by order subject to the approval of Tynwald.

[9] http://www.legislation.gov.uk/ukpga/1997/50/part/V as applied to the Island and modified by the Police Act 1997 (Criminal Records) (Isle of Man) Order 2010 refers http://www.legislation.gov.uk/uksi/2010/764/contents/made

PART 2 Youth Justice

2.1 It is proposed to change the age at which a person is subject to proceedings in an adult court setting from 17 to 18 years of age. Extract 2 shows consequential changes in other legislation. The purpose of the change is to reflect the understanding internationally[10] that a child is to be regarded as a person under the age of 18 and so it is proposed to amend the Island's legislation to reflect this international standard. Similar changes[11] had been made to section 40(13) of the Police Powers and Procedures Act 1998 to the effect an arrested juvenile is now a person under the age of 18.

QUESTION 2:

A–In Extract 2, are there any other provisions that need to be amended so the age is changed from 17 to 18?

B – Are there any unintended consequences likely to arise from this apparently simple change of age?

2.2 It is proposed to state in law the aim of the youth justice system is to reduce offending by children and young persons. In an ideal society, persons or bodies involved in the youth justice system would work together freely to make that aim a reality. In order to remove any possible barriers to multi-agency working, it is proposed to place such persons or bodies under a duty to have regard to that aim.

QUESTION 3:

The aim is to empower the various agencies and to remove potential legal obstacles to working together to support youth justice. Do you think placing a legal duty on agencies to work together is the right way to address this? If not, what is your preferred method of ensuring agencies work together to secure justice in respect of young offenders?

2.3 The Youth Justice Team plays a significant role in assisting the police and others to intervene appropriately and to make effective decisions in relation to young offenders. It plays a key role in assisting to manage young offenders and to ensure those willing to receive it obtain guidance and assistance to turn their lives around. It is considered timely to place this Team on a statutory footing.

[10]Article 1 of the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989, does allow for the age of majority to be a different age. However, a European Court of Human Rights judgement in respect of the treatment of a 17 year old in police custody is persuasive in bringing the Department to the view the age when a person becomes subject to adult criminal justice court procedures should be raised from 17 to 18.

[11]Effected by the Criminal Justice, Police Powers and Other Amendments Act 2014.

QUESTION 4:

Do you agree the Youth Justice Team should be placed on a statutory basis? If you do not agree, please say why and outline your alternative provision for youth justice.

PART 3 Offender management

3.1. The Department notes existing probation provision within the Criminal Justice Act 1963 is assumed but only to the extent the law takes for granted the existence of probation officers; it does not though provide for a probation service. It has been indicated that provision ought, as best practice, to be placed on a legal footing. Furthermore, the service provided by probation personnel has developed over the years and, in terms of the criminal justice strategy, it is considered timely to bring the legislation up to date to reflect the range of work undertaken now and the work it is envisaged will be developed in the years to come. The Department is considering enacting legislation based on provisions within sections 1 to 14 of the Offender Management Act 2007 (of Parliament) and Extract 3 contains the main provisions currently proposed to be adapted for use in the Island.

It is a key part of the evolving criminal justice strategy that there should be intervention/assistance provided early to address offending behaviour, or where there are indications a particular person is at risk of being drawn into a criminal lifestyle. It is proposed to empower the involvement of probation officers in decisions relating to whether or not to give a person a simple caution or a caution with conditions and, if the latter, what conditions would be appropriate. Probation officers may be involved in the supervision and rehabilitation of such persons. Probation officers may assist persons remanded on bail and those charged with or convicted of offences in order to promote their rehabilitation and prevent or divert them from re-offending. Probation officers will be empowered to work with persons in custody as they will be with those in the community. The role of probation officers currently includes other functions such as the preparation of pre-sentence reports, supervising persons released on licence and ensuring community orders are carried out and it is proposed to add specific provision requiring them to keep victims informed. A victim, for these purposes, will include a person claiming to be a victim of a person charged with an offence. It is well understood by the Department that a person is innocent until proved guilty (or they indicate they will plead guilty, or actually plead guilty). This is about ensuring each of the parties affected by a matter is kept informed.

It is proposed to set out the following aims of the Department in respect of offender management and community rehabilitation –

- the protection of the public;
- the reduction of re-offending;
- the proper punishment of offenders;

- ensuring the offender is aware of the effects of the crime on victims of crime and the public; and
- the rehabilitation of offenders.

It is also proposed the Department be empowered to make arrangements, including contractual arrangements, with others for the provision of probation/community rehabilitation services. The purpose behind this is to enable the Department to undertake services on its own, to share those services with another Department (or other Departments), to enter into arrangements with a Third Sector provider or to establish a body expressly for the purpose of working with the Department. It is envisaged the arrangements the Department may make with others would only be made with a public body (such as another Government Department) or a charity.

The proposals for legislation relating to offender management specifically relate to work for probation purposes. The Department would be interested in your views as to whether or not provision should be made to place the wider work of protecting the public[12] on a statutory basis and that the duty on persons to co-operate should include all the agencies concerned in the matter of protecting the public[13].

QUESTION 5:

Do you have any comments on the proposed legislative changes?

PART 4 Amendments relating to sentencing matters

SUB-PART A - GENERAL

4.1 One of the principles behind the Criminal Justice Strategy is to expand the powers available to relevant agencies involved to make an appropriate response to offending behaviour. This includes widening the options available to a court when considering handing down a non-custodial sentence.

