



Isle of Man
Government

Reiltys Ellan Vannin



Department of Home Affairs

CONSULTATION
Criminal Justice
(Miscellaneous Provisions) Bill 2009

October 2009

Minister's introduction

As residents of the Isle of Man we are all fortunate to live in a safe community, as clearly evidenced by the Chief Constable's Annual Report for 2008 – 2009.

However, we cannot rest upon our laurels nor ignore the need for improving our legislation based upon our own experiences and those of other jurisdictions.

The proposed Criminal Justice (Miscellaneous Provisions) Bill 2009 seeks to achieve this goal by amending and improving a wide range of the Island's existing legislation. Some of these changes provide for new police powers and new offences, others merely tighten existing legislation to ensure that it is effectively enforced.

It is my wish, and the intention of the Department, that these changes will aid the prevention and punishment of criminal offences along with improving the protection of the Island's community.

You are therefore invited to read this consultation document regarding the above Bill and submit your views to me, via the Department's Legislation Manager, to the Department of Home Affairs, 88 Woodbourne Road, Douglas, IM2 3AP by no later than **Wednesday 18th November 2009**.

Hon. Adrian Earnshaw MHK

Minister for Home Affairs

October 2009

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Department of Home Affairs

CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2009

Consultation Summary

Introduction

The purpose of the Criminal Justice (Miscellaneous Provisions) Bill is to be a mechanism by which a number of important amendments are made to existing Primary Legislation.

The amendments set out in this document and the draft Bill appended to it have been put forward for the following reasons:

1. To take account of changes in legislation related to criminal offences and the police in another jurisdiction which are felt to be appropriate to adopt in the island;
2. To improve community safety and public order;
3. To introduce new legislation for the improved prevention, enforcement and punishment of criminal offences; and
4. To reinforce existing legislation against possible deficiencies and other perceived weaknesses.

The Bill has been drafted in such a way as to amend older Acts first and more recent Acts in later clauses. The Bill is divided into 27 Parts, each part referencing an existing Act which it is proposed will be amended by this Bill.

Content of the Bill

The details below are provided as a summary of the **85** clauses contained within the draft Bill. For the purposes of this consultation the consultative document has been divided into six Chapters, each Chapter summarising the aims of that particular subject area of the Bill and cross referenced to the respective clauses in the attached draft of the Bill. This means the references to the respective clauses and page numbers of the Bill, which are given in italics in the consultation document, are not necessarily in the order in which they are presented within the Bill.

The chapters are entitled as follows —

- **Chapter 1** Powers and organisation of the Police;
- **Chapter 2** Licensing Act amendments
- **Chapter 3** Sex offences and obscene publications;
- **Chapter 4** Drugs offences
- **Chapter 5** Community safety and public order;
- **Chapter 6** Miscellaneous other amendments to legislation.

It is important to note that the draft of the Bill has been prepared for the purposes of consultation and further refinement of the layout and content of the Bill will be undertaken in the light of the responses to the consultation.

There are five appendices to this consultation document which, with this document, may be downloaded from the Department's website at www.gov.im/dha/consultations.gov.

Chapter 1

Powers and organisation of the Police

Brief overview

Part 16 amends the Police Act 1993. It provides for a Superintendents Association and ensures the Department can make regulations covering the full range of the Constabulary's functions, terms and conditions. Various amendments to the Police Powers and Procedures Act 1998 ("the 1998 Act") are included in Part 20. These amendments cover matters such as search warrants; additional powers of seizure; powers of arrest; the granting of bail elsewhere than at the police station; police bail with conditions attached; powers of police officers to issue cautions with conditions attached; the use of video and telephone links for detention; intimate searches and intimate samples; police powers relating to drugs, the visual recording with sound of police interviews; fingerprints; the taking of samples elsewhere than at the police station; the photographing of suspects; police codes of practice; and the arrest of children for serious arrestable offences.

Police organisation

- 1.1** *Clauses 26 and 27 (pages 81 to 88).* Since the Police Act 1993 was enacted the Island now has two Superintendents distinct from the rank of Deputy Chief Constable. *Clause 26* provides for a Superintendents Association. An issue has arisen as to the powers of the Department to make regulations covering the full range of the functions and duties of the Constabulary and it has therefore become necessary, through *clause 27*, to seek to clarify the Island's legislation to ensure the terms and conditions of police officers can be kept in line with their United Kingdom counterparts.

Search warrants

- 1.2** *Clauses 42 and 44 to 46 (pages 130 to 136).* Crime and technology have moved on substantially since the introduction of the 1998 Act. Evidence and the proceeds of crime can be moved and spread quickly amongst different premises owned or controlled by an individual in order to thwart police investigations. Applying repeatedly for search warrants for different premises can cause delay which enables an individual to ensure evidence is not uncovered by the police. This provision will remove the need for individual warrants where this can be justified.

Warrants: persons who may accompany constables.

- 1.3** *Clause 43 (page 131 and 132)* would ensure that persons who accompany police officers, for example IT or financial experts, can play an effective role in search and seizure operations.

Additional powers of seizure for police and customs officers

- 1.4** *Clauses 47 and 48 (pages 136 to 171)* provide for additional powers of seizure from premises. A key purpose of these provisions is to enable investigators to remove material from premises for examination elsewhere. The need to remove material may arise because either there is insufficient time to examine the material in situ; or else specialised

equipment is required to conduct the examination elsewhere; or there is a risk material may be lost or destroyed if left on the site.

Powers of arrest

- 1.5** *Clauses 49 and 50 (pages 171 to 175)* substitute sections 27 and 28 of the 1998 Act, clarify a police officer's powers of arrest and ensure that an officer is aware of the need to justify the arrest of a person under the Human Rights Act 2001.

Police Bail

- 1.6** *Clauses 51 and 52 (pages 175 to 179)* enable a police officer to grant a person bail from the scene of arrest. There are times when all that is needed is that a person be required to appear at the police station to assist with police enquiries at a later date. This would avoid the necessity of the person being brought to the police station. Clearly this would only be done if there was no risk of further offences being committed. A failure to answer police bail would itself be an offence.

Clause 56 (pages 189 to 191) enables the police to release a person on bail with conditions (such as curfew or not to contact witnesses) from a police station. Currently police may only release a person with or without a financial surety.

Conditional cautions

- 1.7** *Clause 53 (pages 179 to 184)* empowers the police to impose conditions (for example attendance on an anger management course, reparation etc) on the administration of a caution by an officer. Cautions are currently used as a means of disposal for offenders at the lower end of the scale where it is thought the offender will react positively. The imposition of a condition or conditions will reinforce the effectiveness of the caution. It should be noted a person has to agree to accept a caution and agree to any conditions.

Detention

- 1.8** *Clauses 54 and 55 (pages 184 to 189)* provide for the use of video and telephone links for decisions on reviews concerning a person's detention in police custody.

Child arrested for serious arrestable offence

- 1.9** *Clause 57 (page 191)* amends section 55 of the 1998 Act to enable Part V to apply to children arrested without a warrant for a serious arrestable offence. At present Part V only applies to children arrested for homicide.

Intimate Searches and the taking of intimate samples

- 1.10** *Clauses 58 and 59 (page 191).* Presently authorisation for intimate searches (e.g. strip searches) and the taking of intimate samples can only be provided by a police officer of the rank of Chief Inspector (or above).

This amendment allows for intimate searches to be authorised by a person of the rank of Inspector, if no person of the rank of Chief Inspector or higher is available, and brings the Island in line with best practise.

Interviews of suspects

- 1.11** *Clause 61 (pages 194 and 195)* inserts a new provision to enable interviews of suspects to be undertaken using video recording with sound equipment.

DNA samples, fingerprints and photographs

- 1.12** *Clauses 62 to 66 (pages 195 to 198)* enable police officers to take DNA samples, fingerprints and photographs at a location other than a police station on a voluntary basis and also provide for fingerprints and DNA samples to be taken after a caution has been given. The ability to take samples from persons cautioned will aid in the identification of repeat offenders and thus improve the detection and resolution of criminal offences.

If a person in a public place is suspected by a police officer of having committed a criminal offence the police officer may wish to confirm that person's identity through the use of fingerprints, a DNA sample or a photograph. At present these personal details can only be taken at a Police Station. This will avoid the necessity and inconvenience for an individual of having to be taken to a police station.

A person, whose personal details have been requested in such a manner, may refuse to provide these details and the police officer would have to transfer this person to a Police Station to have the samples taken there.

Codes of practice

- 1.13** *Clauses 67 and 68 (pages 199 and 200)* extend the subject matter for which police codes of practice may be made.

Chapter 2

Licensing Act amendments

Brief overview

Part 18 contains various amendments to the Licensing Act 1995 covering matters such as the constitution of the Licensing Court of Appeal, general licence conditions, drunkenness on licensed premises, variation of court orders, control of places of late night refreshment, wholesale sale of liquor, disposal of seized liquor, public drunkenness and drinking in public places.

Constitution of Licensing Court of Appeal

- 2.1** *Clause 29 (pages 97 and 98)* would amend the constitution of the Licensing Court of Appeal so that its members are required to have additional experience and standing to make a judgement on the decisions of the lower court.

Licensing conditions

- 2.2** *Clause 30 (page 98)* amends section 9 of the Licensing Act 1995 to additionally enable regulations to be made whose effect would be to introduce licensing requirements for supermarkets to locate alcohol sales in a separate area of the shop. It is not necessarily the case that the Department will make such regulations if this provision is enacted but it would enable the Department, if it deemed it appropriate, to do so.

Drunkenness etc on premises

- 2.3** *Clause 31 (pages 99 to 102)* amends section 33 of the Licensing Act 1995 and provides for the definition of the offence of being drunk on a licensed premises to also include being drunk within the vicinity of licensed premises.

The clause makes provision for persons banned from licensed premises to be allowed to pass through such premises in order to undertake travel on and off the Island (i.e. through the Airport departure lounges).

The clause also provides that where a person receives a fine for an offence against the Licensing Act they shall be banned from licensed premises until such time as the fine is paid and to provide for such a ban from licensed premises to include clubs. Further provision is made in like manner to *clause 37 (page 118 to 121)*.

Clause 32 (pages 102 and 103) provides for the Court to have powers to vary the terms of a ban from licensed premises.

Provision of late night refreshment

- 2.4** *Clause 33 (pages 103 to 116)* introduces a number of powers to require the registration of late night food outlets with the Department of Local Government and the Environment and imposes various duties on proprietors of late night food outlets to improve public order. This matter is still under consideration with the Department of Local Government and the Environment and is being consulted upon to obtain the views of the public and owners of such properties to ascertain if this is the right way forward.

Wholesale sale of liquor.

- 2.5** *Clause 34 (page 116)* removes the exemption from the requirement of wholesalers to have a licence for the sale of liquor to the public and *clause 35 (pages 116 and 117)* inserts new section 57A which makes more restrictive provision for sale of liquor by wholesale.

Disposal of liquor

- 2.6** *Clause 36 (page 118)* would give the Police the power to destroy any liquor seized from a minor in a public place (under section 74(1) of the Licensing Act 1995) without being required to go to Court to obtain permission to destroy the liquor.

Public drunkenness

- 2.7** *Clause 37 (pages 118 to 121)* amends section 75 of the Licensing Act 1995 so as to —
- enable a court to ban a person from off-licence premises, registered clubs and the premises of wholesalers where liquor is sold in addition to on-licensed premises,
 - to enable the court to prohibit the holder of a licence or the person acting on behalf of a registered club from supplying liquor to a person subject to a ban,
 - to permit a person subject to a ban to pass through the Airport Departure Lounge or any other premises prescribed by order made by the Department,
 - to provide that persons convicted under section 75(6) may be subject to both a fine and a community service order, the length of which is determined by the level of fine imposed, and

- that should a person be subject to any fine imposed for an offence under the Licensing Act 1995 the court may order that the holder of a licence or a person acting on behalf of a registered club shall not supply liquor to that person.

Drinking in public places

- 2.8** *Clause 40 (pages 121 to 123)* enables a constable to require a person to desist from the consumption of alcohol if, in the opinion of the constable, that person is making a nuisance of him or herself in any public place in the Island. This is a development from the present power of constable to require a person to desist from the consumption of alcohol if a person is making a nuisance of his or herself in a designated place and will provide for regulations for when such powers may be used.
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Chapter 3

Sex offences and obscene publications

Brief overview

Part 3 amends section 2 of the Obscene Publications and Indecent Advertisements Act 1907 (penalty for obscene publications).

Part 15, which amends the Sexual Offences Act 1992, is about sexual offences with children and young persons, further sexual offences and extreme pornographic images.

Part 23 makes various amendments to Schedule 1 to the Criminal Justice Act 2001 in respect of sex offenders offences, registration and the powers to authorise searches of sex offenders homes.

Penalty for obscene publications

- 3.1** *Clause 5 (page 20)* increases the penalty for printing, selling etc., indecent or obscene publications from two years to 5 years custody and from £1,000 to £2,500.

Sexual offences against children

- 3.2** *Clause 21 (pages 58 to 64)* makes it an offence to engage, or attempt to engage, in any sexual activity with children or young persons under the age of 16. The commission of an offence with a child (under the age of 14) carries a more severe penalty of custody for life. The provisions inserted also provide that it is an offence for person under the age of sixteen to commit the above offences. *Clause 22 (pages 64 and 65)* amends Schedule 1 of the Sexual Offences Act 1992 to take into account these proposed legislative changes.

Further sexual offences

- 3.3** *Clause 23 (pages 65 to 68)* makes it a criminal offence for a person to expose their genitals in public; to conduct sexual activity in a public place; or to commit an act of voyeurism against a person who has an expectation of privacy.

Extreme pornographic images

3.4 *Clause 24 (pages 68 to 75)* makes it an offence to possess violent and extreme pornography, such as that which it is illegal to publish on the Island under the Obscene Publications and Indecent Advertisements Act 1907. *Clause 25 (pages 75 to 81)* inserts a new Schedule to the Sexual Offences Act which details special rules in relation to providers of information society services.

Registration of sex offences

3.5 *Clause 78 (pages 230 to 234)* amends Schedule 1 to the Criminal Justice Act 2001 in a number of ways —

1. so as to provide that the maximum period of time a person under caution is listed on the sexual offenders register is two years in line with the United Kingdom;
2. to require a person convicted of an offence of a sexual nature off-Island, who either returns to the island or becomes resident on the Island, to register as sex offender as if the offence had been committed on the Island; and
3. to give the Police powers to enter and search, under a warrant provided by a JP, the home of a sex offender for the purpose of assessing the risks that such a person may pose to the community. This may be granted if a constable has been denied access on two previous occasions during one week.

Chapter 4

Drugs offences

Brief overview

Part 9 is about the supply of controlled drugs and travel restrictions for drug trafficking offenders. It amends the Misuse of Drugs Act 1976 by inserting a new section 4B (aggravation of offence of supply of controlled drug) and new sections 27A (power to make travel restriction orders; 27B (meaning of "drug trafficking offence"); 27C (revocation and suspension of travel restriction order); 27D (offences of contravening orders) and 27E (exceptions for other powers to remove person from the Island).

Part 12 is about the extension of detention for suspected drug offenders. It amends the Summary Jurisdiction Act 1989 by inserting a new section 84B (remands of suspected drug offenders to detention).

In Part 20, clause 60 gives power to the police in relation to x-rays and ultrasound scans if they suspect a drug has been concealed.

Aggravation of offence of supply of controlled drug

- 4.1** *Clause 12 (pages 35 to 37)* provides additional sentencing powers to the courts in terms of taking into account aggravating circumstances regarding the supply of controlled drugs when passing sentence.

Travel restrictions on drug traffickers

- 4.2** *Clause 13 (pages 37 to 46)* provides the courts with powers, when passing sentence, to impose restrictions on the travel of convicted drug traffickers.

Extension of detention for suspected drug traffickers and other police powers

- 4.3** *Clause 16 (pages 47 and 48)* empowers a magistrates court to commit a person suspected of concealing a controlled drug within their body to custody for a period of up to 192 hours (8 days) to increase the likelihood of any swallowed drugs being recovered.

X-rays and ultrasound scans

- 4.4** *Clause 60 (pages 191 to 194)* provides Police Officers with the power to authorise an x-ray or ultrasound scan of a person suspected of concealing a Class A drug within their body.

Chapter 5

Community safety and public order

Brief overview

Parts 6 and 14 are about offensive weapons.

Part 19 is about crime and disorder strategies.

Part 22 contains various amendments to the Public Order Act 1998 covering such matters as hatred against persons on grounds of race, religion, disability or sexual orientation (provision is also made in Part 27 to permit a court to consider hatred expressed on these grounds in relation to other offences as an aggravating factor when passing sentence on those offences), persons acting in an anti-social manner and the dispersal of groups and removal of persons under 16 to their place of residence.

Part 23 contains various amendments to the Criminal Justice Act 2001 covering matters such as on the spot penalties for disorderly behaviour; anti-social behaviour orders; anti-social behaviour injunctions; and curfew orders.

Offensive weapons

- 5.1** *Clause 9 (page 33)* increases the penalties for possession of a 'flick knife' or 'flick gun' or a 'gravity knife' from three months custody to six months custody and the fine from £1,000 to £5,000. *Clause 19 (pages 54 to 56)* introduces a new defence to the importation of offensive weapons to clarify the law in relation to importation for the purposes of theatrical performances or the making of television programmes or films. *Clause 20 (pages 56 and*

57) introduces further provision to permit importation and to require such as may be prescribed, irrespective of date of importation, to be subject to a licensing regime similar to that applicable under the Firearms Act. It is initially intended to regulate the possession of swords, particularly those that are samurai swords or those that may be termed "samurai type" swords.

Crime and disorder strategies

- 5.2** *Clause 41 (pages 124 to 129)* provides for the establishment of partnerships between the police, local authorities and bodies such as the Department of Education, the Probation and Fire Services etc in order to identify and develop common strategies for addressing local patterns of crime and disorder. Provision in law is made for the sharing of prescribed information between these partners. It is recognised this provision needs detailed consideration by local authorities whose views will be taken into account as to how or if this provision will be progressed.

Public order: amendments to the Public Order Act 1998

- 5.3** *Clause 71 (page 201)* empowers a constable to require a person acting in an anti-social manner to provide details of their name and address and makes it an offence to either fail to do so or provide false details. This provision is similar to the power found in section 5 of the Litter Act 1972.