4.2 It is proposed to –

- retain the concept of community service orders and ensure those orders may be combined with other sentencing options;
- remove unnecessary restrictions on the power of the court to impose suspended sentences and to make suspended sentence supervision orders;
- section 35(4) of the Criminal Justice Act 2001[14] expressly prevents a reparation order from being made in combination with custody, a community service order, a combination order or a compensation order. It is proposed to remove this restriction so the Courts have more flexibility. The aim is to enable reparation orders to be made more frequently and to expand the options available to the sentencing court;

[12] One of the ways work to protect the public is undertaken is on a multi-agency basis (known as MAPPA).
[13] This would extend the duty to co-operate in respect of youth justice to include a duty to co-operate in respect of adult justice.
[14] http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0004/CriminalJusticeAct2001_3.pdf

QUESTION 6:

Do you consider the removal of this restriction to be a positive move? If not, why not?

- amend section 35(6)(a) of the Criminal Justice Act 2001 as this currently restricts the amount of reparation a person may be required to undertake to no more than 24 hours in aggregate. It is considered the maximum period of 24 hours is so short that it limits the effectiveness (or potential effectiveness) of any reparation currently required. By extending substantially the maximum number of hours a person may be required to undertake this will give greater flexibility to the courts and others to provide for reparation that makes a difference in each particular case. One proposal is to increase the maximum period from 24 hours to 240 hours. However, it is recognised there may be occasions when what is actually required is for a particular outcome to be achieved (which may take more or less hours to achieve depending on the person or persons involved and the particular case).

QUESTION 7:

Do you agree with the proposal (and if not, what alternative proposal would you like to see explored).

i. to increase the maximum number of hours a person may be required to undertake in reparation;

ii. to increase the maximum number of hours to 240 hours; and/or

iii. to provide that the order for reparation may specify a particular outcome that must be achieved (which means the person must work however many hours are necessary – whether many or few)?

The Department considers that, within the reparation provisions, there is the possibility of face to face meetings being arranged with the person or a representative of the person affected by the offender's conduct. Face to face meetings, where participants are willing, can have significant benefits in terms of reducing or curbing an offender's pattern of re-offending and can be helpful to the person affected by the conduct. The Department considers the provisions relating to reparation to be really important in terms of making good wrongs that have been committed, helping offenders to face up to the consequences of their behaviour and giving those affected an opportunity to meet the offender. It is recognised the proposal relating to reparation will not work for everyone, not least because one or both parties may not wish to engage. However, the object is to give individuals the opportunity to meet, to talk and perhaps to change;

- re-enact provision for anti-social behaviour sentences[15], which may be imposed where a court is satisfied harassment, alarm or distress was caused by the defendant to one or more persons, where the sentence is necessary to protect any person in the Island, or in a particular locality within the Island. The proposal is to re-enact with a small change that will enable these orders to be made in respect of persons of the same household. In effect this would enable such orders to be used in appropriate domestic circumstances.

QUESTION 8:

In respect of anti-social behaviour sentences, do you agree the court should be able to make an order in respect of a person or persons of the same household (i.e. in the domestic setting)? If not, please explain why and perhaps suggest an alternative option for dealing with anti-social behaviour by a person, or persons, in the same household.

4.3 The Department would be interested to receive your views on deferred sentencing, a requirement that short sentences to a term of custody should automatically be converted to a community based sentence and the concept of intermittent custody (sometimes known as weekend custody).

- Deferred sentencing may be useful where the Court considers, after receiving appropriate reports and mitigation, that the convicted person has shown remorse and perhaps is prepared to make reparation for the offence or undertake some other work along restorative justice lines. A sentence could be deferred so that it kicks in only in certain circumstances or sentencing only needs to take place in the light of the success or otherwise of other activities completed, attempted or avoided. In other words, if the convicted person is sincere, makes good their remorse and takes the action/s agreed with the Court then the sentence the Court might otherwise have imposed may be discharged.
- It must be noted those receiving short custodial sentences are most at risk of going on to commit further offences and one of the key aims of the Criminal Justice Strategy is to reduce or even to break the cycle of re-offending. The Department invites you to consider that one way of achieving this may be to legislate to presume that short custodial sentences will be converted into community sentences such as, for example, community service[16]. In practice, what this proposal would do is to encourage various criminal justice agencies to work in such a way that incarcerating an offender in Prison becomes an even less attractive option for the courts and places a greater onus on the Prison and Probation Service and other agencies to address the offence by undertaking community rehabilitation programmes in the community with the offender.

[15]The provision is currently located in section 28A of the Criminal Justice Act 2001. Currently subsection (2)(a) prohibits an order being made in respect of one or more persons of the same household.

[16] The proposal has its origins in Finnish sentencing policy and interested persons are also invited to refer to the Criminal Justice (Community Service) (Amendment) Act 2011 in the Republic of Ireland, which suggests 6 months as the threshold.

- Intermittent custody (sometimes known as weekend custody) means that a person may be sentenced to serve a term of custody but that the period served may, for example, be either Friday to Monday (hence weekend custody) but equally it may be Monday to Friday with release into the community on Saturday and Sunday, or any combination. The idea is that a person is subject to a custodial term but is able to maintain their home, family life and employment, which are key factors in helping to ensure offenders are effectively rehabilitated back into the community once they have served their time. The Department acknowledges there are drawbacks such as potential risks in terms of material being brought into or removed from the place of custody and there would be administration involved in booking persons in and out of custody as well as taking action where persons are late in returning to custody, or fail to return when required. The question is; do the potential benefits outweigh the risks and administration?