Clause 72 (pages 202 to 210) makes it an offence to commit acts intended to stir up hatred. This includes hatred on grounds of race, sexual orientation, religious belief or lack of belief or persons with any kind of disablement.

Clause 73 (pages 210 to 216) enables a constable, subject to approval by a Chief Inspector and other safeguards, to designate specific areas as "hot-spots" and subsequently to order the dispersal of groups or persons who may be acting in an anti-social manner from a particular location to their respective places of residence.

Clause 85 (pages 243 to 246) empowers a court, when considering the seriousness of an offence for the purposes of sentencing, to regard the fact that the defendant demonstrated hostility towards the victim on grounds of race, religion, disability or sexual orientation as an aggravating factor.

Public order and anti-social behaviour: amendments to the Criminal Justice Act 2001

- 5.4** *Clause 74 (pages 216 to 225)* introduces provisions enabling a constable to issue an "on the spot" penalty for a variety of relatively minor offences against public order from those related to drink, to the giving of a false report and wasting police time and criminal damage.

Clauses 75 and 76 (pages 225 to 226) extend anti-social behaviours orders to include domestic abuse cases. Currently an anti-social behaviour order cannot be made against a person whose behaviour has been directed towards a person in the same household.

Clause 77 (pages 227 to 230) inserts further provisions in to section 28 of the Criminal Justice Act 2001 to enable public housing bodies (e.g. the Department of Local Government and the Environment or a local authority) to apply for civil court injunctions against tenants who engage in anti-social behaviour. Provision has been made to enable the Department to specify other bodies that provide social housing which may use these provisions in relation to their tenants.

Clause 79 (pages 234 and 235) amends Schedule 5 to the Criminal Justice Act 2001 to enable curfew orders to be revoked or suspended in exceptional circumstances.

Chapter 6

Miscellaneous other amendments to legislation

Brief overview

Part 1 provides for the short title and commencement of the Bill.

Part 2 is about conspiracy.

Part 4 is about false identity documents.

Part 5 is about bail conditions and the offence of absconding by person released on bail

Part 7 provides the legal basis for test purchases by under-age persons.

Part 8 is about firearms.

Part 10 is about telecommunications systems.

Part 11 is about disqualification periods for road traffic offences.

Part 13 is about cold calling.

Part 17 is about prohibited articles in prison.

Part 21 is about exclusion from the Island.

Part 24 provides for cautions to be spent.

Part 25 is about the return of children in care.

Part 26 is about Fireworks.

Conspiracy

6.1 *Clauses 3 and 4 (pages 17 to 20)* provide that the sentence for the offence of conspiracy to commit a criminal act should be the same as the sentence against the specific criminal act the defendant conspired to commit.

False identity documents

6.2 *Clause 6 (pages 20 to 26)* amends the Forgery Act 1954 whose provisions have been found to be outdated, particularly in relation to immigration cases.

Bail

6.3 *Clause 7 (pages 27 to 29)* provides for the new offence of breaching a condition or conditions of bail and *clause 8 (pages 29 to 32)* makes it an offence for a person to fail to surrender to custody, as required by the terms of their bail.

Test purchases by under-age persons

- 6.4** *Clause 10 (pages 33 to 35)* amends the Children and Young Persons Act 1966 to enable a constable, or an authorised officer of the Isle of Man Office of Fair Trading, to request a young person to make a particular purchase of an age restricted product (e.g. alcohol or tobacco) in order to check compliance with the law.

Firearms

- 6.5** *Clause 11 (page 35)* amends the Firearms Act 1968 to ensure that air weapons are treated in the same way as other firearms.

Telecommunications

- 6.6** *Clause 14 (page 47)* amends section 28 of the Telecommunications Act 1984 so as to increase the fine for improper use from £2,500 to £5,000.

Disqualification for road traffic offences

- 6.7** *Clause 15 (page 47)* addresses a situation where a person is sentenced to custody and is also disqualified from driving for a period of time which is often spent in custody. The period of disqualification starts from the date the person's custodial sentence expires or they are released from prison, whichever is sooner.

Cold calling

- 6.8** *Clause 17 (page 48)* repeals section 47A(2)(c) of the Consumer Protection Act 1991 (failure to provide notice of cancellation rights). It has been found the provision hinders effective enforcement by the Office of Fair Trading. *Clause 18 (pages 48 to 54)* inserts new provisions which have the effect of prohibiting cold calling by traders. Contracts made during the course of a solicited visit are not affected.

Prohibited articles in prison

- 6.9** *Clause 28 (pages 88 to 97)* substitutes section 19 (introduction of articles) of the Custody Act 1995 which provides for the classification of articles by list (by order) for which it is an offence to bring into or out of the prison. This enables the list of prohibited articles to be altered as circumstances, prison ingenuity or currency change. A new addition (introduced by new section 19(AC) relates to other offences against prison security and will make it an offence to transmit signals or photographs or any other sound or image inside the prison to the outside.

Exclusion orders

- 6.10** *Clause 69 (page 200)* amend the Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998 to provide that the courts may exclude persons from the Island for such period as the court determines. Currently the maximum period is restricted to 5 years. *Clause 70 (pages 200 and 201)* provides that an exclusion order may be varied or revoked by the court in exceptional circumstances.

Spent cautions

- 6.11** *Clauses 80 to 82 (pages 235 to 242)* address an anomaly whereby there was no provision in law for cautions to become spent.

Return of children in care

- 6.12** *Clause 83 (page 242 and 243)* inserts section 49A in to the Children and Young Person's Act 2001 to provide authority for a constable to return a missing child to care.

Fireworks Act 2004

- 6.13** *Clause 84 (page 243)* amends this Act to enable the supply of fireworks to certain exempt persons outside of permitted periods and to provide that Orders made under the Act must be laid before Tynwald.
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Issues arising upon which the Department would be grateful for your additional observations —

1. The Department is aware of the alarm or distress that can be caused to individuals through the improper use of the public telecommunications system and for that reason has determined to increase the maximum sentence for improper use of the public telecommunications system from £2,500 to £5,000 (*clause 14, page 47*). You are invited to comment on whether you consider the increase in maximum sentence to £5,000 is sufficient.

Further to this proposed change the Department is considering whether or not legislation should be introduced specifically to make it an offence to use social networking sites, such as Facebook, improperly or otherwise in such a manner as to cause another person alarm or distress or give them reason to feel harassed.

There are significant legislative difficulties associated with the fact that offenders may not reside in the Island or the website may be established and hosted in another jurisdiction. Furthermore, there are already provisions in law to address conduct which amounts to harassment or defamation and this consultation refers to new provisions to prohibit the use of words or behaviour or display of written material for the purposes of stirring up hatred of other persons on various grounds.

You are invited to comment on whether or not you consider improper use of social networking sites should be regulated by law specifically or whether current legal provisions dealing with inappropriate conduct are sufficient?

If you consider there should be specific laws to address improper use of these kinds of sites in the Island, you are invited to suggest what should be regulated and indicate how you think such regulation would work in practice. Any such proposals would need to take into account the right of an individual to have freedom of expression as set out under section 11 of the Human Rights Act 2001.

2. In *clause 31 (pages 99 to 102)* those in default of fines imposed as a result of an offence against the Licensing Act are also banned from licensed premises.

The original thinking was that all persons who are in default of any fine imposed against them by any provision of law should be banned from licensed premises. You are invited to comment on whether or not you believe:

- (a) that persons in default of fines imposed for breach of the Licensing Act should be banned from licensed premises (as currently drafted), or
 - (b) that any person in default of any fine imposed for a breach of any legal provision from parking fines to litter or Dogs Act offences etc could be banned from licensed premises, or
 - (c) that there should be no provision banning any fine defaulter from licensed premises.
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Feedback to the consultation

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
"Homefield", 88 Woodbourne Road
Douglas, IM2 3AP

or by emailing dhaconsultation.crimemiscprovbill@gov.im

The closing date for the receipt of comments is **Wednesday 18th November 2009**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. If you are responding on behalf of a group it would be helpful to make your position clear.

It may be useful when giving your feedback to make reference to the number and title of the specific provision(s) set out in the Bill 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.

Following the completion of the consultation exercise it is the Department's intention for the Bill to proceed to the House of Keys for first reading in **December 2009**.



Isle of Man
Government

Reiltys Ellan Vannin

Department of Home Affairs

CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2009

Impact Assessment (Appendix A)

Impact Assessment

IMPACT ASSESSMENT OF: Criminal Justice (Miscellaneous Provisions) Bill 2009
DEPARTMENT: Home Affairs
DATE: 07/10/09
VERSION NUMBER: 3.0

Responsible Officer: Tom Bateman, Legislation Manager
E-mail Address: dhaconsultation.crimemiscprovbill@gov.im
Telephone number: 694305

SUMMARY: INTERVENTION AND OPTIONS**What is the Bill intended to do:**

Should the Bill be passed by the Branches and receive Royal Assent it would become "spent" upon becoming an Act. This would occur as all its provisions would either substitute existing provisions or insert new provisions into 26 existing Acts. The Bill is therefore intended to be a vehicle by which existing legislation is clarified, revised or modernised.

Nature of problem:

The proposed draft Bill puts forward in one document the Department's legislative response to a wide range of issues and concerns which have been identified in recent years but individually may not have been suitable for dedicated items of primary legislation. These issues and concerns are listed below:

1. The Department has a number of operational Divisions concerned with community safety and public order including the Constabulary, the Probation Service and the Prison Service. The remits of these Divisions require a significant input of legislation from time to time to support new initiatives and progress issues concerned with community safety and public order, particularly as technological and scientific advances are made (for example in respect of DNA and fingerprinting). These developments form the basis of a number of proposed provisions within the Bill.
2. Some provisions contained within the draft of the proposed Bill had formed part of the Criminal Justice, Police and Courts Act, which was considered prior to the last General Election. At the time, these provisions were removed to make that item of legislation slimmer and ensured its passage through the Branches. With the greater amount of time now available for the consideration of these provisions by the Branches, these items have now been included in the draft Bill.

3. With the passing of time, fresh understandings and interpretations of existing law can occur and therefore require legislative changes. The law enacted at the time was done for sound reasons but technology and society has changed. For this reason some alterations have been required to existing legislation, in particular the Police Act 1993 and the Licensing Act 1995. Provisions have been included within this Bill to perform these required updates to existing legislation to ensure that the intent of this legislation is clear and effectively enforced.
4. In some cases the opportunity has been taken to introduce provisions which address levels of sentencing that have become outdated (levels of fines for example) or other anomalies that have been discovered such as the fact that a Caution could not become spent under the Rehabilitation of Offenders Act or that a person was required to be on the sex offenders register for a specified period of time except in the case of a caution.
5. The Constabulary have highlighted issues relating to bail, drug offences, the need to further address offences of a sexual nature and anti-social behaviour. In relation to the latter, for example, it has not been possible to issue an ASBO in domestic situations and it is felt the ability to do so would actually lead to a better outcome in certain cases.
6. In the case of amendments to the Licensing Act 1995 a diverse array of issues has been addressed including additional powers to control the sale of liquor.
7. Mention was made of technological advances and in respect of prison security it has become apparent that the importation in to the prison, and use within prison, of mobile phones is a threat to good order and discipline. The Bill includes provisions to enable the Department, by Order, to list the various types of item the transport of which into, or use within, the Prison should be prohibited and to make the use of any such item within the Prison an offence.

Purpose of Proposal:

The purpose of the Bill is therefore to amend, supplement and update existing legislation in the fields of public order and community safety.

Means by which it is to be achieved

Option 1: The draft Bill is not progressed.

The outcome of this option would mean significant necessary modernising of legislation in the fields of community safety and public order would not occur and some anomalies (such as the fact that cautions currently are never spent) would continue.

Option 2: The Bill passes with some provisions removed.

The impact of this option occurring would vary significantly, depending upon which provisions were removed from the Bill.

For example, if the provision increasing the sentence for an offence under the Telecommunications Act (*clause 14*) were removed there would be no discernable adverse effects, except the persuasive nature of the sentence would not be increased.

In another example, *clause 15* enables a court to order, as part of its sentence, that the period

of disqualification from driving for an offence under the Road traffic Act 1985, imposed at the same time as a custodial sentence, shall commence when the offender is released from custody. The removal of this provision would have no ill effects, except that the ban for driving would be ineffective in some circumstances.

However, if the provision to empower the imposition of a condition on a liquor licence which required the separation of the sale of alcohol from the sale of other products in supermarkets were removed, it could undermine work currently being undertaken with the supermarkets to address access to alcohol (*clause 30*).

In addition, failure to amend the Custody Act (*clause 28*) would mean that the threats to prison security posed by mobile phones being brought in to the prison could continue and develop.

Option 3: (preferred option) The Bill is authorised for public consultation and passes through the Branches in its entirety.

Ministerial sign off for Options stage I have read the Impact Assessment and I am satisfied that given the available information, it represents a reasonable view of the likely costs and impact of the preferred option.

*Hon Adrian Earnshaw, MHK
Minister for Home Affairs*

October 2009

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower)

Statement: It is considered the Bill has no financial implications and any resource requirements can be met from within existing resources.

Likely Financial Costs One Off: None.

Average Annual (excluding one off): None

Likely Financial Benefits One Off: None

Average Annual (excluding one off): None

If the proposal introduces provisions that will require enforcement or monitoring who will undertake this and what is the likely annual cost:

The provisions within *clauses 19 and 20* relate to offensive weapons. *Clause 20* makes particular provision for the licensing of swords. It is expected the regime would be maintained by the Constabulary in the same way as firearms.

The provisions (*clause 33*) in relation to the licensing of places of late night refreshment require the establishment and maintenance of a register by the Department of Local Government and the Environment (DLGE), any new cost would be considered as part of the ongoing consideration of these provisions.

It is not anticipated that other provisions will require significant, if any, further pressures on enforcement officers such as constables.

Are there any costs or benefits that are not financial i.e. social:

The social benefits include those provisions amending the Licensing Act which will serve to assist in work with supermarkets to address concerns associated with the location of the sale of alcohol in their premises.

The provisions in relation to offences of a sexual nature (*clauses 5, 21 to 25 & 78*) deal with offences against children, voyeurism and extreme pornography which are repugnant to a civilised society.

Unsolicited doorstep sales and trades people are a great inconvenience to many and the provision in relation to cold calling (*clauses 17 & 18*) addresses this.

The introduction of a provision (*clause 41*) enabling the formation of crime and disorder strategies through partnership between the Constabulary, local authorities and others such as the Probation Service will enable greater community participation in the work of ensuring our communities in the localities of the island remain safe and secure environments for people to live and work in.

Whilst the Island is a place where there are few instances of "hate" crime it is nevertheless a positive move to adopt legislation to expressly make it an offence in itself (*clause 72*) and to enable the court, when sentencing to regard hate of a person's difference as an aggravating factor (*clause 85*).

Has Treasury Concurrence been given for the preferred option?:

No, as the provisions are not expected to change the expenditure of Government.

Key Assumptions / Sensitivities / Risks:

The Bill covers a wide range of issues but the key assumption is that the community would wish the law to keep up with technological advances whilst recognising the need to maintain good public order and improve community safety.

Provisions that relate to police powers and organisation may be a sensitive area for some.

The risks include concerns in relation to prison security and the prevalence of offensive weapons discovered, for example, through drugs searches (hence *clause 20*).

Approximate date for legislation to be implemented if known:

Subject to responses to the consultation exercise and Council of Ministers authority, it is envisaged that the Bill will be introduced into the Branches at the earliest opportunity. The Bill will become spent immediately upon Royal Assent being announced in Tynwald as the Bill will amend other legislation forthwith.

Link to Government Strategic Plan:

Legislation and Regulation, Community safety.

Link to Department/Statutory Board/Office Aims and Objectives:

Ensure the delivery of the Department of Home Affairs' Bills in accordance with the legislative programme and compliance with the Island's international obligations.

SUMMARY: CONSULTATION

Consultation in line with Government standard consultation process: No

Date: Consultation on the main provisions of this Bill was carried out when it was proposed they be included within the Criminal Justice Police and Courts Act before being withdrawn to ensure the Bill was progressed before the last election. It was therefore decided that one consultation exercise would suffice.

Statement: The consultation will be carried out on the draft Bill from October 2009 over a period of 6 weeks. Copies of the consultation document and draft Bill are available from the Tynwald Library and on the Department's website at www.gov.im/dha/consultations.gov



Isle of Man
Government

Reiltys Ellan Vannin

Department of Home Affairs

CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2009

Consultation draft of the Bill **(Appendix B)**

Explanatory Memorandum

1. This Bill, which is promoted by the Department of Home Affairs, makes miscellaneous amendments to a range of statutes relating to criminal law, criminal justice and the police.
2. Part 1 of the Bill contains the Bill's opening provisions. *Clause 1* states the short title of the Bill. *Clause 2* deals with the Bill's commencement.
3. Part 2 (*clauses 3 and 4*) is about conspiracy. It amends the Criminal Code 1872 by repealing section 19 (conspiring or soliciting to commit murder) and substituting section 330 (conspiracy).
4. Part 3 (*clause 5*) is about obscene publications. It amends section 2 of the Obscene Publications and Indecent Advertisements Act 1907 (penalty for obscene publications).
5. Part 4 (*clause 6*) is about false identity documents. It amends the Forgery Act 1952 by inserting new sections 11A (possession of false identity documents), 11B (meaning of "false") and 11C (meaning of "identity document").
6. Part 5 (*clauses 7 and 8*) is about bail. It amends the Bail Act 1952 by amending section 3A (bail conditions) and inserting new section 13A (offence of absconding by person released on bail).
7. Part 6 (*clause 9*) is about offensive weapons. It amends section 1 of the Restriction of Offensive Weapons Act 1963 (penalties for offences in connection with dangerous weapons).
8. Part 7 (*clause 10*) is about test purchases by under-age persons. It amends the Children and Young Persons Act 1966 by inserting new section 6F (test purchases by under-age persons).
9. Part 8 (*clause 11*) is about firearms. It amends sections 2 and 3 of the Firearms Act 1968 (carrying firearms and trespassing with firearms).
10. Part 9 (*clauses 12 and 13*) is about the supply of controlled drugs and travel restrictions for drug trafficking offenders. It amends the Misuse of Drugs Act 1976 by inserting new section 4B (aggravation of offence of supply

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of controlled drug) and new sections 27A (power to make travel restriction orders, 27B (meaning of “drug trafficking offence”), 27C (revocation and suspension of travel restriction order), 27D (offences of contravening orders) and 27E (saving for powers to remove person from the Island).