QUESTION 9:

The Department would appreciate your views on deferred sentencing, the conversion of short custodial sentences to community sentences and the idea that offenders may serve their time in custody on an intermittent basis as briefly outlined above.

SUB-PART B –SENTENCING POWERS OF THE HIGH BAILIFF

4.4 It is proposed to increase the sentencing powers of the High Bailiff (and hence the Deputy High Bailiff) when dealing with criminal offences which are triable either way (in other words triable in either a court of summary jurisdiction or the Court of General Gaol Delivery). What the proposal would mean is that the High Bailiff, when sitting as a court of summary jurisdiction, will be able to sentence a person to 2 years in custody or to an unlimited fine. The increased sentencing powers would not apply to a court of summary jurisdiction when it is comprised of magistrates (whose powers would remain as before). Currently the summary courts, whether presided over by the High Bailiff or not, may sentence a person to custody for 12 months or impose a fine of up to £5,000 or to both[17].

4.5 The High Bailiff and the Deputy High Bailiff are, together with the Deemsters, judges of the High Court and the thinking behind this is that as there are cases where the sentence the Deemster in the Court of General Gaol Delivery (CGGD) would impose are no greater than 2 years custody and/or a fine and so the person passing the sentence may just as well be the High Bailiff or the Deputy High Bailiff who is already familiar with the case. This will cut down on the number of cases progressing up to the CGGD, save on court costs, cut out an unnecessary procedure and bring appropriate cases to a conclusion sooner than would currently be the case[18].

[17]Section 17(1)(a) of the Bribery Act is an exception in that it provides for a maximum fine of £10,000 on summary conviction for certain offences.
[18]Thereby meeting the aims of the Criminal Justice Strategy set out in page 14 of GD 0061/12.

SUB-PART C – SENTENCING INFORMATION/GUIDELINES

4.6 The courts currently consider a number of factors when passing sentence including what has previously been determined in similar cases and circumstances in the Island, judgements in other jurisdictions, such as the United Kingdom, and any particular requirements set out in law (such as the sentencing options and the maximum sentences available). Further information is on the website of the Isle of Man Courts of Justice[19].

4.7 In inviting views on whether or not to establish a Sentencing Council, the Department would invite you to consider whether it would be in the interests of the Isle of Man to patriate the primary reference point for guidance about sentencing to the Isle of Man, and to publish that information in accessible form.

4.8 If there was a view that sentencing guidance/guidelines should be provided in the Isle of Man by means of a Manx Sentencing Council, the Department would invite you to consider this would have two benefits: consistency in sentencing and a greater transparency in terms of setting out more precise information about sentencing and related matters.

4.9 One model the Department suggests is that it be provided with the power, by order, to establish a body to be known as "The Sentencing Council" for the purpose of providing guidance/guidelines in respect of sentences and sentencing options in respect of particular offences or offences more generally. The Council, if or when established, would be expected as a priority to provide guidelines in respect of pleas of guilty and the stage in proceedings at which the plea is entered. The Council would be expected to set out first those offences where guidance/guidelines have effectively been established over many years and place them in such a form and manner as will make them readily accessible to the ordinary citizen. Over time the Council could then work on guidance/guidelines in respect of other offences etc.

4.10 The Department considers this could potentially be a very important element in the development of justice that is available to all. The Department further considers that, if the Council was established, the guidance/guidelines the judiciary follow in relation to sentencing should be publicly available for all citizens and not just those immediately involved in the criminal justice process.

4.11 The Department considers the Council may promote greater public confidence in the criminal justice service not least through the publication of clear guidance/guidelines that are designed to see greater consistency and transparency in sentencing. Whilst it may be accepted that regard is had for the impact of sentencing decisions on victims of offences, the Department is keen to promote measures generally that will give victims of crime a greater appreciation that they and their experiences matter.

[19] https://www.courts.im/courtinformation/sentencing.xml

4.12 The Department believes the establishment of a Sentencing Council would help victims, witnesses and the wider public to appreciate the kind, and range of, sentences imposed for offences. The Department also believes guidance/guidelines produced by such a Council would help those accused of offences, if they wish to plead guilty to an offence, to plead guilty sooner rather than later.

QUESTION 10:

The Department would be interested to receive your views on whether or not there is merit in providing for a Sentencing Council for the Isle of Man.

SUB-PART D – INFORMATION ABOUT NON-CUSTODIAL SENTENCES

4.13 The Department believes it is important to give information about court orders, particularly non-custodial disposals, before the relevant persons leave the court. If that is not possible then it should be done as soon as possible after the person has left the court. The Department considers it to be important that the offender and the persons expected to execute the orders of the court are given details of their obligations swiftly.

Extract 4 is loosely based on section 74 of the New Zealand Sentencing Act 2002[20]. If this proposal is developed further, subject to consultation, the Department considers the requirement as drafted in the Extract for the offender to receive a copy of the order should be changed to require the offender and other parties affected to be given a copy also (i.e. those responsible for executing the order such as probation officers).