11. Part 10 (*clause 14*) is about telecommunications systems. It amends section 28 of the Telecommunications Act 1984 (penalties for improper use of public telecommunications system).

12. Part 11 (*clause 15*) is about disqualification periods for road traffic offences. It amends section 53 of the Road Traffic Act 1985 (prosecution and punishment of offences).

13. Part 12 (*clause 16*) is about the extension of detention for suspected drug offenders. It amends the Summary Jurisdiction Act 1989 by inserting a new section 84B (remands of suspected drug offenders to detention).

14. Part 13 (*clauses 17 and 18*) is about cancellation rights and cold calling. It amends the Consumer Protection Act 1991 by repealing section 47A(2)(c) (failure to provide notice of cancellation rights) and by inserting a new Part VIIB (cold calling).

15. Part 14 (*clauses 19 and 20*) is about offensive weapons. It amends the Criminal Justice Act 1991 by amending section 27 (offensive weapons) and inserting a new section 27D (further provisions about the application of section 27 to swords).

16. Part 15 (*clauses 21 to 25*) is about sexual acts with children and young persons, further sexual offences and extreme pornographic images. It amends the Sexual Offences Act 1992. It inserts new sections 6A (causing or inciting a child under 13 to engage in sexual activity), 6B (sexual activity with child), 6C (causing or inciting child to engage in sexual activity), 6D (engaging in sexual activity in presence of child), 6E (causing child to watch sexual act), 6F (child sex offences committed by children or young persons) and 6G (arranging or facilitating commission of child sex offence). It amends Schedule 1 (registration of sex offenders). It inserts new sections 14A (exposure), 14B (voyeurism), 14C (interpretation of voyeurism provision) and 14DF (sexual activity in public lavatory). It inserts new sections 31A

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(possession of extreme pornographic images), 31B (exclusion of classified films), 31C (general defences), 31D (defence of participation in consensual acts), 31E (penalties for possessing extreme pornographic images), and 31F (special rules relating to providers of information society services). It inserts new Schedule 1A (special rules relating to providers of information society services).

17. Part 16 (*clauses 26 and 27*) is about the Police Superintendents' Association and police regulations. It amends the Police Act 1993. It inserts new section 12A (police superintendents' association). It substitutes sections 8 (police regulations) and 8A (regulations for special constables). It inserts new sections 8B (regulations for police cadets), 8C (regulations as to standards of equipment) and 8D (regulation of procedures and practices).

18. Part 17 (*clause 28*) is about prohibited articles. It amends the Custody Act 1995 by substituting new section 19 (classification of articles) and inserting new sections 19AA (conveyance of List A articles into or out of prison), 19AB (conveyance of List B or C articles into or out of prison), 19AC (other offences relating to prison security), 19AD (meaning of "authorisation" and other interpretation) and 19AE (extension of Crown immunity).

19. Part 18 (*clauses 29 to 40*) contains various amendments to the Licensing Act 1995. It amends section 2 (licensing court of appeal). It amends section 9 (conditions and undertakings). It amends section 33 (drunkenness on premises). It inserts new section 35A (variation of court orders). It inserts new Part 4A (provision of late night refreshment). It amends section 57 (wholesale sale of liquor). It inserts new section 57A (selling liquor wholesale). It amends section 74 (disposal of liquor in possession of minors). It amends section 75 (public drunkenness). It amends the fine levels in sections 23 (sale to minors) and 74A (agents obtaining liquor from minors). It inserts new sections 74B (persistently selling alcohol to children), 74C (suspending a licence for an offence under section 74B), 74D (closure notices for persistently selling alcohol to children) and 74E (effect of closure notices). It substitutes section 76 (drinking in public places).

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20. Part 19 (*clause 41*) is about crime and disorder strategies. It amends the Criminal Justice Act 1996 by inserting new sections 1A (authorities responsible for strategies, 1B (formulation and implementation of strategies), 1C (supplemental), 1D (duty to consider crime and disorder implications) and 1E (sharing of information).

21. Part 20 (*clauses 42 to 68*) contains various amendments to the Police Powers and Procedures Act 1998. It amends section 11 (search warrants: power to authorise entry and search of premises). It inserts new section 11A (search warrants: persons who may accompany constables). It amends section 18 (search warrants: safeguards). It amends section 19 (execution of warrants). It amends Schedule 1 (special procedure as to access). It inserts new Part IIA (additional powers of seizure). It inserts new Schedules 1A (powers of seizure) and 1B (applications and minor and consequential amendments). It substitutes sections 27 (arrest without warrant: constables) and 28 (arrest without warrant: other persons) and makes supplementary provision about such substituted provisions. It amends section 33 (arrest elsewhere than at police station). It inserts new sections 33A (bail elsewhere than at police station), 33B (bail notices), 33C (supplemental bail provisions) and 33D (failure to answer bail). It inserts new Part IIIA (conditional cautions). It inserts new section 43A (use of telephone for review of person's detention). It inserts new section 48A (use of video conferencing facilities for decisions about detention). It inserts new section 50A (conditions for bail after arrest). It amends section 55 (children: serious arrestable offences). It amends section 58 (intimate searches) and section 65 (intimate samples). It inserts new section 58A (drugs searches: x-rays and ultrasound scans). It inserts new section 63A (visual recording of interviews). It amends section 64 (fingerprinting). It further amends section 65 (intimate samples not taken at police station). It amends section 66 (other samples) and section 67 (supplementary provisions about fingerprinting and samples). It amends section 68A (photographing suspects). It substitutes section 75 (codes of practice). It amends section 76 (supplementary provisions about codes of practice).

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22. Part 21 (*clauses 69 and 70*) is about exclusion orders. It amends the Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998 by amending section 1 (orders excluding persons from the Island) and inserting a new section 3A (revocation of exclusion orders in exceptional cases).

23. Part 22 (*clauses 71 to 73*) contains various amendments to the Public Order Act 1998 covering such matters as persons acting in an anti-social manner, hatred against persons on certain grounds and the dispersal of groups and removal of persons under 16 to their place of residence. It inserts new section 3A (power to require information from persons acting in an anti-social manner). It inserts new Part IA which (hatred of persons on grounds of race, religion, disability or sexual orientation). It inserts new Part IB (removal of persons).

24. Part 23 (*clauses 74 to 79*) contains various amendments to the Criminal Justice Act 2001 covering matters such as on the spot penalties for disorderly behaviour, anti-social behaviour orders, anti-social behaviour injunctions, the registration of sex offenders and curfew orders. It inserts new Part 7A (on the spot penalties for disorderly behaviour). It amends section 28 (anti-social behaviour orders) and section 28A (anti-social behaviour sentence). It inserts new sections 28B (anti-social behaviour injunction), 28C (injunctions: exclusion and power of arrest) and 28D (supplementary provisions about such injunctions). It amends Schedule 1 (registration of sex offenders). It amends Schedule 5 (curfew orders).

25. Part 24 (*clauses 80 to 82*) is about spent cautions. It amends the Rehabilitation of Offenders Act 2001 by inserting new section 7A (protection afforded to spent cautions). It inserts new section 8A (unauthorised disclosure of spent cautions). It inserts new Schedule 1A (protection for spent cautions).

26. Part 25 (*clause 83*) is about the return of children in care. It amends the Children and Young Persons Act 2001 by inserting new section 49A (return of child in care).

27. Part 26 (*clause 84*) is about fireworks. It amends the Fireworks Act 2004 to enable certain categories of person to purchase fireworks outside the usual permitted periods.

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28. Part 27 (*clause 85*) is about sentencing. It amends the Criminal Justice, Police and Courts Act 2007 by inserting new section 41A (increases in sentences for aggravation related to race, religion, disability or sexual orientation).

29. The Bill is not expected to have any significant effect on public revenue, expenditure or personnel.

30. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

PART 1

OPENING PROVISIONS

1. Short title
2. Commencement

PART 2

AMENDMENTS TO THE CRIMINAL CODE 1872

Conspiracy

3. Repeal of section 19
4. Substitution of section 330

PART 3

AMENDMENTS TO THE OBSCENE PUBLICATIONS AND INDECENT ADVERTISEMENTS ACT 1907

Penalty for obscene publications

5. Amendment of section 2

PART 4

AMENDMENTS TO THE FORGERY ACT 1952

False identity documents

6. Insertion of new sections 11A to 11C

PART 5

AMENDMENTS TO THE BAIL ACT 1952

Bail: absconding and breach of conditions

7. Amendment of section 3A

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8. Insertion of new section 13A

PART 6

**AMENDMENTS TO THE
RESTRICTION OF OFFENSIVE WEAPONS ACT 1963**

Offensive weapons

9. Amendment of section 1

PART 7

**AMENDMENTS TO THE
CHILDREN AND YOUNG PERSONS ACT 1966**

Test purchases by under-age persons

10. Insertion of new section 6F

PART 8

AMENDMENTS TO THE FIREARMS ACT 1968

Firearms

11. Amendment of sections 2 and 3

PART 9

AMENDMENTS TO THE MISUSE OF DRUGS ACT 1976

Supply of controlled drugs

12. Insertion of new section 4B

Travel restrictions on drug trafficking offenders

13. Insertion of new sections 27A to 27E

PART 10

AMENDMENTS TO THE TELECOMMUNICATIONS ACT 1984

Telecommunications systems

14. Amendment of section 28

PART 11

AMENDMENTS TO THE ROAD TRAFFIC ACT 1985

Road traffic offences – disqualification

15. Amendment of section 53

PART 12

AMENDMENTS TO THE SUMMARY JURISDICTION ACT 1989

Extension of detention for suspected drug offenders

16. Insertion of new section 84B

PART 13

AMENDMENTS TO THE CONSUMER PROTECTION ACT 1991

Cancellation rights

17. Repeal of section 47A(2)(c)

Cold calling

18. Insertion of new Part VIIIB

PART 14

AMENDMENTS TO THE CRIMINAL JUSTICE ACT 1991

Offensive weapons

19. Amendment of section 27
20. Insertion of new section 27D

PART 15

AMENDMENTS TO THE SEXUAL OFFENCES ACT 1992

Sexual acts with children and young persons

21. Insertion of new sections 6A to 6G
22. Amendment of Schedule 1

Further sexual offences

23. Insertion of new sections 14A to 14D

Extreme pornographic images

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24. Insertion of new sections 31A to 31F

25. Insertion of new Schedule 1A

PART 16

AMENDMENTS TO THE POLICE ACT 1993

Police Superintendents' Association

26. Insertion of new section 12A

Police regulations

27. Substitution of sections 8 and 8A and insertion of new section 8B to 8D

PART 17

AMENDMENTS TO THE CUSTODY ACT 1995

Prohibited articles

28. Substitution of section 19

PART 18

AMENDMENTS TO THE LICENSING ACT 1995

Constitution of Licensing Court of Appeal

29. Amendment of section 2

Licence conditions

30. Amendment of section 9

Drunkenness etc on premises

31. Amendment of section 33

Variation of court orders

32. Insertion of new section 35A

Late night refreshment

33. Insertion of new Part 4A

Wholesale sale of liquor

34. Amendment of section 57

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35. Insertion of new section 57A

Disposal of seized liquor

36. Amendment of section 74

Public drunkenness

37. Amendment of section 75

Persistent selling of alcohol to children

38. Amendments to section 23 and 74A

39. Insertion of new sections 74B to 74E

Drinking in public places

40. Substitution of section 76

PART 19

AMENDMENTS TO THE CRIMINAL JUSTICE ACT 1996

Crime and disorder strategies

41. Insertion of new sections 1A to 1E

PART 20

AMENDMENTS TO THE

POLICE POWERS AND PROCEDURES ACT 1998

Search warrants

42. Amendment of section 11

43. Insertion of new section 11A

44. Amendment of section 18

45. Amendment of section 19

46. Amendment of Schedule 1

Additional powers of seizure

47. Insertion of new Part IIA

48. Insertion of new Schedules 1A and 1B

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Powers of arrest

49. Substitution of sections 27 and 28

50. Section 49: supplementary

Bail elsewhere than at police station

51. Amendment of section 33

52. Insertion of new sections 33A to 33D

Conditional cautions

53. Insertion of new Part IIIA

Use of video and telephone links for detention

54. Insertion of new section 43A

55. Insertion of new section 48A

Police bail

56. Insertion of new section 50A

Child arrested for serious arrestable offence

57. Amendment of section 55

Intimate searches and intimate samples

58. Amendment of section 58

59. Amendment of section 65

Police powers relating to drugs

60. Insertion of new section 58A

Visual recording of interviews

61. Insertion of new section 63A

Fingerprints

62. Amendment of section 64

Samples taken elsewhere than at police station

63. Amendment of section 65

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64. Amendment of section 66

65. Amendment of section 67

Photographing of suspects

66. Amendment of section 68A

Codes of practice

67. Substitution of section 75

68. Amendment of section 76

PART 21

**AMENDMENTS TO THE CRIMINAL JUSTICE
(EXCLUSION OF NON-RESIDENT OFFENDERS) ACT 1998**

Exclusion orders

69. Amendment of section 1

70. Insertion of new section 3A

PART 22

AMENDMENTS TO THE PUBLIC ORDER ACT 1998

Persons acting in an anti-social manner

71. Insertion of new section 3A

Hatred against persons on certain grounds

72. Insertion of new Part IA

Removal of persons

73. Insertion of new Part IB

PART 23

AMENDMENTS TO THE CRIMINAL JUSTICE ACT 2001

On the spot fines for disorderly behaviour

74. Insertion of new Part 7A

Anti-social behaviour orders

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75. Amendment of section 28

76. Amendment of section 28A

Anti-social behaviour injunctions

77. Insertion of new sections 28B to 28D

Registration of sex offenders

78. Amendment of Schedule 1

Curfew orders

79. Amendment of Schedule 5

PART 24

**AMENDMENTS TO THE
REHABILITATION OF OFFENDERS ACT 2001**

Protection for spent cautions

80. Insertion of new section 7A

81. Insertion of new section 8A

82. Insertion of new Schedule 1A

PART 25

**AMENDMENTS TO THE
CHILDREN AND YOUNG PERSONS ACT 2001**

Return of children in care

83. Insertion of new section 49A

PART 26

AMENDMENTS TO THE FIREWORKS ACT 2004

Fireworks

84. Amendments to the Fireworks Act 2004

PART 27

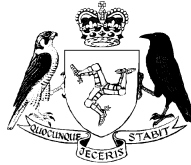
AMENDMENTS TO THE CRIMINAL JUSTICE,

POLICE AND COURTS ACT 2007

Sentencing

85. Insertion of new section 41A

CONSULTATION DRAFT



A BILL

to make new provision relating to criminal law, criminal justice and the police; to amend enactments relating to those matters; 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

OPENING PROVISIONS

Short title

1. The short title of this Act is the Criminal Justice (Miscellaneous Provisions) Act 2010.

Commencement

2. (1) This Act (other than this section and section 1) comes into operation on such day as the Department of Home Affairs by order appoints and different days may be appointed for different provisions and for different purposes.

(2) An order under subsection (1) may make such transitional and saving provisions as the Department of Home Affairs considers necessary or expedient.

PART 2

AMENDMENTS TO THE CRIMINAL CODE 1872

Conspiracy

Repeal of section 19

3. (1) Section 19 of the Criminal Code 1872 [IV p.160] (conspiring or soliciting to commit murder) is repealed.

(2) In section 3(7)(a) of the Maritime Security Act 1995 [c.5] the reference to section 19 of the Criminal Code 1872 is repealed.

(3) Subsections (1) and (2) do not affect—

(a) any proceedings commenced before the time when this section comes into operation; or

(b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time.

Substitution of section 330

4. For section 330 of the Criminal Code 1872 (conspiracy, etc) substitute—

“Conspiracy

P1977/45/1 and 3

330. (1) If a person agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions—

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement;

or

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- (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he or she is guilty of conspiracy to commit the offence or offences in question.

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person is nevertheless not guilty of conspiracy to commit the offence by virtue of subsection (1) unless he or she and at least one other party to the agreement intend or know that the particular fact or circumstance will exist at the time when the conduct constituting the offence is to take place.

(3) A person guilty by virtue of subsection (1) of conspiracy to commit an offence is liable on conviction on information—

- (a) in a case falling within subsection (5) or (6), to custody for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to in subsections (5) and (6) as the relevant offence or offences); and

- (b) in any other case, to a fine.

(4) Subsection (3)(b) does not prejudice the application of section 25 of the Criminal Jurisdiction Act 1993 [c.9] (discretion as to penalties) in a case falling within subsection (5) or (6).

(5) Where the relevant offence or any of the relevant offences is an offence of any of the following descriptions—

- (a) murder, or any other offence the sentence for which is fixed by law;

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(b) an offence for which a sentence extending to custody for life is provided; or

(c) an offence punishable on conviction on information with custody for which no maximum term of custody is provided,

the person convicted is liable to custody for life.

(6) Where in a case other than one to which subsection (5) applies the relevant offence or any of the relevant offences is punishable with custody, the person convicted is liable to custody for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

(7) In the case of an offence triable either way or an offence specified in Schedule 2 to the Summary Jurisdiction Act 1989 [c.15] (offences triable on information which can be dealt with summarily) the references in subsection (6) to the maximum term provided for that offence are references to the maximum term so provided on conviction on information.

(8) Where—

(a) an offence has been committed in pursuance of any agreement; and

(b) proceedings may not be instituted for that offence because any time limit applicable to the institution of any such proceedings has expired,

proceedings under subsection (1) for conspiracy to commit that offence must not be instituted against any person on the basis of that agreement.

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(9) Subsections (1) to (8) do not affect—

- (a) any proceedings commenced before the time when this section comes into operation; or
- (b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time.”.

PART 3

**AMENDMENTS TO THE OBSCENE PUBLICATIONS
AND INDECENT ADVERTISEMENTS ACT 1907**

Penalty for obscene publications

Amendment of section 2

5. In section 2 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p.91] (penalty for printing, selling etc indecent or obscene publications)—

- (a) for “two years” substitute “5 years”; and
- (b) for “£1,000” substitute “£2,500”.