PART 5 Pre-recording and other means of giving evidence

5.1 All who are involved in the field of criminal justice are aware of the need to accommodate persons who may be vulnerable on a variety of grounds. The Department was asked to consider this initially because the law made provision in respect of persons under the age of 17. Problems occurred on two fronts, firstly where the person is under 17 at the time of the incident but by the time the case comes to trial is over that age and secondly because the international definition of a child is a person under the age of 18. In considering this matter the Department feels provision ought to be much wider and should enable the courts to take into account a person's vulnerability on a wider range of grounds than merely their age. Having considered sections 102, 102A and 103 to 107 of the New Zealand Evidence Act 2006[21], the Department invites comments on the proposals within Extract 5.

[20] http://www.legislation.govt.nz/act/public/2002/0009/latest/DLM136090.html
[21] http://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393933.html

5.2 Extract 5A empowers the court on its own motion or on the application of a party to proceedings to provide for a witness to give his or her main evidence, and cross examination of that evidence, either in the traditional way in court or else in some other manner as set out in Extract 5C. There are conditions set out in Extract 5A, subsections (3) and (4). In subsection (3) there are 10 important grounds for permitting a witness to give evidence in an alternative manner to the traditional. These include the age or maturity of the witness. This means it is not just important that the witness in question is vulnerable by virtue of being a child[22] (i.e. under the age of 18) but also if there is a question as to the maturity of the witness that may have a detrimental effect either on the witness or the quality of the evidence and cross-examination given. There are various other grounds such as any physical, intellectual, psychological or psychiatric impairment of the witness, trauma, fear of intimidation, nature of the proceedings or the evidence the witness is expected to give, the absence or likely absence of the witness from the Island or any other ground appearing to the court to be likely to promote the interests of justice.

In subsection (4) of Extract 5A there are five points the court must have regard to when giving a direction. These relate to the need to ensure a fair trial, obtain the views of the witness, minimise stress on the witness, promote the recovery of the complainant from the alleged offence, and any other factor relevant to the just outcome of the proceedings.

5.3 Extract 5B provides for each party to the proceedings to be heard in Chambers before the court gives any direction about how the evidence is to be given and then cross-examined.

5.4 Extract 5C is titled "Alternative ways of giving evidence" and is about how the evidence would be given practically.

In subsection (1) the evidence may be given so the witness is in the courtroom but is unable to see the defendant or some other specified person, from an appropriate location outside the courtroom whether in the Island or elsewhere, or by a visual record made before the relevant day of the proceedings. The court may direct how the judge, jury (if any) and any advocates may see and hear the witness. A direction may need to be given as to how or whether the defendant should be able to see the witness. If an order protecting the anonymity of the witness has been made then directions will need to be made giving effect to the terms of that order.

Subsection (2) is relevant where a visual record of the evidence of the witness has been made. Where that evidence is to be shown at the hearing, the court will need to consider the manner in which the cross-examination and, indeed, the re-examination of the witness is to be conducted (and give directions accordingly).

Subsection (3) is supplementary.

[22] See footnote 6 (page 11).

5.5 Extract 5D on pages 37 and 38 sets out seven requirements that must be met in order to give visually recorded evidence properly and in accordance with the principles of a fair trial. It is currently titled "Video record evidence" but the Department is minded to have that changed to "Visual record evidence".

5.6 Extract 5E makes similar provision to the 5A to 5D but would be specifically inserted to deal with evidence where persons under the age of 18 are concerned.

QUESTION 11:

The Department would be interested in your views –

i. on the principle of using alternative means to give evidence including visual recording, early cross-examination etc; and

ii. on the proposed New Zealand model as adapted for the Island.

Feedback to the consultation

This consultation has been prepared for the purposes of assisting the Department in preparing appropriate legislation to address the issues of criminal justice, sentencing and offender management. In the light of the responses to the consultation, the Department will consider whether or not to continue to develop the proposals outlined in the consultation. In the event a Bill is subsequently drafted, the Department will engage in a further consultation on the basis of that Bill.

If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman, Legislation Manager
Department of Home Affairs
Headquarters Building
Tromode Road
Douglas, IM2 5PA

or by emailing dhaconsultation@gov.im

The closing date for the receipt of comments is **Monday 19th September 2016.**

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

It may be useful, when giving your feedback, to make reference to the number and title of the specific issue within the document that you wish to discuss.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

Extracts relating to the proposals

EXTRACT 1

CAUTIONS/CONDITIONAL CAUTIONS

1A Conditional caution — the five requirements
[P2003/44/23]

(1) The first requirement is that the authorised person has evidence that the offender has committed the offence.

(2) The second requirement is that the authorised person decides —

(a) that there is sufficient evidence to charge the offender with the offence; and

(b) that a conditional caution should be administered to the offender in respect of the offence.

(3) The third requirement is that the offender admits to the authorised person that the offender committed the offence.

(4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns the offender that failure to comply with any of the conditions attached to the caution may result in the offender being prosecuted for the offence.

(5) The fifth requirement is that the offender signs a document which contains—

(a) details of the offence;

(b) an admission that the offender committed the offence;

(c) the consent of the offender to being given the conditional caution; and

(d) the conditions attached to the caution.

[The five requirements in relation to a simple caution are similar except that references to the conditional element are removed. References to an authorised person, in addition to a constable, would include an officer authorised by a Government Department or Board and an officer of the Attorney General's Chambers.]

1B Code of practice: conditional cautions
P2003/44/25

(1) The Department must by order provide for a code of practice in relation to conditional cautions.

(2) The code may, in particular, include provision as to—

(a) the circumstances in which conditional cautions may be given;

(b) the procedure to be followed in connection with the giving of such cautions;

(c) the conditions which may be attached to such cautions and the time for which they may have effect;

(d) the category of constable or investigating officer by whom such cautions may be given;

(e) the form which such cautions are to take and the manner in which they are to be given and recorded;

(f) the places where such cautions maybe given; and

(g) the monitoring of compliance with conditions attached to such cautions.

(3) Subsections (2) and (3) of section 75, and section 76 *[of the Police Powers and Procedures Act 1998]* apply to an order under subsection (1) as they apply to an order under section 75(1) *[of the Police Powers and Procedures Act 1998]*.

1C Assistance of probation officers

P2003/44/26

Probation officers may give assistance to authorised persons in determining—

(a) whether conditional cautions should be given and which conditions to attach to conditional cautions; and

(b) the supervision and rehabilitation of persons to whom conditional cautions are given.

1D Offences leading to fixed penalty fines

P2001/16/1

For the purposes of this Division, "**penalty offence**" means an offence committed under any of the provisions mentioned in the first column of the following table and described, in general terms, in the second column—

Offence creating provision	**Description of offence**
Criminal Law Act 1981, s.8(2)	Wasting police time or giving false report
Telecommunications Act 1984, s 28(1)(b)	Using public telecommunications system for sending message known to be false in order to cause annoyance
Fire Services Act 1984, s.7	Knowingly giving a false alarm of fire
Licensing Act 1995 S. 23 S. 33(1) or (2) S. 34(1) or (2) S. 73(1)	 Sale of liquor to minors etc Drunkenness etc on premises Procuring drink for drunken persons Consumption of liquor by minors

S. 74A(1) S. 75(1) or (2) 76(1)	Agents, etc. obtaining liquor for minors Public drunkenness Drinking in public places
Public Order Act 1998, s.3	Behaviour likely to cause harassment, alarm or distress
Fireworks Act 2004, s 4(1)	Restrictions on fireworks displays

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EXTRACT 2

Provisions to be amended to reflect change in relation to age at which a person becomes liable to adult criminal court procedures from 17 to 18.

Petty Sessions and Summary Jurisdiction Act 1927

In section 3 of the *Petty Sessions and Summary Jurisdiction Act 1927* in the definitions of "adult" and "young person" for "seventeen" substitute "eighteen".

CYPA 1966 amended

CYPA 1966 is amended as follows.

In section 107(1) for "seventeen" substitute "eighteen".

In section 118, in the definition of "young person" for "seventeen" substitute "eighteen".

Interpretation Act 1976, s. 3 amended

In section 3 of the *Interpretation Act 1976*, for the definitions of "child" and "young person"" substitute —

> "**child**", in relation to the investigation and prosecution of a criminal offence, means a person ("A") who, in the opinion of any court, constable or other person dealing with A for the offence, is under the age of 14 years;"; and
>
> "**young person**" in relation to the investigation and prosecution of a criminal offence, means a person ("A") who, in the opinion of any court, constable or other person dealing with A for the offence, has reached the age of 14 years but is under the age of 18 years;".

Criminal Law Act 1981 amended

In the Criminal Law Act 1981, Schedule 2, paragraph 2 for "seventeen years" substitute "18 years".

SJA 1989 amended

In the following provisions of the SJA 1989, for "17" substitute "18".

The provisions are —

section 6(6);

section 15A(1);

section 15B(1);

section 16(1);

section 17;

section 19;

section 38;

section 40(2);

section 114, in the definition of "adult".

In section 40, for subsection (1) substitute —

> "(1) A juvenile court sitting for the purpose of hearing a charge against a person who is believed to be under the age of 18 years may, if it thinks fit to do so, proceed with the hearing and determination of the charge, despite it being discovered that the person in question is not under that age.".

Custody Act 1995 amended

In the Custody Act 1995, Schedule 2, paragraph 8(4)(a) for "17" substitute "18".

CYPA 2001amended

CYPA 2001 is amended as follows

In section 72(1) for "17" substitute "18".

In section 102(1) at the end of the definition of "child" add (and in that Part has the meaning given in Schedule 1 to the Interpretation Act 2015

Interpretation Act 2015, Sch. 1 amended

In Schedule 1 to the *Interpretation Act 2015* at the appropriate points in the alphabetical list insert —

> "**child**", in relation to the investigation and prosecution of a criminal offence, means a person ("A") who, in the opinion of any court, constable or other person dealing with A for the offence, is under the age of 14 years;"; and

"**young person**" in relation to the investigation and prosecution of a criminal offence, means a person ("A") who, in the opinion of any court,

constable or other person dealing with A for the offence, has reached the age of 14 years but is under the age of 18 years;

Rehabilitation of Offenders Act 2001, Sch. 1 amended

In Schedule 1 to the *Rehabilitation of Offenders Act 2001,* in paragraph 7 and in the table immediately after paragraph 7, for "17" substitute "18".

EXTRACT 3

3A Meaning of "the probation purposes"
[P2007/21/1]

(1) In this Part "**the probation purposes**" means the purposes of providing for—

(a) courts to be given assistance in determining the appropriate sentences to pass, and making other decisions, in respect of persons charged with or convicted of offences;

(b) authorised persons to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions;

(c) the supervision and rehabilitation of persons charged with or convicted of offences;

(d) the giving of assistance to persons remanded on bail;

(e) the supervision and rehabilitation of persons to whom conditional cautions are given;

(f) the giving of information to victims of persons charged with or convicted of offences.