PART 4

AMENDMENTS TO THE FORGERY ACT 1952

False identity documents

Insertion of new sections 11A to 11C

6. (1) After section 11 of the Forgery Act 1952 [XVIII p.6] insert—

“Possession of false identity documents etc

P2006/15/25

11A.(1) It is an offence for a person with the requisite intention to have in his or her possession or under his or her control—

- (a) an identity document that is false and that he or she knows or believes to be false;

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- (b) an identity document that was improperly obtained and that he or she knows or believes to have been improperly obtained; or
 - (c) an identity document that relates to someone else.
- (2) The requisite intention for the purposes of subsection (1) is—
- (a) the intention of using the document for establishing registrable facts about himself or herself; or
 - (b) the intention of allowing or inducing another to use it for establishing, ascertaining or verifying registrable facts about himself or herself or about any other person (with the exception, in the case of a document within paragraph (c) of that subsection, of the individual to whom it relates).
- (3) It is an offence for a person with the requisite intention to make, or to have in his or her possession or under his or her control—
- (a) any apparatus which, to his or her knowledge, is or has been specially designed or adapted for the making of false identity documents; or
 - (b) any article or material which, to his or her knowledge, is or has been specially designed or adapted to be used in the making of false identity documents.
- (4) The requisite intention for the purposes of subsection (3) is the intention—
- (a) that he or she or another will make a false identity document; and

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- (b) that the document will be used by somebody for establishing, ascertaining or verifying registrable facts about a person.

(5) It is an offence for a person to have in his or her possession or under his or her control, without reasonable excuse—

- (a) an identity document that is false;
- (b) an identity document that was improperly obtained;
- (c) an identity document that relates to someone else; or
- (d) any apparatus, article or material which, to his or her knowledge, is or has been specially designed or adapted for the making of false identity documents or to be used in the making of such documents.

(6) A person guilty of an offence under subsection (1) or (3) is liable, on conviction on information, to custody for a term not exceeding 10 years or to a fine, or to both.

(7) A person guilty of an offence under subsection (5) is liable—

- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction, to custody for a term not exceeding 1 year or to a fine not exceeding £5,000, or to both.

(8) For the purposes of this section—

- (a) an identity document is false only if it is false within the meaning of section 11B; and
- (b) an identity document was improperly obtained if false information was provided, in or in connection with the application for its issue

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or an application for its modification, to the person who issued it or
(as the case may be) to a person entitled to modify it,

and references to the making of a false identity document include references to the modification of an identity document so that it becomes false.

(9) In this section “identity document” has the meaning given by section 11C.

(10) In this Act “registrable fact”, in relation to an individual, means—

- (a) his or her identity;
- (b) the address of his or her principal place of residence in the Island;
- (c) the address of every other place in the Island or elsewhere where he or she has a place of residence;
- (d) where in the Island and elsewhere he or she has previously been resident;
- (e) the times at which he or she was resident at different places in the Island or elsewhere;
- (f) his or her current residential status;
- (g) residential statuses previously held by him or her; or
- (h) information about numbers allocated to him or her for identification purposes and about the documents to which they relate.

(11) But the registrable facts falling within subsection (10)(h) do not include any sensitive personal data (within the meaning of the Data Protection Act 2002 [c.2]) or anything the disclosure of which would tend to reveal such data.

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(12) The Department of Home Affairs may by order modify the list of registrable facts in subsection (10).

(14) An order under subsection (13) must not come into operation unless it is approved by Tynwald.

Meaning of “false” for the purposes of section 11A

P1981/45/9(1)

11B. (1) An instrument is false for the purposes of section 11A—

- (a) if it purports to have been made in the form in which it is made by a person who did not in fact make it in that form;
- (b) if it purports to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;
- (c) if it purports to have been made in the terms in which it is made by a person who did not in fact make it in those terms;
- (d) if it purports to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;
- (e) if it purports to have been altered in any respect by a person who did not in fact alter it in that respect;
- (f) if it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect;
- (g) if it purports to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or

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- (h) if it purports to have been made or altered by an existing person but he or she did not in fact exist.

(2) A person is to be treated for the purposes of section 11A as making a false instrument if he or she alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

Identity documents for the purposes of section 11A

P2006/15/26

11C.(1) In section 11A “identity document” means any document that is, or purports to be—

- (a) an immigration document;
- (b) a United Kingdom passport within the meaning of the Immigration Act 1971 [c.77] (an Act of Parliament, as it has effect in the Island);
- (c) a passport issued by or on behalf of the authorities of a country or territory outside the Island and the United Kingdom or by or on behalf of an international organisation;
- (d) a document that can be used (in some or all circumstances) instead of a passport;
- (e) a Manx driving licence; or
- (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the Island.

(2) In subsection (1) “immigration document” means—

- (a) a document used for confirming the right of a person in respect of entry or residence in the Island or the United Kingdom;

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(b) a document which is given in exercise of immigration functions and records information about leave granted to a person to enter or to remain in the Island or the United Kingdom; or

(c) a registration card within the meaning of section 26A of the Immigration Act 1971 (an Act of Parliament, as it has effect in the Island);

and in paragraph (b) “immigration functions” means functions under the Immigration Acts within the meaning of section 64(2) of the Immigration, Asylum and Nationality Act 2006 [c.13] (an Act of Parliament, as it has effect in the Island).

(3) In subsection (1) “Manx driving licence” means a licence to drive a motor vehicle granted under Schedule 3 to the Road Traffic Act 1985 [c.23].

(4) The Department of Home Affairs may by order modify the list of documents in subsection (1).

(5) An order under subsection (4) must not come onto operation unless it is approved by Tynwald.”.

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

“(k) an offence under section 11A of the Forgery Act 1952 [XVIII p.6].”.

PART 5

AMENDMENTS TO THE BAIL ACT 1952

Bail : absconding and breach of conditions

Amendment of section 3A

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7. In section 3A of the Bail Act 1952 [XVIII p.78] (conditions for bail), after subsection (2) add—

“(3) If a person—

- (a) is released on bail in criminal proceedings, and
- (b) without reasonable cause acts in contravention of any requirements under subsection (1),

that person shall be guilty of an offence.

(4) It shall be for the accused to prove that there was reasonable cause for failure to surrender to custody.

(5) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's contravention of any requirement.

(6) An offence under subsection (3) shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(7) Where a court of summary jurisdiction convicts a person of an offence under subsection (3) the court may, if it thinks—

- (a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict; or
- (b) in a case where it commits that person for trial to the Court of General Gaol Delivery for another offence, that it would be appropriate for that person to be dealt with for the offence under

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subsection (3) by the court before which that person is tried for the other offence,

commit that person in custody or on bail to the Court of General Gaol Delivery for sentence.

(8) A person who is convicted summarily of an offence under subsection (3) and is not committed to the Court of General Gaol Delivery for sentence shall be liable to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(9) A person who is so committed for sentence or is dealt with as for such a contempt shall be liable to custody for a term not exceeding 12 months or to a fine or to both.

(10) In any proceedings for an offence under subsection (3) a document purporting to be a copy of the part of the official record which relates to the requirements imposed under subsection (3) and to be duly certified to be a true copy of that part of the record shall be evidence of the requirements.

(11) Section 75 of the Summary Jurisdiction Act 1989 [c.15] (limitation of time) shall not apply in relation to an offence under subsection (3).

(12) Where a person has been released on bail in criminal proceedings and that bail was granted by a constable, a court of summary jurisdiction shall not try that person for an offence under subsection (3) in relation to that bail (the “relevant offence”) unless either or both of subsections (13) and (14) applies.

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(13) This subsection applies if a complaint is made for the relevant offence within 6 months from the time of the commission of the relevant offence.

(14) This subsection applies if a complaint is made for the relevant offence no later than 3 months from the time of the occurrence of the first of the events mentioned in subsection (15) to occur after the commission of the relevant offence.

(15) Those events are—

- (a) the person surrenders to custody at the appointed place;
- (b) the person is arrested, or attends at a police station, in connection with the relevant offence or the offence for which the person was granted bail;
- (c) the person appears or is brought before a court in connection with the relevant offence or the offence for which the person was granted bail.

(16) In this section, “bail in criminal proceedings” means—

- (a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or
- (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued.”.

Insertion of new section 13A

8. After section 13 of the Bail Act 1952 [XVIII p.78] insert –

“Offence of absconding by person released on bail

13A.(1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody that person shall be guilty of an offence.

(2) If a person who—

(a) has been released on bail in criminal proceedings; and

(b) having reasonable cause, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable that person shall be guilty of an offence.

(3) It shall be for the accused to prove that there was reasonable cause for the failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) An offence under subsection (1) or (2) shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(6) Where a court of summary jurisdiction convicts a person of an offence under subsection (1) or (2) the court may, if it thinks—

(a) that the circumstances of the offence are such that greater punishment should be inflicted for that offence than the court has power to inflict, or

(b) in a case where it commits that person for trial to the Court of General Gaol Delivery for another offence, that it would be

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appropriate for that person to be dealt with for the offence under subsection (1) or (2) by the court before which that person is tried for the other offence,

commit that person in custody or on bail to the Court of General Gaol Delivery for sentence.

(7) A person who is convicted summarily of an offence under subsection (1) or (2) and is not committed to the Court of General Gaol Delivery for sentence shall be liable to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(8) A person who is so committed for sentence or is dealt with as for such a contempt shall be liable to custody for a term not exceeding 12 months or to a fine or to both.

(9) In any proceedings for an offence under subsection (1) or (2) a document purporting to be a copy of the part of the official record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(10) Section 75 of the Summary Jurisdiction Act 1989 [c.15] (limitation of time) shall not apply in relation to an offence under subsection (1) or (2).

(11) Where a person has been released on bail in criminal proceedings and that bail was granted by a constable, a court of summary jurisdiction shall not try that person for an offence under subsection (1) or (2) in relation to that

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bail (the “relevant offence”) unless either or both of subsections (12) and (13) applies.

(12) This subsection applies if a complaint is made for the relevant offence within 6 months from the time of the commission of the relevant offence.

(13) This subsection applies if a complaint is made for the relevant offence no later than 3 months from the time of the occurrence of the first of the events mentioned in subsection (14) to occur after the commission of the relevant offence.

(14) Those events are—

- (a) the person surrenders to custody at the appointed place;
- (b) the person is arrested, or attends at a police station, in connection with the relevant offence or the offence for which the person was granted bail;
- (c) the person appears or is brought before a court in connection with the relevant offence or the offence for which the person was granted bail.

(15) In this section, “bail in criminal proceedings” means—

- (a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or
- (b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued.”.

PART 6
AMENDMENTS TO THE
RESTRICTION OF OFFENSIVE WEAPONS ACT 1963

Offensive weapons

Amendment of section 1

9. In section 1(1) of the Restriction of Offensive Weapons Act 1963 [XIX p.864] (penalties for offences in connection with dangerous weapons), for “three months” and “£1,000” substitute “6 months” and “£5,000” respectively.

PART 7
AMENDMENTS TO THE
CHILDREN AND YOUNG PERSONS ACT 1966

Test purchases by under-age persons

Insertion of new section 6F

10. After section 6 of the Children and Young Persons Act 1966 [XX p.89] insert—

“Test purchases by under-age persons

6F. (1) This section applies in respect of offences under a prescribed enactment under which it is an offence for a person—

- (a) to sell or supply any thing (“a restricted item”); or
- (b) to attempt to sell or supply a restricted item,

to a person under an age specified in that enactment.

(2) A person under that age who purchases or acquires any restricted item or attempts to purchase or acquire a restricted item does not commit an offence under a prescribed enactment if acting in accordance with a request by an authorised officer who is acting in the course of the officer’s duty for the purpose of determining whether or not the provisions of the enactment are being complied with.

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(3) An authorised officer who makes a request in the circumstances specified in subsection (2) does not commit an offence in respect of that request.

(4) The Department of Home Affairs may issue a code of practice about—

(a) requests referred to in subsection (2); and

(b) the issue of warning notices to persons who have or are believed to have—

(i) sold or supplied any restricted item; or

(ii) attempted to sell or supply a restricted item,

to a person under an age specified in the prescribed enactment.

(5) A code of practice under subsection (4) must not come into operation unless it is approved by Tynwald.

(6) In making a request referred to in subsection (2), an authorised officer must have regard to any code of practice for the time being in force under this section.

(7) In this section—

“authorised officer” means—

(a) a constable;

(b) an officer of the Isle of Man Office of Fair Trading authorised for the purpose by that Office.

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“prescribed enactment” means an enactment specified for the purposes of this section in an order made by the Department of Home Affairs.

(8) An order under subsection (7) must not come into operation unless it is approved by Tynwald.”.

PART 8

AMENDMENTS TO THE FIREARMS ACT 1968

Firearms

Amendment of sections 2 and 3

11. (1) In paragraph (b) of section 2 of the Firearms Act 1968 [XX p.464] (carrying firearms), the words “unless the firearm is an air weapon,” are repealed.

(2) In paragraph (b) of section 3 of the Firearms Act 1968 [c.14] (trespassing with firearms), the words “unless the firearm is an air weapon,” are repealed.

PART 9

AMENDMENTS TO THE MISUSE OF DRUGS ACT 1976

Supply of controlled drugs

Insertion of new section 4B

P2005/17/1

12. (1) After section 4A of the Misuse of Drugs Act 1976 [c. 21] insert—

“Aggravation of offence of supply of controlled drug

P1971/38/4A

4B. (1) This section applies if—

- (a) a court is considering the seriousness of an offence under section 4(3) of this Act; and

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- (b) at the time the offence was committed the offender had attained the age of 18.
- (2) If either of the following conditions is met the court—
 - (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and
 - (b) must state in open court that the offence is so aggravated.
- (3) The first condition is that the offence was committed on or in the vicinity of school premises at a relevant time.
- (4) The second condition is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.
- (5) In subsection (3), a relevant time is—
 - (a) any time when the school premises are in use by persons under the age of 18;
 - (b) one hour before the start and one hour after the end of any such time.
- (6) For the purposes of subsection (4), a person uses a courier in connection with an offence under section 4(3) of this Act if he or she causes or permits another person (the courier)—
 - (a) to deliver a controlled drug to a third person; or
 - (b) to deliver a drug related consideration to himself or herself or a third person.

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(7) For the purposes of subsection (6), a drug related consideration is a consideration of any description which—

- (a) is obtained in connection with the supply of a controlled drug; or
- (b) is intended to be used in connection with obtaining a controlled drug.

(8) In this section—

“school premises” means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and

“school” has the same meaning as in the Education Act 2001 [c.33].”.

(2) Section 4B of the Misuse of Drugs Act 1976 (c. 21) (inserted by subsection (1)) does not apply to an offence committed before this section comes into operation.

Travel restrictions on drug trafficking offenders

Insertion of new sections 27A to 27E

13. After the cross-heading “Miscellaneous and supplementary provisions” immediately before section 28 of the Misuse of Drugs Act 1976 [c. 21] insert—

“Power to make travel restriction orders

P2001/16/33

27A.(1) This section applies where—

- (a) a person (“the offender”) has been convicted by any court of a post-commencement drug trafficking offence;

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- (b) the court has determined that it would be appropriate to impose a sentence of custody for that offence; and
 - (c) the term of custody which the court considers appropriate is a term of 4 years or more.
- (2) It is the duty of the court, on sentencing the offender—
- (a) to consider whether it would be appropriate for the sentence for the offence to include the making of a travel restriction order in relation to the offender;
 - (b) if the court determines that it is so appropriate, to make such travel restriction order in relation to the offender as the court thinks suitable in all the circumstances (including any other convictions of the offender for post-commencement drug trafficking offences in respect of which the court is also passing sentence); and
 - (c) if the court determines that it is not so appropriate, to state its reasons for not making a travel restriction order.
- (3) A travel restriction order is an order that prohibits the offender from leaving the Island at any time in the period which—
- (a) begins with the offender's release from custody; and
 - (b) continues after that time for such period of not less than 2 years as may be specified in the order.
- (4) A travel restriction order may contain a direction to the offender to deliver up, or cause to be delivered up, to the court any UK passport held by him or her; and where such a direction is given, the court must send any

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passport delivered up in pursuance of the direction to the Chief Secretary's Office.

(5) Where the offender's passport is held by the Chief Secretary's Office by reason of the making of any direction contained in a travel restriction order, the Chief Secretary's Office (without prejudice to any other power or duty to retain the passport)—

- (a) may retain it for so long as the prohibition imposed by the order applies to the offender, and is not for the time being suspended; and
- (b) must not return the passport after the prohibition has ceased to apply, or when it is suspended, except where the passport has not expired and an application for its return is made to it by the offender.

(6) In this section "post-commencement"—

- (a) except in relation to an offence that is a drug trafficking offence by virtue of an order under section 27B(1)(c), means committed after the coming into operation of this section; and
- (b) in relation to an offence that is a drug trafficking offence by virtue of such an order, means committed after the coming into operation of that order.

(7) References in this section to the offender's release from custody are references to his or her first release from custody after the imposition of the travel restriction order which is neither—

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- (a) a release on bail; nor
- (b) a temporary release for a fixed period.

(8) In this section “UK passport” means a United Kingdom passport within the meaning of the Immigration Act 1971 [c. 77] of Parliament (as it has effect in the Island).

Meaning of “drug trafficking offence”

P2001/16/34

27B. (1) In section 27A, “drug trafficking offence” means any of the following offences (including one committed by aiding, abetting, counselling or procuring)—

- (a) an offence under section 4(2) or (3) (production and supply of controlled drugs);
- (b) an offence under section 20 (assisting in or inducing commission outside the Island of an offence punishable under a corresponding law);
- (c) any such other offence under this Act as may be designated by order made by the Department of Home Affairs;
- (d) an offence under—
 - (i) section 47(2) or (3) of the Customs and Excise Management Act 1986 [c. 34] (improper importation);
 - (ii) section 69(2) of that Act (exportation); or
 - (iii) section 178 of that Act (fraudulent evasion),

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in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of this Act;

(e) an offence under section 330 of the Criminal Code 1872 [IV p.160] of conspiracy to commit any of the offences in paragraphs (a) to (d);

(f) an offence under section 9 of the Criminal Law Act 1981 [c. 20] of attempting to commit any of those offences; and

(g) an offence under section 19 of this Act of inciting another person to commit any of those offences.