(2) The purpose set out in subsection (1)(c) includes (in particular)—

(a) giving effect to community orders and suspended sentence orders (or, in the case of persons mentioned in subsection (3), any corresponding sentence which is to be carried out in the Island

(b) assisting in the rehabilitation of offenders who are being held in an institution;

(c) supervising persons released from an institution on licence;

(d) providing accommodation in approved premises.

(3) That purpose also applies in relation to persons who—

(a) are convicted of an offence under the law of a country outside the Island, and

(b) receive a sentence which is to any extent to be served or carried out in the Island,

as it applies in relation to persons convicted of offences.

(4) In this section—

"**authorised person**" and "**conditional caution**" have the same meaning as in *[the provision dealing with interpretation for cautions, when drafted]*;

"**community order**" means a community order within the meaning of the Criminal Law Act 1981 (see Schedule 3 of that Act);

"**institution**" includes an institution (within the meaning of the Custody Act 1995) for the secure detention of persons under the age of 18;

"**suspended sentence order**" has the same meaning as in the Custody Act 1995 (see Schedule 1 of that Act); and

"**victim**" includes a person claiming to be a victim of a person charged with or convicted of an offence.

(5) Regulations made by the Department may extend the purposes mentioned in subsection (1) to include other purposes relating to persons charged with or convicted of offences or persons to whom conditional cautions are given.

3B Responsibility for ensuring the provision of probation services
P2007/21/2

(1) It is the function of the Department to ensure that sufficient provision is made —

(a) for the probation purposes;

(b) for enabling functions conferred by any enactment (whenever passed or made) on providers of probation *[community rehabilitation]* services, or on officers of a provider of probation *[community rehabilitation]* services, to be performed; and

(c) for the performance of any function of the Department under any enactment (whenever passed or made) which is expressed to be a function to which this paragraph applies;

and any provision which the Department considers should be made for a purpose mentioned above is referred to in this Part as "**probation provision**".

(2) The Department must discharge its function under subsection (1) in relation to any probation provision by making and carrying out arrangements under Extract 3C.

(3) The Department must have regard to the aims mentioned in subsection (4) in the exercise of its functions under subsections (1) and (2) (so far as they may be exercised for any of the probation purposes).

(4) Those aims are —

(a) the protection of the public;

(b) the reduction of re-offending;

(c) the proper punishment of offenders;

(d) ensuring offenders' awareness of the effects of crime on the victims of crimes and the public; and

(e) the rehabilitation of offenders.

(5) The Department is not required by subsections (1) and (2) to take any action in relation to the making of provision for a purpose mentioned in subsection (1) if it appears to the Department that appropriate provision is being or will be made by any person acting otherwise than in pursuance of arrangements under Extract 3C.

3C Power to make arrangements for the provision of probation services
P2007/21/3

(1) This section applies to any probation provision which the Department considers ought to be made for any of the purposes mentioned in Extract 3B.

(2) The Department may make contractual or other arrangements with any other person or body for the making of the probation provision, including, in particular, a body established for the probation purposes on a not-for-profit basis whose governing body includes among its members persons appointed as such by the Department.

This is subject to Extract 3D.

(3) Arrangements under subsection (2) may in particular authorise or require that other person —

(a) to co-operate with other providers of probation services or persons who are concerned with the prevention or reduction of crime or with giving assistance to the victims of crime;

(b) to authorise individuals under …… to act as officers of a provider of probation *[community rehabilitation]* services;

(c) to make contractual or other arrangements with third parties for purposes connected with the probation provision to be made, including in particular contractual or other arrangements —

(i) for provision to be made, or for activities to be carried out, by third parties on behalf of that other person; or

(ii) for individuals who are not members of that other person's staff to act as officers of a provider of probation services.

(4) The Department may make provision for the performance of any function to which Extract 3B(1)(c) applies by making arrangements under subsection (2) above providing for the delegation of that function to the other person.

(5) If instead of making arrangements under subsection (2) the Department considers it appropriate to make any probation provision itself, it must make arrangements for the making of that probation provision (and for the avoidance of doubt the members of staff through whom he may act in making and carrying out those arrangements include officers or other persons employed at an institution).

(6) In this Part "**provider of probation services**" means —

(a) a person with whom the Department has made arrangements that are in force under subsection (2); or

(b) the Department (in relation to probation provision which is the subject of arrangements that are in force under subsection (5)).

(7) The Department must ensure that arrangements under subsection (2) or (5) for the supervision or rehabilitation of persons convicted of offences identify anything in the arrangements that is intended to meet the particular needs of female offenders.

(8) The Department must have regard, in carrying out its functions under this Part in relation to arrangements under subsection (2) with another person ("the provider"), to the need to take reasonable steps to avoid (so far as is practicable) the risk that —

(a) the provision, in pursuance of the arrangements, of assistance to a court or to the Parole Committee, and

(b) the carrying out, in pursuance of the arrangements, of any other activities,

might be adversely affected by any potential conflict between the provider's obligations in relation to those activities and the provider's financial interests.

3D Restriction on certain arrangements under Extract 3C

P2007/21/4

(1) Arrangements under Extract 3C(2) relating to restricted probation provision may only be made with a public body or a charity.

(2) In this section **"restricted probation provision"** means probation provision that —

(a) is made for a purpose mentioned in Extract 3B(a) or (b); and

(b) relates to the giving of assistance to any court in determining the appropriate sentence to pass, or making any other decision, in respect of a person charged with or convicted of an offence.