(2) An order under subsection (1)(c) must not come into operation unless it is approved by Tynwald.

(3) An order under subsection (1)(c) may provide, in relation to any offence designated by such an order, that it is to be treated as so designated only—

(a) for such purposes; and

(b) in cases where it was committed in such manner or in such circumstances,

as may be described in the order.

Revocation and suspension of a travel restriction order

P2001/16/35

27C.(1) Subject to the following provisions of this section, the court by which a travel restriction order has been made in relation to any person under section 27A may—

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- (a) on an application made by that person at any time which is—
 - (i) after the end of the minimum period; and
 - (ii) is not within 3 months after the making of any previous application for the revocation of the prohibition,

revoke the prohibition imposed by the order with effect from such date as the court may determine; or
- (b) on an application made by that person at any time after the making of the order, suspend the prohibition imposed by the order for such period as the court may determine.

(2) A court to which an application for the revocation of the prohibition imposed on any person by a travel restriction order is made must not revoke that prohibition unless it considers that it is appropriate to do so in all the circumstances of the case and having regard, in particular, to—

- (a) that person's character;
- (b) his or her conduct since the making of the order; and
- (c) the offences of which he or she was convicted on the occasion on which the order was made.

(3) A court must not suspend the prohibition imposed on any person by a travel restriction order for any period unless it is satisfied that there are exceptional circumstances, in that person's case, that justify the suspension on compassionate grounds of that prohibition for that period.

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(4) In making any determination on an application for the suspension of the prohibition imposed on any person by a travel restriction order, a court (in addition to considering the matters mentioned in subsection (3)) is to have regard to—

- (a) that person's character;
- (b) his or her conduct since the making of the order;
- (c) the offences of which he or she was convicted on the occasion on which the order was made; and
- (d) any other circumstances of the case that the court considers relevant.

(5) Where the prohibition imposed on any person by a travel restriction order is suspended, it shall be the duty of that person—

- (a) to be in the Island when the period of the suspension ends; and
- (b) if the order contains a direction under section 27A(4), to surrender, before the end of that period, any passport returned or issued to that person, in respect of the suspension, by the Chief Secretary's Office,

and a passport that is required to be surrendered under paragraph (b) must be surrendered to the Chief Secretary's Office in such manner as the Chief Secretary's Office may direct at the time when it returns or issues it.

(6) Where the prohibition imposed on any person by a travel restriction order is suspended for any period under this section, the end of the period of the prohibition imposed by the order is to be treated (except for the purposes

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of subsection (7)) as postponed (or, if there has been one or more previous suspensions, further postponed) by the length of the period of suspension.

- (7) In this section “the minimum period”—
- (a) in the case of a travel restriction order imposing a prohibition for a period of 4 years or less, means the period of 2 years beginning at the time when the period of the prohibition began;
 - (b) in the case of a travel restriction order imposing a prohibition of more than 4 years but less than 10 years, means the period of 4 years beginning at that time; and
 - (c) in any other case, means the period of 5 years beginning at that time.

Offences of contravening orders

P2001/16/36

27D.(1) A person who leaves the Island at a time when he or she is prohibited from leaving it by a travel restriction order commits an offence and is liable—

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

(2) A person who is not in the Island at the end of a period during which a prohibition imposed on him or her by a travel restriction order has been suspended commits an offence and is liable—

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

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

(3) A person who fails to comply with—

(a) a direction contained in a travel restriction order to deliver up a passport to a court, or to cause such a passport to be delivered up; or

(b) any duty imposed on him or her by section 27C(5)(b) to surrender a passport to the Chief Secretary's Office,

commits an offence and is liable, on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(4) This section has effect subject to section 27E(3).

Saving for powers to remove a person from the Island

P2001/16/37

27E. (1) A travel restriction order made in relation to any person must not prevent the exercise in relation to that person of any prescribed removal power.

(2) A travel restriction order made in relation to any person is to remain in force, notwithstanding the exercise of any prescribed removal power in relation to that person, except in so far as either—

(a) the Department of Home Affairs by order otherwise provides; or

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(b) the travel restriction order is suspended or revoked under section 27C.

(3) No person commits an offence under section 27D in respect of any act or omission required of him or her by an obligation imposed in the exercise of a prescribed removal power.

(4) In this section “a prescribed removal power” means any such power conferred by or under any enactment as—

(a) consists of a power to order or direct the removal of a person from the Island; and

(b) is designated for the purposes of this section by an order made by the Department of Home Affairs.

(5) An order under subsection (2)(a) or (4)(b) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.

(6) An order under subsection (2)(a)—

(a) may make different provision for different cases; and

(b) may contain such incidental, supplemental, consequential and transitional provision as the Department of Home Affairs thinks fit.

(7) References in this section to a person’s removal from the Island include references to his or her deportation, extradition, repatriation, delivery up or other transfer to a place outside the Island.”.

PART 10

AMENDMENTS TO THE TELECOMMUNICATIONS ACT 1984

Telecommunications systems

Amendment of section 28

14. In section 28(1) of the Telecommunications Act 1984 [c.11] (improper use of public telecommunications system) for “£2,500” substitute “£5,000”.

PART 11

AMENDMENTS TO THE ROAD TRAFFIC ACT 1985

Road traffic offences – disqualification

Amendment of section 53

15. In section 53 of the Road Traffic Act 1985 [c.23] (prosecution and punishment of offences), after subsection (5) insert—

“(6) A court ordering a person to be disqualified for holding or obtaining a licence to drive a motor vehicle (by virtue of Part II of Schedule 3) may (but is not obliged to) order the period of disqualification to commence on the expiration of any term of custody imposed on that person by that or any other court for an offence under this Act.

(7) In subsection (6), “expiration of any term of custody” includes the person’s early release from custody.”.

PART 12

AMENDMENTS TO THE SUMMARY JURISDICTION ACT 1989

Extension of detention for suspected drug offenders

Insertion of new section 84B

P2005/17/8

16. After section 84A of Summary Jurisdiction Act 1989 [c.15] insert—

“Remands of suspected drug offenders to detention

P1988/33/152

84B. (1) Where—

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(a) a person is brought before a court of summary jurisdiction charged with—

(i) an offence against section 5(2) of the Misuse of Drugs Act 1976 [c.21] (possession of controlled drug); or

(ii) a drug trafficking offence; and

(b) the court has power to remand him or her,

the court may, if it considers it appropriate to do so, remand the person in custody for a period not exceeding 192 hours.

(2) This section does not apply where a charge is brought against a person under the age of 17.

(3) In this section “drug trafficking offence” has the same meaning as in section 27B of the Misuse of Drugs Act 1976 [c.21].”.

PART 13

AMENDMENTS TO THE CONSUMER PROTECTION ACT 1991

Cancellation rights

Repeal of section 47A(2)(c)

17. Section 47A(2)(c) of the Consumer Protection Act 1991 [c.11] (failure to provide notice of cancellation rights) is repealed.

Cold calling

Insertion of new Part VIIIB

18. After Part VIIIA of the Consumer Protection Act 1991 [c.11] insert—

“PART VIIIB

COLD CALLING

Contracts to which this Part applies

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57O.(1) Subject to subsections (2) and (3), this Part applies to a contract between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made—

- (a) during a visit by the trader to the consumer's home, or to the home of another individual;
- (b) during an excursion organised by the trader away from his or her business premises; or
- (c) after an offer made by the consumer during such a visit or excursion.

(2) This Part does not apply to a contract made during the course of a solicited visit or a contract made after an offer made by a consumer during the course of a solicited visit.

(3) The Board may by order prescribe contracts to which this Part does not apply.

Offence to enter into contract to which this Part applies

57P. (1) A trader commits an offence if he or she enters into a contract to which this Part applies.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding £5,000.

No contracting-out of contracts to which this Part applies

57Q. A term contained in a contract is void if, and to the extent that, it is inconsistent with section 57P.

Defence of due diligence

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57R. In any proceedings against a person for an offence under section 57P it is a defence for that person to prove—

- (a) that the commission of the offence was due to—
 - (i) the act or default of another; or
 - (ii) reliance on information given by another; and
- (b) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or herself or any person under his or her control.

Liability of persons other than the principal offender

57S. Where the commission by a person of an offence under section 57P is due to the act or default of another person, that other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first person.

Offences committed by bodies of persons

57T. (1) Where an offence under section 57P committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his or her part,

the officer, as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) a reference to an officer of a body corporate includes a reference to—

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- (a) a director, manager, secretary or other similar officer; and
- (b) a person purporting to act as a director, manager, secretary or other similar officer.

Powers of investigation

57U.(1) If a duly authorised officer of the Board has reasonable grounds for suspecting that an offence has been committed under section 57P, he or she may require a person carrying on or employed in a business to produce any document relating to the business, and take copies of it or any entry in it for the purposes of ascertaining whether such an offence has been committed.

(2) If the officer has reasonable grounds for believing that any documents may be required as evidence in proceedings for such an offence, he or she may seize and detain them and shall, if he or she does so, inform the person from whom they are seized.

(3) In this section “document” includes information recorded in any form.

(4) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form.

(5) An officer seeking to exercise a power under this section must do so only at a reasonable hour and on production (if required) of his or her identification and authority.

(6) Nothing in this section requires a person to produce, or authorises the taking from a person of, a document which the other person would be

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entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege.

Obstruction of authorised officers

57V. (1) A person commits an offence if he or she—

- (a) intentionally obstructs an officer of the Board acting in pursuance of his or her functions under this Part;
- (b) without reasonable cause fails to comply with any requirement properly made of him or her by such an officer under section 57U; or
- (c) without reasonable cause fails to give such an officer any other assistance or information which he or she may reasonably require for the purpose of the performance of the officer's functions under this Part.

(2) A person commits an offence if, in giving any information which is required of him or her under subsection (1)(c), he or she makes any statement which he or she knows to be false in a material particular.

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £1,000.

(4) Nothing in this section or section 57U is to be construed as requiring a person to answer any question or give any information if to do so might incriminate him or her.

Interpretation of Part VIIIB

57W.(1) In this Part—

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“consumer” means a natural person who in making a contract to which this Part applies is acting for purposes which can be regarded as outside his or her trade or profession;

“solicited visit” has the meaning given in subsection (2);

“trader” means a person who, in making a contract to which this Part applies, is acting in his or her commercial or professional capacity and includes anyone acting in the name or on behalf of a trader.

(2) A solicited visit means a visit by a trader, whether or not he or she is the trader who supplies the goods or services, to a consumer’s home or to the home of another individual, which is made at the express request of the consumer but does not include—

(a) a visit by a trader which is made after he or she, or a person acting in his or her name or on his or her behalf—

(i) telephones the consumer (otherwise than at the consumer’s express request) and indicates during the course of the telephone call (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to visit the consumer; or

(ii) visits the consumer (otherwise than at the consumer’s express request) and indicates during the course of that visit (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to make a subsequent visit to the consumer; or

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- (b) a visit during which the contract which is made relates to goods and services other than those concerning which the consumer requested the visit of the trader, provided that when the visit was requested the consumer did not know, or could not reasonably have known, that the supply of such goods or services formed part of the trader's commercial or professional activities.”.

PART 14

AMENDMENTS TO THE CRIMINAL JUSTICE ACT 1991

Offensive weapons

Amendment of section 27

19. (1) In section 27 of the Criminal Justice Act 1991 [c.25] (offensive weapons), for subsection (9) substitute—

“(9) Subject to subsection (11), where a person is charged with an offence under subsection (1) in respect of conduct relating to a weapon to which this section applies, it shall be a defence to show that his or her conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (10).

(10) Those purposes are—

- (a) the purposes of theatrical performances and of rehearsals for such performances;
- (b) the production of films (as defined in section 5 of the Copyright Act 1991 [c.8]);
- (c) the production of television programmes.

(11) Where—

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- (a) a person is charged with an offence under subsection (1) in respect of conduct relating to a weapon to which this section applies (a “relevant weapon”), and
 - (b) the relevant weapon is one the importation of which is prohibited,
- subsection (9) does not apply unless the condition in subsection (12) is satisfied.

(12) The condition is that there is in operation in the Island provision to the effect that it is a defence for a person (“A”) charged with a relevant offence in respect of A’s conduct relating to a relevant weapon to show that A’s conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (10).

(13) In subsection (12), “relevant offence” means an offence under section 47(2) or (3) of the Customs and Excise Management Act 1986 [c.34] (improper importation).

(14) For the purposes of this section, a person shall be taken to have shown a matter specified in subsection (5), (7), (8) or (9) if—

- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.

(15) The Department of Home Affairs may by order modify the application of this section in relation to any description of weapon specified in the order.

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(16) An order under subsection (15) may make different provision for different purposes.

(17) An order under subsection (15) shall not come into operation unless it is approved by Tynwald.

(18) This section shall not have effect in relation to anything done before it comes into operation.”.

Insertion of new section 27D

20. After section 27C of the Criminal Justice Act 1991 [c.25] insert—

“Application of section 27 to swords: further provision

27D.(1) This section applies where the Department of Home Affairs makes an order under section 27(2) directing that the section shall apply to swords.

(2) The Department of Home Affairs may include in the order provision for or in connection with modifying section 27 in its application to swords.

(3) The Department of Home Affairs may in particular—

(a) provide for defences (including in particular defences relating to religious, educational, cultural or sporting purposes) to offences;

(b) increase the penalties specified in section 27(1) (or that subsection as modified) so as to make a person liable—

(i) on conviction on information to custody for a term not exceeding 2 years or to a fine or both;

(ii) on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 or both;

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- (c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Department of Home Affairs may make provision for or in connection with—

- (a) the granting, and revocation, by it of authorisations in relation to the acquisition of swords;
- (b) enabling it to specify conditions in such authorisations;
- (c) requiring persons to whom authorisations are granted to comply with such conditions;
- (d) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—

- (a) custody for a term not exceeding 12 months; or
- (b) a fine not exceeding £5,000,

or both.

(7) The power conferred by subsection (2) is without prejudice to the generality of the power conferred by section 27(15).”.

PART 15

AMENDMENTS TO THE SEXUAL OFFENCES ACT 1992

Sexual acts with children and young persons

Insertion of new sections 6A to 6G

21. After section 6 of the Sexual Offences Act 1992 [c.6] insert—

“Causing or inciting a child under 13 to engage in sexual activity

P2003/42/8

6A. (1) A person (“A”) commits an offence if—

- (a) A intentionally causes or incites another person (“B”) to engage in an activity;
- (b) the activity is sexual; and
- (c) B is under 13.

(2) A person guilty of an offence under this section, if the activity caused or incited involved—

- (a) penetration of B’s anus or vagina;
- (b) penetration of B’s mouth with a person’s penis;
- (c) penetration of a person’s anus or vagina with a part of B’s body or by B with anything else; or
- (d) penetration of a person’s mouth with B’s penis,

is liable, on conviction on information, to custody for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

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- (a) on conviction on information, to custody for a term not exceeding 14 years;
- (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or both.

Sexual activity with a child

P2003/42/9

- 6B.** (1) A person aged 18 or over (“A”) commits an offence if—
- (a) A intentionally touches another person (B);
 - (b) the touching is sexual; and
 - (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this section, if the touching involved—
- (a) penetration of B’s anus or vagina with a part of A’s body or anything else;
 - (b) penetration of B’s mouth with A’s penis;
 - (c) penetration of A’s anus or vagina with a part of B’s body; or
 - (d) penetration of A’s mouth with B’s penis,

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is liable, on conviction on information, to custody for a term not exceeding 14 years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on conviction on information, to custody for a term not exceeding 14 years;
- (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or both.

Causing or inciting a child to engage in sexual activity

P2003/42/10

6C. (1) A person aged 18 or over (“A”) commits an offence if—

- (a) A intentionally causes or incites another person (“B”) to engage in an activity;
- (b) the activity is sexual; and
- (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.

(2) A person guilty of an offence under this section, if the activity caused or incited involved—

- (a) penetration of B’s anus or vagina;
- (b) penetration of B’s mouth with a person’s penis;

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- (c) penetration of a person's anus or vagina with a part of B's body or
by B with anything else; or
- (d) penetration of a person's mouth with B's penis,

is liable, on conviction on information, to custody for a term not exceeding 14 years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on conviction on information, to custody for a term not exceeding 14 years;
- (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or both.

Engaging in sexual activity in the presence of a child

P2003/42/11

6D. (1) A person aged 18 or over ("A") commits an offence if—

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it—
 - (i) when another person ("B") is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it; and
- (d) either—

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- (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on information, to custody for a term not exceeding 10 years;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.

Causing a child to watch a sexual act

P2003/42/12

- 6E.** (1) A person aged 18 or over (“A”) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (“B”) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
 - (b) the activity is sexual; and
 - (c) either—
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) A person guilty of an offence under this section is liable—

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- (a) on conviction on information, to custody for a term not exceeding 10 years;
- (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.

Child sex offences committed by children or young persons

P2003/42/13

6F. (1) A person under 18 (“A”) commits an offence if A does anything which would be an offence under any of sections 6B to 6E if A were aged 18.

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

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

Arranging or facilitating commission of a child sex offence

P2003/42/14

6G. (1) A person (“A”) commits an offence if—

- (a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world; and
- (b) doing it will involve the commission of an offence under any of sections 6B to 6F.

(2) A does not commit an offence under this section if—

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- (a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do; and
 - (b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.
- (3) For the purposes of subsection (2), a person acts for the protection of a child if he or she acts for the purpose of—
- (a) protecting the child from sexually transmitted infection;
 - (b) protecting the physical safety of the child;
 - (c) preventing the child from becoming pregnant; or
 - (d) promoting the child's emotional well-being by the giving of advice,
- and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to custody for a term not exceeding 14 years;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.”.

Amendment of Schedule 1

22. (1) Schedule 1 to the Criminal Justice Act 2001 [c.4] (registration of sex offenders) is amended as follows.

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(2) After paragraph 2(1)(a)(vi) (sexual act with mental patient)
insert—

“(via) section 6A (causing or inciting a child under 13 to engage in sexual activity);

(vib) section 6B (sexual activity with a child);

(vic) section 6C (causing or inciting a child to engage in sexual activity);

(vid) section 6D (engaging in sexual activity in the presence of a child);

(vie) section 6E (causing a child to watch a sexual act);

(vif) section 6F (child sex offences committed by children or young persons);

(vig) section 6G (arranging or facilitating commission of a child sex offence);”.