(3) The provision described in subsection (2)(b) includes provision which relates to the making of an application by an officer to a court under Part 4 of Schedule 3 to the *Criminal Law Act 1981.*

3E Power to make grants for probation purposes etc

P2007/21/6

(1) The Department may make payments (other than payments falling to be made in pursuance of arrangements under Extract 3B(2)) towards expenditure incurred by any other person for any purpose falling within the probation purposes.

(2) Payments under this section may be made on conditions (which may require repayment in specified circumstances).

3F Officers of providers of probation services

P2007/21/9

(1) In this Part "**officer of a provider of probation services**" means an individual who is for the time being authorised under subsection (2) (and "**officer**", in relation to a particular provider of probation services, means a person so authorised to act as an officer of that provider).

(2) An individual may be authorised to act as an officer of a particular provider of probation services ("the relevant provider") by —

(a) the Department; or

(b) a provider of probation *[community rehabilitation]* services (whether the relevant provider or any other provider) who is authorised to do so by the Department.

(3) If the relevant provider is the Department, subsection (2) has effect with the omission of paragraph (b).

3G Disclosure for offender management purposes

P2007/21/14

(1) This section applies to —

(a) the Department;

(b) a provider of probation services (other than the Department);

(c) an officer of a provider of probation services; and

(d) a person carrying out activities in pursuance of arrangements made by a provider of probation services as mentioned in Extract 3C(3)(c).

(2) In this section "listed person" means —

(a) a Department;

(b) the Youth Justice Team or any other person or body involved in the management of offenders;

(c) the Parole Committee or any other person concerned with the discipline, release or rehabilitation of persons who are or have been detained;

(e) a relevant contractor;

(f) the chief constable;

(g) a person who is responsible for securing the electronic monitoring of an individual; and

(h) any other person specified or described in regulations made by the Department.

(3) Information may be disclosed —

(a) by a person to whom this section applies —

(i) to another person to whom this section applies, or

(ii) to a listed person, or

(b) by a listed person to a person to whom this section applies, but only if the disclosure is necessary or expedient for any of the purposes mentioned in subsection (4).

(4) Those purposes are —

(a) the probation purposes;

(b) the performance of functions relating to institutions or detainees of —

(i) the Department;

(ii) any other person to whom this section applies; or

(iii) any listed person; and

(c) any other purposes connected with the management of offenders (including the development or assessment of policies relating to matters connected with the management of offenders).

(5) In subsection (4)(b) —

(a) the reference to institutions or detainees includes a reference to an in institution, accommodation or other secure facility for the detention of persons under the age of 18;

(b) the reference to functions, in relation to a listed person who is a relevant contractor, includes activities connected with the making or performance of a contract mentioned in subsection (9).

(6) Nothing in this section —

(a) affects any power to disclose information that exists apart from this section; or

(b) authorises the disclosure of any information in contravention of any provision contained in a Manx enactment (whenever passed or made) which prevents disclosure of the information.

(7) In this section "relevant contractor" means —

(a) a person who has entered into a contract with the Department for the performance of anything connected with the probation purposes; or

(b) a person who has entered into arrangements with the Department for the provision of prisoner escorts within the meaning of the *Prisoner Escorts Act 2008*.

3H Duty to co-operate for probation purposes

Every person to whom Extract 3G applies, and every listed person within the meaning of Extract 3G(2), must co-operate with every other such person, so far as is practicable, for the furtherance of the probation purposes.

EXTRACT 4

Production of court orders: Summary Jurisdiction Act 1989 s. 78A inserted

After section 78 of the Summary Jurisdiction Act 1989 insert —

“78A Order must be drawn up and copy given to offender, etc

(1) If a court imposes a fine, a community order or an endorsement or disqualification of any kind on an offender, the particulars of the sentence must be drawn up in the form of an order.

(2) Wherever practicable, a copy of the order must be given to the offender before he or she leaves the court.

(3) The order must include information regarding—

(a) the nature of the sentence; and

(b) the initial reporting obligations; and

(c) the date on which the sentence commences; and

(d) the obligations to comply with the instructions of a probation officer and the terms of the sentence; and

(e) the consequences of non-compliance with the terms of the sentence; and

(f) the statutory provisions under which the sentence may be varied or cancelled.

(4) If the community-based sentence is a sentence of community detention, then, in addition to the information required to be included in the order under subsection (3), the order must also include—

(a) the sentence term;

(b) the curfew period; and

(c) the conditions that apply, including those that apply for the duration of the sentence term and those that only apply during the curfew period.

(5) For the purposes of subsection (1), a court may direct that the offender —

(a) be detained in the custody of the court; or

(b) remain within the precincts of the court,

for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(6) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(7) A copy of the order must be provided to the Department and to any officer or other person involved in carrying it into effect as soon as possible after it is drawn up.”.

EXTRACT 5

5A Directions about alternative ways of giving evidence
[NZ2006/69/103]

(1) In any proceeding, the court may, either on the application of a party or on the court's own initiative, direct that a witness is to give evidence in chief and be cross-examined in the ordinary way or in an alternative way as provided in *Extract 5C*.

(2) An application for directions under subsection (1) must be made to the court as early as practicable before the proceeding is to be heard, or at any later time permitted by the court.