Further sexual offences

Insertion of new sections 14A to 14D

23. After section 14 of the Sexual Offences Act 1992 [c.6] insert—

“Exposure

P2003/42/66

14A.(1) A person (“A”) commits an offence if A—

(a) intentionally exposes A’s genitals; and

(b) intends that someone will see them and be caused alarm or distress.

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

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

Voyeurism

P2003/42/67

14B. (1) A person (“A”) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, A observes another person doing a private act; and
- (b) A knows that the other person does not consent to being observed for A’s sexual gratification.

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

- (a) A operates equipment with the intention of enabling another person (“B”) to observe, for the purpose of obtaining sexual gratification, a third person (“C”) doing a private act; and
- (b) A knows that C does not consent to A’s operating equipment with that intention.

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

- (a) A records another person (“B”) doing a private act;
- (b) A does so with the intention that A or a third person (“C”) will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and

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(c) A knows that B does not consent to A's recording the act with that intention.

(4) A person ("A") commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit an offence under subsection (1).

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

(a) on conviction on indictment, to custody for a term not exceeding 2 years;

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

Voyeurism: interpretation

P2003/42/68

14C.(1) For the purposes of section 14B, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—

(a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;

(b) the person is using a lavatory; or

(c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In section 14B, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

Sexual activity in a public lavatory

P2003/42/71

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14D.(1) A person (“A”) commits an offence if—

- (a) A is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;
- (b) A intentionally engages in an activity; and
- (c) the activity is sexual.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider it to be sexual.

(3) A person guilty of an offence under this section is liable on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.”.

Extreme pornographic images

Insertion of new sections 31A to 31F

24. After section 31 of Sexual Offences Act 1992 [c.6] insert—

“Extreme pornographic images

Possession of extreme pornographic images

P2008/4/63

31A.(1) It is an offence for a person to be in possession of an extreme pornographic image.

- (2) An “extreme pornographic image” is an image which is both—
 - (a) pornographic; and
 - (b) an extreme image.

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(3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images; and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An “extreme image” is an image which—

(a) falls within subsection (7); and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

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(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

- (a) an act which threatens a person's life;
- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;
- (c) an act which involves sexual interference with a human corpse; or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(8) In this section “image” means—

- (a) a moving or still image (produced by any means); or
- (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

Exclusion of classified films etc

P2008/4/64

31B. (1) Section 31A does not apply to excluded images.

(2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an “excluded image” if—

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(a) it is contained in a recording of an extract from a classified work;
and

(b) it is of such a nature that it must reasonably be assumed to have
been extracted (whether with or without other images) solely or
principally for the purpose of sexual arousal.

(4) Where an extracted image is one of a series of images contained in
the recording, the question whether the image is of such a nature as is
mentioned in subsection (3)(b) is to be determined by reference to—

(a) the image itself; and

(b) (if the series of images is such as to be capable of providing a
context for the image) the context in which it occurs in the series of
images,

and section 31A(5) applies in connection with determining that question as it
applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording
is a recording of the whole or part of a classified work, any alteration
attributable to—

(a) a defect caused for technical reasons or by inadvertence on the part
of any person; or

(b) the inclusion in the recording of any extraneous material (such as
advertisements),

is to be disregarded.

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(6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 31A (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.

(7) In this section—

“classified work” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

“classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1995 [c.19];

“designated authority” means an authority which has been designated under section 4 of the Video Recordings Act 1984 (of Parliament) [c.39];

“extract” includes an extract consisting of a single image;

“image” and “pornographic” have the same meanings as in section 31A;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

(8) Where any alteration is made to a classified work, the classification certificate is not to be treated for the purposes of this section as issued in respect of the altered work.

Defences: general

P2008/4/65

31C.(1) Where a person is charged with an offence under section 31A, it is a defence for the person to prove any of the matters mentioned in subsection (2).

(2) The matters are—

- (a) that the person had a legitimate reason for being in possession of the image concerned;
- (b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;
- (c) that the person—
 - (i) was sent the image concerned without any prior request having been made by or on behalf of the person; and
 - (ii) did not keep it for an unreasonable time.

(3) In this section “extreme pornographic image” and “image” have the same meanings as in section 31A.

Defence: participation in consensual acts

P2008/4/66

31D.(1) This section applies where—

- (a) a person (“D”) is charged with an offence under section 31A; and
- (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.

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- (2) It is a defence for D to prove—
- (a) that D directly participated in the act or any of the acts portrayed;
and
 - (b) that the act or acts did not involve the infliction of any non-consensual harm on any person; and
 - (c) if the image portrays an act within section 31A(7)(c), that what is portrayed as a human corpse was not in fact a corpse.
- (3) For the purposes of this section harm inflicted on a person is “non-consensual” harm if—
- (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
 - (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

Penalties etc for possession of extreme pornographic images

P2008/4/67

31E. (1) This section has effect where a person is guilty of an offence under section 31A.

(2) Except where subsection (3) applies to the offence, the offender is liable—

- (a) on conviction on information, to custody for a term not exceeding 3 years or a fine or both;
- (b) on summary conviction, to custody for a term not exceeding one year or a fine not exceeding £5,000 or both.

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(3) If the offence relates to an image that does not portray any act within section 31A(7)(a) or (b), the offender is liable—

(a) on conviction on information, to custody for a term not exceeding 2 years or a fine or both;

(b) on summary conviction, to custody for a term not exceeding one year or a fine not exceeding £5,000 or both.

Special rules relating to providers of information society services

P2008/4/68

31F. Schedule 1A makes special provision in connection with the operation of section 31A in relation to persons providing information society services within the meaning of that Schedule.”.

Insertion of new Schedule 1A

P2008/4/Sch14

25. After Schedule 1 to the Sexual Offences Act 1992 [c.6] insert—

“SCHEDULE 1A
SPECIAL RULES RELATING TO
PROVIDERS OF INFORMATION SOCIETY SERVICES

Section 31F

Domestic service providers: extension of liability

1. (1) This paragraph applies where a service provider is established in the Island (a “domestic service provider”).

(2) Section 31A(1) applies to a domestic service provider who—

(a) is in possession of an extreme pornographic image in the United Kingdom or another EEA state; and

(b) is in possession of it there in the course of providing information society services,

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as well as to persons (of any description) who are in possession of such images in the Island.

(3) In the case of an offence under section 31A, as it applies to a domestic service provider by virtue of sub-paragraph (2)—

- (a) proceedings for the offence may be taken in the Island; and
- (b) the offence may for all incidental purposes be treated as having been committed in the Island.

(4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 3 to 5.

Non-Island service providers: restriction on institution of proceedings

2. (1) This paragraph applies where a service provider is established in the United Kingdom or another EEA state (a “non-Island service provider”).

(2) Proceedings for an offence under section 31A may not be instituted against a non-Island service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.

(3) The derogation condition is satisfied where the institution of proceedings—

- (a) is necessary for the purposes of the public interest objective;
- (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective; and
- (c) is proportionate to that objective.

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- (4) “The public interest objective” means the pursuit of public policy.

Exceptions for mere conduits

3. (1) A service provider is not capable of being guilty of an offence under section 31A in respect of anything done in the course of providing so much of an information society service as consists in—

- (a) the provision of access to a communication network; or
- (b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

- (2) The condition is that the service provider does not—

- (a) initiate the transmission;
- (b) select the recipient of the transmission; or
- (c) select or modify the information contained in the transmission.

- (3) For the purposes of sub-paragraph (1)—

- (a) the provision of access to a communication network; and
- (b) the transmission of information in a communication network,

includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

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4. (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The service provider is not capable of being guilty of an offence under section 31A in respect of the automatic, intermediate and temporary storage of information so provided, if—

(a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request; and

(b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service provider—

(a) does not modify the information;

(b) complies with any conditions attached to having access to the information; and

(c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

(a) the information at the initial source of the transmission has been removed from the network;

(b) access to it has been disabled; or

(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

5. (1) A service provider is not capable of being guilty of an offence under section 31A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if—

(a) the service provider had no actual knowledge when the information was provided that it contained offending material; or

(b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.

(2) “Offending material” means material the possession of which constitutes an offence under section 31A.

(3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

6. (1) This paragraph applies for the purposes of this Schedule.

(2) “Extreme pornographic image” has the same meaning as in section 31A.

(3) “Information society services”—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and

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- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

and “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(4) “Recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(5) “Service provider” means a person providing an information society service.

(6) For the purpose of construing references in this Schedule to a service provider who is established in the Island or in a part of the United Kingdom or in another EEA state—

- (a) a service provider is established in the Island, or in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—

- (i) effectively pursues an economic activity using a fixed establishment in the Island, or in that part of the United Kingdom, or that EEA state, for an indefinite period; and

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- (ii) in the case of a service provider established in a particular part of the United Kingdom or in another EEA state, is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;
- (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service."

PART 16

AMENDMENTS TO THE POLICE ACT 1993

Police Superintendents' Association

Insertion of new section 12A

26. (1) After section 12 of the Police Act 1993 [c.11] insert—

“Police Superintendents’ Association

12A.(1) There shall be an Isle of Man Police Superintendents’ Association (“the Association”) for the purpose of representing members of the police force of the rank of superintendent in all matters affecting their welfare and efficiency, other than questions of discipline, appointments and promotion affecting individuals.

(2) The Department shall by regulations prescribe the constitution of the Association, and regulations under this subsection may make provision as to—

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(a) the constitution of a representative body through which the Association is to act, the election and tenure of office of officers of the Association and the proceedings of the Association;

(b) meetings of members of the Association and the proceedings of such meetings;

(c) the granting of leave for attendance at meetings of the Association; and

(d) the raising, use and management of funds of the Association, the accounts to be kept of such funds and the audit of such accounts.

(3) Regulations under subsection (2) shall not be made without the concurrence of the Association given by resolution passed at a meeting of the members of the Association.

(4) The Association shall be entirely independent of and unassociated with any body or person outside the police force.”.

(2) In section 20(1) of the Police Act 1991 [c.11] (regulations), after “the Federation” (wherever occurring) insert “and the Isle of Man Superintendents’ Association”.

Police regulations

Substitution of sections 8 and 8A and insertion of new sections 8B to 8D

27. For sections 8 (police regulations) and 8A (regulations for special constables) of the Police Act 1993 [c.11] substitute—

“Police regulations

P1996/16/50

8. The Department may make regulations as to the government, discipline, administration and conditions of service of the police force.

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(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision with respect to—

- (a) the ranks to be held by members of the police force;
- (b) the qualifications for appointment and promotion of members of the police force;
- (c) periods of service on probation;
- (d) voluntary retirement of members of the police force;
- (e) the conduct, efficiency and effectiveness of members of the police force and the maintenance of discipline;
- (f) the suspension of members of the police force from membership of the force and from their office as constable;
- (g) the maintenance of personal records of members of the police force;
- (h) the duties which are or are not to be performed by members of the police force;
- (i) the treatment as occasions of police duty of attendance at meetings of the Police Federation and of any other body specified in the regulations;
- (j) the hours of duty, leave, pay and allowances of members of the police force; and
- (k) the issue, use and return of police clothing, personal equipment and accoutrements.

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(3) Without prejudice to the powers conferred by this section, regulations under this section may establish, or make provision for the establishment of, procedures for cases in which a member of the police force may be dealt with by dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution.

(4) In relation to any matter as to which provision may be made by regulations under this section, the regulations may—

- (a) authorise or require provision to be made by, or confer discretionary powers on, the Department, the Chief Constable or other persons; or
- (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations.

(5) Regulations under this section for regulating pay and allowances may be made with retrospective effect to any date specified in the regulations, but nothing in this subsection shall be construed as authorising pay or allowances payable to any person to be reduced retrospectively.

Regulations for special constables

P1996/16/51

8A. (1) The Department may make regulations as to the government, discipline, administration and conditions of service of special constables.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision with respect to—

- (a) the qualifications for appointment of special constables;
- (b) the retirement of special constables;

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- (c) the conduct of special constables and the maintenance of discipline;
- (d) the suspension of special constables from their office as constable;
- (e) the allowances payable to special constables; and
- (f) the application to special constables, subject to such modifications as may be prescribed by the regulations, of any provisions made by or under any enactment relating to the pensions payable to or in respect of members of the police force.

(3) If regulations under this section provide for the calculation of any pension payable to or in respect of special constables by reference to a scale of notional remuneration specified in the regulations, regulations under this section increasing any such notional remuneration may be made with retrospective effect to any date specified in the regulations.

(4) In relation to any matter as to which provision may be made by regulations under this section, the regulations may—

- (a) authorise or require provision to be made by, or confer discretionary powers on, the Department, the Chief Constable or other persons; or
- (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations.

Regulations for police cadets

P1996/16/52

8B. (1) The Department may make regulations as to the government, discipline, administration and conditions of service of police cadets.

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(2) In relation to any matter as to which provision may be made by regulations under this section, the regulations may—

- (a) authorise or require provision to be made by, or confer discretionary powers on, the Department, the Chief Constable or other persons; or
- (b) authorise or require the delegation by any person of functions conferred on that person by or under the regulations.

(2) Subsections (5) of section 8 shall apply to regulations under this section.

Regulations as to standard of equipment

P1996/16/53

8C. (1) The Department may make regulations requiring equipment provided or used for police purposes to satisfy such requirements as to design and performance as may be prescribed in the regulations.

(2) The Department may by regulations make any or all of the following provisions—

- (a) provision requiring all the police force, when using equipment for the purposes specified in the regulations to use only—
 - (i) the equipment which is specified in the regulations;
 - (ii) equipment which is of a description so specified; or
 - (iii) equipment which is of a type approved by the Department in accordance with the regulations;

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- (b) provision requiring all the police force to keep available for use the equipment falling within paragraph (a)(i) to (iii) which is specified or described in, or approved in accordance with, the regulations;
 - (c) provision prohibiting all the police force from using equipment of a type approved as mentioned in paragraph (a)(iii) except—
 - (i) where the conditions subject to which the approval was given are satisfied; and
 - (ii) in accordance with the other terms of that approval;
 - (d) provision requiring equipment used by the police force to comply, in the case of all the police force, with such conditions as may be specified in the regulations, or as may be approved by the Department in accordance with the regulations;
 - (e) provision prohibiting all the police force from using equipment specified in the regulations, or any equipment of a description so specified.
- (3) The Department shall not make any regulations under subsection (2) unless it considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of the police force.
- (4) In this section “equipment” includes—
- (a) vehicles; and
 - (b) headgear and protective and other clothing.

Regulation of procedures and practices

P1996/16/53A

8D. The Department may by regulations make provision requiring all the police force—

- (a) to adopt particular procedures or practices; or
- (b) to adopt procedures or practices of a particular description.”.

PART 17

AMENDMENTS TO THE CUSTODY ACT 1995

Prohibited articles

Substitution of section 19

28. For section 19 of the Custody Act 1995 [c.1] (introduction of articles) substitute—

“Sections 19AA and 19AB: classification of articles

P1952/52/40A

19. (1) This section defines the categories of articles which are referred to in sections 19AA and 19AB.

(2) A List A article is any article or substance in the following list (“List A”)—

- (a) a controlled drug (as defined for the purposes of the Misuse of Drugs Act 1976 [c.21]);
- (b) an explosive;
- (c) any firearm or ammunition (within the meaning of the Firearms Act 1947 [XVI p.586]);
- (d) any other offensive weapon (as defined in section 1(9) of the Police Powers and Procedures Act 1998 [c.9]).

(3) A List B article is any article or substance in the following list (“List B”)—

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- (a) alcoholic liquor;
- (b) a mobile telephone;
- (c) a camera;
- (d) a sound-recording device.

(4) In List B—

“camera” includes any device by means of which a photograph (as defined in section 19AD) can be produced;

“sound-recording device” includes any device by means of which a sound-recording (as defined in section 19AD) can be made.

(5) The reference in paragraph (b), (c) or (d) of List B to a device of any description includes a reference to—

- (a) a component part of a device of that description; or
- (b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).

(6) A List C article is any article or substance prescribed for the purposes of this subsection by custody rules.

(7) The Department may by order amend this section for the purpose of—

- (a) adding an entry to List A or List B;
- (b) repealing or modifying any entry for the time being included in List A or List B;

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- (c) adding, repealing or modifying any provision for the interpretation of any such entry.

- (8) An order under subsection (7) must be laid before Tynwald.

Conveyance etc of List A articles into or out of prison

P1952/52/40B

19AA.(1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List A article into or out of a prison;
- (b) causes another person to bring, throw or otherwise convey a List A article into or out of a prison;
- (c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner; or
- (d) knowing a person to be a prisoner, gives a List A article to him or her,

commits an offence.

(2) In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a specified description, by custody rules or by the Department; or
- (b) in relation to a particular prison, by the Department or by the governor or director of the prison.

In paragraph (a) “specified” means specified in the authorisation.

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(3) Authorisation may be given to specified persons or persons of a specified description—

- (a) in relation to specified articles or articles of a specified description;
- (b) in relation to specified acts or acts of a specified description; or
- (c) on such other terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(4) Authorisation given by the Department otherwise than in writing must be recorded in writing as soon as is reasonably practicable after being given.

(5) Authorisation given by the governor or director of a prison must—

- (a) be given in writing; and
- (b) specify the purpose for which it is given.

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

Conveyance etc of List B or C articles into or out of prison

P1952/52/40C

19AB.(1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List B article into or out of a prison;
- (b) causes another person to bring, throw or otherwise convey a List B article into or out of a prison;

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- (c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner; or
- (d) knowing a person to be a prisoner, gives a List B article to him or her,

commits an offence.

(2) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner;
- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner;
- (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner;
- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner;
- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner; or
- (f) while inside a prison, gives a List C article to a prisoner,

commits an offence.

(3) A person who attempts to commit an offence under subsection (2) is guilty of that offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

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- (a) he or she reasonably believed that he or she had authorisation to do the act in respect of which the proceedings are brought; or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 or to both.

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding £1,000.