(3) A direction under subsection (1) that a witness is to give evidence in an alternative way, may be made on the grounds of—

(a) the age or maturity of the witness;

(b) the physical, intellectual, psychological, or psychiatric impairment of the witness;

(c) the trauma suffered by the witness;

(d) the witness's fear of intimidation;

(e) the linguistic or cultural background or religious beliefs of the witness;

(f) the nature of the proceedings;

(g) the nature of the evidence that the witness is expected to give;

(h) the relationship of the witness to any party to the proceedings:

(i) the absence or likely absence of the witness from the Island;

(j) any other ground appearing to the court to be likely to promote the interest of justice.

(4) In giving directions under subsection (1), the court must have regard to—

(a) the need to ensure a fair trial;

(b) the views of the witness;

(c) the need to minimise the stress on the witness;

(d) the need to promote the recovery of a complainant from the alleged offence; and

(e) any other factor that is relevant to the just determination of the proceedings.

5B Chambers hearing before directions for alternative ways of giving evidence
[NZ2006/69/104]

If an application for directions is made under *Extract 5A*, before giving any directions about the way in which a witness is to give evidence in chief and be cross-examined, the court—

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any person considered by the court to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.

5C Alternative ways of giving evidence

[NZ2006/69/105]

(1) The court may direct, under *Extract 5A*, that the evidence of a witness is to be given in an alternative way so that—

(a) the witness gives evidence—

(i) while in the courtroom but unable to see the defendant or some other specified person;

(ii) from an appropriate place outside the courtroom, either in the Island or elsewhere; or

(iii) by a video *[prefer "visual" here and subsequently instead of to "video"]* record made before the hearing of the proceedings;

(b) any appropriate practical and technical means may be used to enable the Judge, the jury (if any), and any lawyers to see and hear the witness giving evidence, in accordance with any rules of Court;

(c) the defendant is able to see and hear the witness, unless the court directs otherwise;

(d) in proceedings in which a witness anonymity order has been made, effect is given to the terms of that order.

(2) If a video record of the witness's evidence is to be shown at the hearing of the proceedings, the court must give directions under *Extract 5A* as to the manner in which cross-examination and re-examination of the witness is to be conducted.

(3) The court may admit evidence that is given substantially in accordance with the terms of a direction under Extract 5A, despite a failure to observe strictly all of those terms.

5D Video *[prefer reference here and subsequently to "visual" rather than "video"]* **record evidence**

[NZ2006/69/106 and drafting (subsection (6)]

(1) A video record offered as an alternative way of giving evidence must be recorded in compliance with any regulations made by the Department *[should this be "any rules of court" instead of "any regulations made by the Department"?]*.

(2) A video record that is to be offered as an alternative way of giving evidence in a proceeding must be offered for viewing by all parties or their lawyers before it is offered in evidence, unless the court directs otherwise.

(3) A copy of any video record that is to be offered as an alternative method of giving evidence in proceedings—

(a) must be given to the advocate for each party before it is offered in evidence, unless the court directs otherwise; and

(b) must be dealt with in accordance with any requirements set out in regulations made by the Department concerning the custody or return of copies of video records, or prohibiting or restricting their copying.

(4) All parties must be given the opportunity to make submissions about the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence.

(5) If any party indicates that the party wishes to object to the admissibility of all or any part of a video record that is to be offered as an alternative way of giving evidence, that video record must be viewed by the court.

(6) The court may order to be excised from a video record offered as evidence any material that, if the evidence were given in the ordinary way, would or could be excluded in accordance with *[this Act]* or any other rule of law whose purpose is to secure a fair trial.

(7) The court may admit a video record that is recorded and offered as evidence substantially in accordance with the terms of any direction under this Division and of any regulations *[or "any rules of court"?]* under subsection (1), despite a failure to observe strictly all of those terms.

DIVISION 2 — DIRECTIONS ABOUT CHILD COMPLAINANTS' EVIDENCE

5E Directions about way child complainants are to give evidence
[NZ2006/69/107]

(1) If the complainant is a ~~child or young~~ person *under the age of 18*, the prosecution must apply to the court in which the case will be tried for directions about the way in which the complainant is to give evidence in chief and be cross-examined.

(2) An application for directions under subsection (1) must be made to the court as early as practicable before the case is to be tried, or at any later time permitted by the court.

(3) When an application is made for directions under subsection (1), before giving any directions about the way in which the complainant is to give evidence in chief and be cross-examined, the court —

(a) must give each party an opportunity to be heard in chambers; and

(b) may call for and receive a report, from any persons considered by the court to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way.

(4) When considering an application under subsection (1), the court must have regard to—

(a) the need to ensure a fair trial;

(b) the views of the complainant;

(c) the need to minimise the stress on the complainant; and

(d) the need to promote the recovery of the complainant from the alleged offence; and

(e) any other factor that is relevant to the just determination of the proceedings.

APPENDIX A

CONSULTATION CRITERIA

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your Department's effectiveness at consultation.

6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX B

LIST OF PERSONS OR BODIES CONSULTED

- Members of Tynwald
- The Attorney General
- Clerk of Tynwald
- Chief Officers of Government Departments, Offices and Statutory Boards
- Social Affairs Policy Review Committee of Tynwald
- Local Authorities
- Chamber of Commerce
- Isle of Man Employers Federation
- Isle of Man Law Society
- Isle of Man Constabulary
- Isle of Man Police Federation
- the Police Advisory Group
- the Police Consultative Forum
- Victim Support
- Safe, Strong, Secure
- Isle of Man Trades Council
- Positive Action Group
- Mec Vannin
- Liberal Vannin

Isle of Man Government

Reiltys Ellan Vannin

This document can be provided in large print on request

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