(7) In this section “authorisation” means authorisation given for the purposes of this section; and subsections (1) to (3) of section 19AD apply in relation to authorisations so given as they apply to authorisations given for the purposes of section 19AC.

Other offences relating to prison security

P1952/52/40D

19AC.(1) A person who, without authorisation—

- (a) takes a photograph, or makes a sound-recording, inside a prison; or
- (b) transmits, or causes to be transmitted, any image or any sound from inside a prison by electronic communications for simultaneous reception outside the prison,

commits an offence.

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(2) It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.

(3) A person who, without authorisation—

(a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison;

or

(b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside a prison by means of electronic communications,

commits an offence.

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

(a) he or she reasonably believed that he or she had authorisation to do the act in respect of which the proceedings are brought; or

(b) in all the circumstances there was an overriding public interest which justified the doing of that act.

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

(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both; or

(b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000 or to both.

Section 19AC: meaning of “authorisation” and other interpretation

P1952/52/40E

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19AD.(1) In section 19AC (and the following provisions of this section)

“authorisation” means authorisation given for the purposes of that section—

- (a) in relation to all prisons or prisons of a specified description, by custody rules or by the Department;
- (b) in relation to a particular prison—
 - (i) by the Department;
 - (ii) by the governor or director of the prison;
 - (iii) by a person working at the prison who is authorised by the governor or director to grant authorisation on his behalf.

In paragraph (a) “specified” means specified in the authorisation.

- (2) Authorisation may be given—
 - (a) to persons generally or to specified persons or persons of a specified description; and
 - (b) on such terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(3) Authorisation given by or on behalf of the governor or director of a prison must be in writing.

(4) In section 19AC “restricted document” means the whole (or any part of)—

- (a) a photograph taken inside the prison;
- (b) a sound-recording made inside the prison;

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(c) a personal record (or a document containing information derived from a personal record);

(d) any other document which contains—

(i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or

(ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

(5) In subsection (4)—

“personal record” means any record which is required by custody rules to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);

“relevant individual” means an individual who is or has at any time been—

(a) a prisoner or a person working at the prison; or

(b) a member of such a person’s family or household.

(6) In section 19AC and this section—

“document” means anything in which information is recorded (by whatever means);

“electronic communications” has the same meaning as in the Electronic Transactions Act 2000 [c.8];

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“photograph” means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced; and

“sound-recording” means a recording of sounds on any medium from which the sounds may by any means be reproduced.

Offences under sections 19AA to 19AC: extension of Crown immunity

P1952/52/40F

19AE.(1) An individual who—

- (a) works at a prison;
- (b) does not do that work as a servant or agent of the Crown; and
- (c) has been designated by the Department for the purposes of this section,

shall be treated for the purposes of the application of sections 19AA to 19AC as if he or she were doing that work as a servant or agent of the Crown.

(2) A designation for the purposes of this section may be given—

- (a) in relation to persons specified in the designation or persons of a description so specified; and
- (b) in relation to all work falling within subsection (1)(a) or only in relation to such activities as the designation may provide.”.

PART 18

AMENDMENTS TO THE LICENSING ACT 1995

Constitution of Licensing Court of Appeal

Amendment of section 2

29. In section 2 of the Licensing Act 1995 [c.8] (the Licensing Court of Appeal), for subsection (2), substitute—

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“(2) The appeal court consists of—

- (a) a chair (who must be a Deemster); and
- (b) a vice-chair and 3 other members (who must all be persons of legal training),

appointed in each case by the Clerk of the Rolls.”.

Licence conditions

Amendment of section 9

30. In section 9 of the Licensing Act 1995 [c.8] (conditions and undertakings), after subsection (2)(d) insert —

“(da) may prescribe conditions requiring liquor in off-licensed premises to be displayed only in one or both of the following —

- (i) an area of the off-licensed premises agreed between the Department and the holder of the licence;
- (ii) an area of the off-licensed premises which is inaccessible to the public;

(db) may prescribe conditions requiring the sale or supply of liquor to be conducted from an area of the off-licensed premises which is separate to any area of those premises from where other items are sold or supplied;

(dc) may require areas of off-licensed premises from which liquor is sold or supplied to be staffed and equipped in accordance with provisions specified in the regulations;”.

Drunkenness etc on premises

Amendment of section 33

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31. (1) Section 33 of the Licensing Act 1995 [c.8] (drunkenness etc on premises) is amended as follows.

(2) For subsections (1) and (2) substitute —

“(1) Any person who is drunk on or in the vicinity of licensed premises commits an offence and is liable on summary conviction to a fine not exceeding £500.”.

(2) Any person who on or in the vicinity of any licensed premises —

- (a) is guilty of disorderly behaviour;
- (b) uses indecent or obscene language;
- (c) behaves indecently to the annoyance of any person; or
- (d) does any other thing which is for the time being prescribed by order made by the Department,

commits an offence and is liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.”.

(3) In subsection (4)(a) after “any licence” insert “or otherwise”.

(4) For subsection (4)(b) substitute —

“(b) an order that the person shall not enter any of the following premises (other than premises on which the person resides) for such period (not exceeding 5 years) from the date of the order as may be specified in the order —

- (i) any on-licensed premises;

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(ii) any off-licensed premises (or any areas of such premises from which liquor is sold or supplied);

(iii) any club premises (in respect of a club registered under Part 4 of this Act); or

(iv) any premises which are used exclusively for wholesale trading (whether solely of liquor or not) where the wholesaler deals wholesale in liquor.”.

(5) After subsection (4) insert —

“(4AA) An order under subsection (4)(b) may not prohibit —

(a) an intending passenger from entering a departure lounge at an airport; or

(b) a person entering any other premises which are prescribed by order made by the Department.

(4AB) In subsection (4AA) —

“departure lounge” means a room at an airport set aside for use solely by intending passengers and from which all other persons (except airport and airline staff) are excluded;

“intending passenger” means a person intending immediately to travel by air from the airport.”.

(6) For subsection (4A) substitute —

“(4A) Where the court makes an order under section (4)(a) against any person (“A”), it may also make either or both of the following orders —

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(a) that no holder of a licence shall supply liquor to A during the period specified under subsection (4)(a);

(b) that no person acting for or on behalf of a club registered under Part 4 of this Act shall supply liquor to A during the period specified under subsection (4)(a).”.

(7) After subsection (5) insert —

“(5A) On conviction of a person for an offence under subsection (5) the court by which the person was convicted may make either or both of the following orders in respect of that person —

(a) a community service order;

(b) a further order under subsection (4).

(5B) The court may postpone the making of an order under subsection (5A) if it thinks it expedient to do so subject to such conditions, if any, as it thinks fit.

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

TABLE

FINE	MINIMUM HOURS	MAXIMUM HOURS

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Not exceeding £200	20 hours	40 hours
Exceeding £200 but not exceeding £500	40 hours	60 hours
Exceeding £500	60 hours	100 hours

.”;

(8) For subsection (6) substitute —

“(6) If the holder of a licence or any person acting for or on behalf of a club registered under Part 4 of this Act knowingly contravenes an order under subsection (4A), that holder or person commits an offence and is liable on summary conviction to a fine not exceeding £1,000.”.

(9) After subsection (8) insert —

“(9) In default of payment of any fine adjudged to be payable on conviction for an offence under this section, the court by which the person was convicted may make an order under subsection (4) in respect of that person.”.

Variation of court orders

Insertion of new section 35A

32. After section 35 of the Licensing Act 1995 [c.8] insert —

“Variation of court orders

1985/23/Sch3/14

35A.(1) Subject to the provisions of this section, a person who is subject to an order of a court under either section 33(4) or section 75(5) (an “existing order”) may apply to the court by which the existing order was made to have the existing order discharged, reduced or suspended.

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(2) On an application under subsection (1), if the court is satisfied that it should do so, it may (having regard to the character of the person disqualified and the conduct of that person subsequent to the order, the nature of the offence, and any other circumstances of the case) by order discharge, reduce or suspend the existing order as from such date as may be specified in the order.

(3) No application may be made under subsection (1) before the expiration of whichever is relevant of the following periods from the date if the existing order —

- (a) 6 weeks, if the existing order is for not more than 3 months;
- (b) 3 months, if it is for more than 3 months.

(4) Where an application under subsection (1) is refused, a further application under that subsection must not be entertained if made within 3 months after the date of the refusal.

(5) If under this section a court orders an existing order to be discharged, reduced or suspended, the court has power to order the applicant to pay the whole or any part of the costs of the application.

(6) If under this section a court orders an existing order to be discharged, reduced or suspended, the court has power to discharge, reduce or suspend any order which has been made under either section 33(4A) or section 75(5A) of this Act in respect of the person to whom the order under this section relates.”.

Late night refreshment

Insertion of new Part 4A

33. (1) After section 55 of the Licensing Act 1995 [c.8] insert —

“PART 4A

LATE NIGHT REFRESHMENT

Provision of late night refreshment

The provision of late night refreshment

P2003/17/Sch2/1

55A.(1) For the purposes of this Act, a person “provides late night refreshment” if —

- (a) at any time between the hours of 12.00 a.m. and 5.00 a.m., he or she supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises; or
- (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he or she supplies, or holds himself or herself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,

unless the supply is an exempt supply by virtue of section 55C or 55D.

(2) References in this Part to the “provision of late night refreshment” are to be construed in accordance with subsection (1).

(3) This section is subject to the following provisions of this Part.

Hot food or hot drink

P2003/17/Sch2/2

55B. Food or drink supplied on or from any premises is “hot” for the purposes of this Part if the food or drink, or any part of it, —

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- (a) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature; or
- (b) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

Exempt supplies: restaurants, clubs, hotels etc and employees

P2003/17/Sch2/3

55C. (1) The supply of hot food or hot drink on or from any premises at any time is an exempt supply for the purposes of section 55A(1) if, at that time, a person will neither—

- (a) be admitted to the premises; nor
- (b) be supplied with hot food or hot drink on or from the premises,

except by virtue of being a person of a description falling within subsection

(2).

(2) The descriptions are that the person —

- (a) is a customer of a restaurant on the premises, at the time of supply;
- (b) is a member of a registered club;
- (c) is a person staying at a particular hotel, or at particular comparable premises, for the night in question;
- (d) is an employee of a particular employer;

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(e) is engaged in a particular trade, is a member of a particular profession or follows a particular vocation;

(f) is a guest of a person falling within any of paragraphs (a) to (e).

(3) The premises which, for the purposes of subsection (2)(c), are comparable to a hotel are —

(a) a guest house, lodging house or hostel;

(b) a caravan site or camping site; or

(c) any other premises the main purpose of maintaining which is the provision of facilities for overnight accommodation.

Miscellaneous exempt supplies

P2003/17/Sch2/5

55D. (1) The following supplies of hot food or hot drink are exempt supplies for the purposes of section 55A(1) —

(a) the supply of hot drink which consists of or contains alcohol;

(b) the supply of hot drink by means of a vending machine;

(c) the supply of hot food or hot drink free of charge;

(d) the supply of hot food or hot drink by a registered charity or a person authorised by a registered charity;

(e) the supply of hot food or hot drink on a vehicle at a time when the vehicle is not permanently or temporarily parked.

(2) Hot drink is supplied by means of a vending machine for the purposes of subsection (1)(b) only if—

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(a) the payment for the hot drink is inserted into the machine by a member of the public; and

(b) the hot drink is supplied directly by the machine to a member of the public.

(3) Hot food or hot drink is not to be regarded as supplied free of charge for the purposes of subsection (1)(c) if, in order to obtain the hot food or hot drink, a charge must be paid—

(a) for admission to any premises; or

(b) for some other item.

(4) In subsection (1)(d) “registered charity” means—

(a) a charity in respect of which a statement has been filed under section 2(1) of the Charities Registration Act 1989 [c.11] and has not been refused under section 3 of that Act; or

(b) a charity which by virtue of section 18(2) of Charities Registration Act 1989 falls to be treated as a registered charity,

but excludes any institution in respect of which an order under section 4 of the Charities Registration Act 1989 has effect.

Clubs which are not registered clubs: members and guests

P2003/17/Sch2/6

55E. For the purposes of this Part —

(a) the supply of hot food or hot drink to a person as being a member, or the guest of a member, of a club which is not a registered club is to be taken to be a supply to a member of the public; and

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- (b) the admission of any person to any premises as being such a member or guest is to be taken to be the admission of a member of the public.

Registration of providers of late night refreshment

Restriction on provision of late night refreshment

1995/19/9

55F. (1) A person must not provide late night refreshment on or from premises in the Island unless the person is registered in respect of those premises in a register to be kept by the Department of Local Government and the Environment in accordance with this Part.

(2) Separate registration under this Part is required in respect of each premises at which a person provides late night refreshment.

(3) A person who contravenes subsection (1) commits an offence.

(4) Subsections (1) and (3) do not apply to any person who is, or any class of persons who are, exempted by regulations made by the Department of Local Government and the Environment.

(5) This section is subject to section 55S.

The register

1995/19/10

55G.(1) The register must be in the form and contain the particulars which are prescribed.

(2) The register must be kept at the office of the Department of Local Government and the Environment.

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(3) The register is a public register and must be open to inspection at any time during the ordinary office hours of the Department of Local Government and the Environment.

Registration

1995/19/11

55H.(1) Applications for registration must be made in writing to the Department of Local Government and the Environment.

(2) An applicant for registration must provide the Department of Local Government and the Environment with such documents and information as are required by the Department of Local Government and the Environment and, before registering an applicant, the Department of Local Government and the Environment may refer the application for registration to the Chief Constable for his or her comments.

(3) Registration may be effected subject to such conditions in accordance with which the registered person may undertake the provision of late night refreshment on or from the relevant premises as the Department of Local Government and the Environment considers appropriate; and those conditions must be entered in the register.

(4) Without limiting subsection (3), conditions may require the applicant for registration to take steps which are reasonably necessary to secure that —

(a) the premises on or from which late night refreshment is to be provided and the vicinity of those premises are kept clear of litter;

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(b) the level of noise emitted from the premises is not so unreasonable so as to affect adversely the amenity of persons in the vicinity of the premises; and

(c) persons on the premises or in their vicinity do not act in a manner likely to cause nuisance or annoyance to members of the public.

(5) The Department of Local Government and the Environment must notify the applicant of its decision on an application for registration and of the reasons for its decision.

(6) Unless previously cancelled, registration is valid for 12 months or such longer period as may be prescribed, and the provisions of this Part relating to applications, fees and registration apply accordingly.

(7) Where an application for renewal of registration is made before that registration expires, the registration continues in force until the application is either —

(a) determined; or

(b) withdrawn.

(8) The fee for registration under this Part is the relevant sum prescribed under the Fees and Duties Act 1989 [c.12].

(9) A person who contravenes a condition of registration commits an offence.

Certificate of registration

1995/19/12

55I. (1) When registration is effected, the Department of Local Government and the Environment must issue a certificate of registration to the registered person.

(2) A registered person must display or cause to be displayed in a prominent position at the premises on or from which late night refreshment is to be provided a current certificate of registration relating to those premises.

(3) A person who fails to comply with subsection (2) commits an offence.

Refusal of registration

1995/19/13

55J. The Department of Local Government and the Environment must refuse to register an applicant for registration under this Part if —

- (a) it is satisfied that the applicant is not a fit and proper person to be registered; or
- (b) it is satisfied that the premises on or from which late night refreshment is to be provided are for any reason unsuitable for the purpose.

Appeal against refusal or cancellation

1995/19/14

55K.(1) An applicant for registration may appeal to the court against a refusal to register.

(2) The court may dismiss or allow an appeal under subsection (1).

(3) Where an appeal is allowed, the court may direct the Department of Local Government and the Environment to register the applicant and the

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Department of Local Government and the Environment must comply with such direction.

(4) The court may make such order in respect of costs as it considers just.

Registration not transferable

VIII p.10/26 and 27

55L.(1) A person who is registered under this Part in respect of premises must not lend, transfer, or assign the registration (or any benefit of it) to any other person.

(2) A person must not borrow or make use of any other person's registration granted under this Part.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Certificate of registration to be produced on demand

VIII p.10/28

55M.(1) A person who is registered under this Part in respect of premises must produce and show the certificate of registration in respect of those premises on demand to—

(a) a constable; or

(b) an authorised officer of the Department of Local Government and the Environment.

(2) A person who contravenes subsection (1) commits an offence.

Regulations

1995/19/15

55N.(1) The Department of Local Government and the Environment may make regulations to provide for —

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- (a) anything which, under this Part, is required to be, or may be prescribed or which may be provided for by regulations;
- (b) the form and content of the register;
- (c) the form and content of certificates of registration;
- (d) the period within which an appeal under section 55K may be commenced;
- (e) the practice and procedure to be adopted in relation to such appeals.

(2) Before making any regulations the Department of Local Government and the Environment must consult with those persons who appear to it to be likely to be affected by the proposed regulations.

False statements etc

1995/19/16

55O. A person commits an offence if, when giving information to the Department of Local Government and the Environment, the person —

- (a) makes a statement or provides information which the person knows is false in a material particular; or
- (b) recklessly makes a statement or provides information which is false in a material particular.

Offences under Part 4A: defence

1995/19/17

55P. In proceedings against a person for an offence under this Part it is a defence for the person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

Penalties

55Q. A person guilty of an offence under this Part is liable, on summary conviction, to a fine not exceeding £5,000.

Order cancelling registration

55R. (1) Where a person who is registered under this Part in respect of premises is convicted of an offence under this Part, if the court by or before which the person is convicted thinks it proper to do so in all the circumstances of the case, the court may order that the registration of the person in respect of those premises is cancelled.

(2) Subject to subsection (3), an order under subsection (1) comes into operation at the time specified by the court that makes it.

(3) Where a court makes an order under subsection (1), it may suspend its coming into operation.

Relaxation of hours for special occasions

P2003/17/172

55S. (1) Despite the provisions of sections 55A and 55F, where the Department considers that a period marks an occasion of exceptional international, national, or local significance, it may make an order which provides that during the period of time specified in the order, late night refreshment may be provided at specified times between the hours of 12.00 a.m. and 5 a.m. by persons who are not registered under this Part.

(2) Before making an order under this section, the Department must consult—

(a) the Chief Constable;

(b) the Department of Local Government and the Environment; and

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(c) such other persons as it considers appropriate.

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Wholesale sale of liquor

Amendment of section 57

34. In section 57 of the Licensing Act 1995 [c.8] (selling liquor without a licence), subsection (2)(c) is repealed.

Insertion of new section 57A

35. After section 57 of the Licensing Act 1995 [c.8] insert—

“Selling liquor wholesale

57A.(1) A person specified in subsection (2) commits an offence if that person barter, sells or exposes for sale liquor unless the person does so from premises which are used exclusively for wholesale trading (whether solely of liquor or not).

(2) The following are specified for the purposes of subsection (1) —

(a) a wholesaler;

(b) an employee of agent of the wholesaler.

(3) Where a licence has been cancelled or suspended under this Act, a person specified in subsection (4) commits an offence if that person acts as a wholesaler during the period of 2 years following the cancellation or suspension of the licence (as the case may be).

(4) The following are specified for the purposes of subsection (3) —

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- (a) the person holding the licence immediately before it was cancelled or suspended (as the case may be);
 - (b) a designated official in relation to the licensed premises (immediately before cancellation or suspension of the licence, as the case may be);
 - (c) an employee or agent of a person referred to in paragraph (a) or (b).
- (5) A person guilty of an offence under subsection (1) or subsection (3) is liable on summary conviction to a fine not exceeding £1,000.
- (6) The Department may by order amend the time period specified in subsection (3).
- (7) In this section —
- “wholesale”, in relation to dealing in liquor, means the sale at any one time —
- (a) to a trader for the purpose of his or her trade;
 - (b) to a registered club for the purposes of the club;
 - (c) to an authorised canteen or an authorised mess; or
 - (d) of not less than the following quantities —
 - (i) in the case of spirits or wine, 9 litres or one case; or
 - (ii) in the case of beer or cider, 20 litres or 2 cases; and
- “wholesaler” means a person who deals wholesale in liquor.

Disposal of seized liquor

Amendment of section 74

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36. In section 74 of the Licensing Act 1995 [c.8] (seizure of liquor in possession of minors), for subsection (2)(b) substitute —

“(b) disposed of in such manner as the officer considers appropriate.”.

Public drunkenness

Amendment of section 75

37. (1) Section 75 of the Licensing Act 1995 [c.8] (public drunkenness) is amended as follows.

(2) In subsection (5)(a) after “any licence” insert “or otherwise”.

(3) For subsection (5)(b) substitute —

“(b) an order that the person shall not enter any of the following premises (other than premises on which the person resides) for such period (not exceeding 5 years) from the date of the order as may be specified in the order —

(i) any on-licensed premises;

(ii) any off-licensed premises (or any areas of such premises from which liquor is sold or supplied);

(iii) any club premises (in respect of a club registered under Part 4 of this Act); or

(iv) any premises which are used exclusively for wholesale trading (whether solely of liquor or not) where the wholesaler deals wholesale in liquor.”.

(4) After subsection (5) insert —

“(5AA) An order under subsection (5)(b) may not prohibit —

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- (a) an intending passenger from entering a departure lounge at an airport; or
- (b) a person entering any other premises which are prescribed by order made by the Department.

(5AB) In subsection (5AA)—

“departure lounge” means a room at an airport set aside for use solely by intending passengers and from which all other persons (except airport and airline staff) are excluded;

“intending passenger” means a person intending immediately to travel by air from the airport.”.

(5) For subsection (5A) substitute —

“(5A) Where the court makes an order under section (5)(a) against any person (“A”), it may also make either or both of the following orders —

- (a) that no holder of a licence shall supply liquor to A during the period specified under subsection (5)(a);
- (b) that no person acting for or on behalf of a club registered under Part 4 of this Act shall supply liquor to A during the period specified under subsection (5)(a).”.

(6) After subsection (6) insert —

“(6A) On conviction of a person for an offence under subsection (6) the court by which the person was convicted may make either or both of the following orders in respect of that person —

- (a) a community service order;

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(b) a further order under subsection (5).

(6B) The court may postpone the making of an order under subsection (6A) if it thinks it expedient to do so subject to such conditions, if any, as it thinks fit.

(6C) In the case of a fine imposed under subsection (6) the amount of which is described in the first column of the following table, the period of community service specified in an order under subsection (6A) must not be less than the number of hours set out opposite that amount in the second column of the table nor more than the number of hours in the third column of the table.

TABLE

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

.”

(7) For subsection (7) substitute —

“(7) If the holder of a licence or any person acting for or on behalf of a club registered under Part 4 of this Act knowingly contravenes an order under subsection (5A), that holder or person commits an offence and is liable on summary conviction to a fine not exceeding £1,000.”.

(8) After subsection (8) insert —

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“(9) In default of payment of any fine adjudged to be paid on conviction for an offence under this section, the court by which the person was convicted may make an order under subsection (5) in respect of that person.”.

38. *Omitted*

39. *Omitted*

Drinking in public places

Substitution of section 76

40. (1) For section 76 of the Licensing Act 1995 [c.8] (drinking in public places) substitute —

“Drinking in public places

76. (1) Any person who consumes liquor in a public place after being warned by a police officer not to do so commits an offence and is liable on summary conviction to a fine not exceeding £500.

(2) A police officer may not give a warning under subsection (1) unless it appears to the officer that the person concerned —

- (a) is acting in an indecent or disorderly manner;
- (b) is using indecent or obscene language;
- (c) is acting in a manner that has resulted, or is likely to result, in any member of the public being intimidated, harassed, alarmed or distressed;
- (d) is acting in a manner that has resulted, or is likely to result, in any member of the public being disturbed in his or her peaceful enjoyment of the public place; or

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(e) is acting in a manner that has caused, or is likely to cause, nuisance or annoyance to any member of the public.

(3) Any person against whom an order under section 33(4)(a) or 75(5)(a) is in force and who consumes liquor in a public place commits an offence and is liable on summary conviction to a fine not exceeding £500.

(4) Any person who —

(a) is carrying in a public place an open bottle, flask, can, glass, cup or other vessel which contains or has contained liquor; and

(b) refuses to comply with a request by a police officer immediately to deposit the vessel in a receptacle for the deposit of litter or to deliver it to the officer,

commits an offence and is liable on summary conviction to a fine not exceeding £500.

(5) Where an offence under subsection (4) is committed, a police officer may seize the vessel and may dispose of it as the officer thinks fit.

(6) Nothing in subsections (4) and (5) applies to —

(a) a flask designed to hold no more than 0.2 litres of spirits and to be carried on the person; or

(b) a chalice or other vessel used in the course of a religious service.

(7) A police officer may require a person who appears to be committing or to have committed an offence under subsection (1), (3) or (4) to remove himself or herself forthwith from the locality of the public place in

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question, and, if the person refuses or fails to comply with the requirement, may arrest the person without warrant.

(8) In this section, “public place” means —

(a) any highway; and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of any express or implied permission,

not being—

(i) a place within the curtilage of any on-licensed premises or club premises; or

(ii) premises at which the sale of liquor is, or has within the previous 15 minutes, been authorised by virtue of an occasional licence.

(9) The Department may by a direction in writing provide that subsection (1) shall not apply to a locality specified in the direction on such day, and for such period (not exceeding 12 hours), as may be so specified.

(10) The Department may by regulations make provision concerning the exercise by police officers of the powers conferred by this section.

(11) In exercising powers under this section, a police officer must have regard to any regulations for the time being in operation under this section.”.

(2) Section 15 of the Licensing (Amendment) Act 2001 [c.17] is repealed.

PART 19
AMENDMENTS TO THE CRIMINAL JUSTICE ACT 1996

Crime and disorder strategies

Insertion of new sections 1A to 1E

41. After section 1 of the Criminal Justice Act 1996 [c.17] insert—

“Authorities responsible for strategies

P1998/37/5

1A. (1) The functions conferred by section 1B are exercisable in relation to each local government district by the responsible authorities for that district.

(2) The Department of Home Affairs must by order prescribe persons or bodies to be responsible authorities for local government districts.

(3) Without limiting subsection (2), responsible authorities may comprise any of the following—

(a) the local authority for the district;

(b) the Isle of Man Constabulary, its Chief Constable or other police officer;

(d) a Department or Statutory Board or a member or officer of a Department or Statutory Board;

(d) a probation officer;

(e) the fire brigade maintained under section 1(1)(a) of the Fire Services Act 1984 [c.19], its Chief Fire Officer or other member of the fire brigade.

(4) The Department of Home Affairs may by order provide in relation to any two or more local government districts—

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- (a) that the functions conferred by section 1B are to be carried out in relation to those districts taken together as if they constituted only one district; and
 - (b) that the persons who for the purposes of this Part are to be taken to be responsible authorities in relation to the combined area are the persons who comprise every person and body which (apart from the order) would be a responsible authority in relation to any one or more of the districts included in the combined area.
- (5) The Department of Home Affairs may not make an order under subsection (4) unless—
- (a) an application for the order has been made jointly by all the persons who would be the responsible authorities in relation to the combined district or the Department of Home Affairs has first consulted those persons; and
 - (b) it considers it would be in the interests of reducing crime and disorder, or of combatting the misuse of drugs, alcohol and other substances to make the order.
- (6) In exercising functions, the responsible authorities must act in co-operation with every person or body of a description which is for the time being prescribed by order of the Department of Home Affairs under this subsection, and it is the duty of those persons and bodies to co-operate in the exercise by the responsible authorities of those functions.
- (7) The responsible authorities must also invite the participation in their exercise of functions of at least one person or body of each description

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which is for the time being prescribed by order of the Department of Home Affairs under this subsection.

(8) An order under this section must be laid before Tynwald.

(8) In sections 1A to 1C—

“local government district” has the same meaning as in the Local Government Consolidation Act 1916 [X p.57].

Formulation and implementation of strategies

P1998/37/6

1B. (1) The responsible authorities for a local government district must, in accordance with section 1A and with regulations made under subsection (2), formulate and implement—

- (a) a strategy for the reduction of crime and disorder in the district (including anti-social and other behaviour adversely affecting the local environment); and
- (b) a strategy for combatting the misuse of drugs, alcohol and other substances in the district.

(2) The Department of Home Affairs may by regulations make further provision as to the formulation and implementation of a strategy under this section.

(3) Regulations under subsection (2) may in particular make provision for or in connection with—

- (a) the time by which a strategy must be prepared and the period to which it is to relate;

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- (b) the procedure to be followed by the responsible authorities in preparing and implementing a strategy (including requirements as to the holding of public meetings and other consultation);
- (c) the conferring of functions on any one or more of the responsible authorities in relation to the formulation and implementation of a strategy;
- (d) matters to which regard must be had in formulating and implementing a strategy;
- (e) objectives to be addressed in a strategy and performance targets in respect of those objectives;
- (f) the sharing of information between responsible authorities;
- (g) the publication and dissemination of a strategy;
- (h) the preparation of reports on the implementation of a strategy.

(4) The provision which may be made under subsection (2) includes provision for or in connection with the conferring of functions on a committee of, or a particular member or officer of, any of the responsible authorities.

(5) The matters referred to in subsection (3)(d) may in particular include guidance given by the Department of Home Affairs in connection with the formulation or implementation of a strategy.

(6) Provision under subsection (3)(e) may require a strategy to be formulated so as to address (in particular)—

- (a) the reduction of crime or disorder of a particular description; or

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- (b) the combatting of a particular description of misuse of drugs, alcohol or other substances.

(7) Regulations under this section may make—

- (a) different provision for different local government districts;
- (b) supplementary or incidental provision.

(8) For the purposes of this section any reference to the implementation of a strategy includes—

- (a) keeping it under review for the purposes of monitoring its effectiveness; and
- (b) making any changes to it that appear necessary or expedient.

(9) Regulations under this section must be laid before Tynwald.

Supplemental

P1998/37/7

1C. (1) The responsible authorities for a local government district must, whenever so required by the Department of Home Affairs, submit to the Department of Home Affairs a report on such matters connected with the exercise of their functions under section 1B as may be specified in the requirement.

(2) A requirement under subsection (1) may specify the form in which a report is to be given.

(3) The Department of Home Affairs may arrange, or require the responsible authorities to arrange, for a report under subsection (1) to be published in such manner as appears to it to be appropriate.

Duty to consider crime and disorder implications

P1998/37/17

1D. Without prejudice to any other obligation imposed on it, it is the duty of each local authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent—

- (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- (b) the misuse of drugs, alcohol and other substances in its area.

Sharing of information

P1998/37/17A

1E. (1) A responsible authority is under a duty to disclose to all other responsible authorities any information held by the authority which is of a prescribed description, at such intervals and in such form as may be prescribed.

(2) In subsection (1) “prescribed” means prescribed in regulations made by the Department of Home Affairs.

(3) The Department of Home Affairs may only prescribe descriptions of information which appears to it to be of potential relevance in relation to the reduction of crime and disorder in any district in the Island (including anti-social or other behaviour adversely affecting the local environment in that district).

(4) Nothing in this section requires a responsible authority to disclose any personal data (within the meaning of the Data Protection Act 2002 [c.2]).”.

PART 20

**AMENDMENTS TO THE
POLICE POWERS AND PROCEDURES ACT 1998**

Search warrants

Amendment of section 11

P2005/15/113 and 114

42. (1) Section 11 of the Police Powers and Procedures Act 1998 [c.9]

(power to authorise entry and search of premises) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)(i), for “specified in the application” substitute
“mentioned in subsection (1A)”;

(b) in paragraph (d), at the end add “in relation to each set of premises
specified in the application”.

(3) After subsection (1) insert—

“(1A) The premises referred to in subsection (1)(a)(i) are—

(a) one or more sets of premises specified in the application (in which
case the application is for a “specific premises warrant”); or

(b) any premises occupied or controlled by a person specified in the
application, including such sets of premises as are so specified (in
which case the application is for an “all premises warrant”).

(1B) If the application is for an all premises warrant, the justice of the
peace must also be satisfied—

(a) that because of the particulars of the offence referred to in
subsection (1)(a)(i), there are reasonable grounds for believing that
it is necessary to search premises occupied or controlled by the

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person in question which are not specified in the application in order to find the material referred to in that subparagraph; and

- (b) that it is not reasonably practicable to specify in the application all the premises which he or she occupies or controls and which might need to be searched.

(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he or she issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.”.

Insertion of new section 11A

43. After section 11 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Warrants: persons who may accompany constables

11A.(1) This section applies where, under any enactment, a Deemster or a justice of the peace has the power to issue a warrant or order authorising a constable to enter and search any land and inspect, examine, operate, test, retain, seize or take possession of any thing found there.

(2) Such a warrant may name any suitable person who may accompany and assist the constable in the execution of the warrant.

(3) Where a suitable person is accompanying and assisting a constable under subsection (2), the warrant shall be authority for the person to do such things under the warrant as the constable is authorised to do.

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(4) This section is in addition to but does not limit enactments that make express provision—

- (a) for a warrant to name other persons who may accompany a constable when executing a warrant; or
- (b) for a constable to be accompanied by other persons when executing a warrant.

(5) In this section, “suitable person” means a person possessing such scientific, technical or other expertise as the constable believes will advance the investigation.”.

Amendment of section 18

P2005/15/113 and 114

44. (1) Section 18 of the Police Powers and Procedures Act 1998 [c.9] (search warrants—safeguards) is amended as follows.

(2) In subsection (2)(a)—

- (a) omit “and” at the end of sub-paragraph (i);
- (b) at the end of sub-paragraph (ii) insert “and”;
- (c) after that sub-paragraph insert—

“(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he or she applies for such a warrant, and whether he or she seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;”.

(3) For subsection (2)(b) substitute—

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“(b) to specify the matters set out in subsection (2A); and”.

(4) After subsection (2) insert—

“(2A) The matters which must be specified pursuant to subsection (2)(b) are—

- (a) if the application is for a specific premises warrant made by virtue of section 11(1A)(a) or paragraph 12 of Schedule 1, each set of premises which it is desired to enter and search;
- (b) if the application is for an all premises warrant made by virtue of section 11(1A)(b) or paragraph 12 of Schedule 1—
 - (i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
 - (ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;
 - (iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and
 - (iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.”.

(5) In subsection (5), at the end add “unless it specifies that it authorises multiple entries”.

(6) After subsection (5) insert—

“(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.”.

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(7) For subsection (6)(a)(iv) substitute—

“(iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and”.

(8) For subsection (7) substitute—

“(7) Two copies shall be made of a specific premises warrant (see section 11(1A)(a)) which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.”.

Amendment of section 19

P2005/15/113 and 114

45. (1) Section 19 of the Police Powers and Procedures Act 1998 [c.9] (execution of warrants) is amended as follows.

(2) In subsection (3), for “one month” substitute “3 months”.

(3) After subsection (3) insert—

“(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered.

(3B) No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of inspector has in writing authorised that entry to those premises.”.

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- (4) In subsection (9), after paragraph (b) add—

“and, unless the warrant is a specific premises warrant specifying one set of premises only, he or she shall do so separately in respect of each set of premises entered and searched, which he or she shall in each case state in the endorsement.”.

Amendment of Schedule 1

P2005/15/113 and 114

- 46.** (1) Schedule 1 to the Police Powers and Procedures Act 1998 [c.9] (special procedure) is amended as follows.

(2) In each of paragraphs 2(a)(ii) and 3(a), at the end add “, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);”.

- (3) In paragraph 3(b), for “the premises” substitute “such premises”.

- (4) In paragraph 12—

(a) in sub-paragraph (a)(ii), after “fulfilled” insert “in relation to each set of premises specified in the application”;

(b) at the end add “or (as the case may be) all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (an “all premises warrant”)”.

- (5) After paragraph 12 insert—

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“12A. The judge may not issue an all premises warrant unless he or she is satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and
 - (b) that it is not reasonably practicable to specify all the premises which he or she occupies or controls which might need to be searched.”.
- (6) In paragraph 14(a), omit “to which the application relates”.

Additional powers of seizure

Insertion of new Part IIA

47. After Part II of the Police Powers and Procedures Act 1998 [c.9] insert—

“PART IIA

ADDITIONAL POWERS OF SEIZURE

Additional powers of seizure from premises

P2001/16/50

26A.(1) Where—

- (a) a person who is lawfully on any premises finds anything on those premises that the person has reasonable grounds for believing may be or may contain something for which that person is authorised to search on those premises;
- (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle that person, if that person

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found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and

(c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—

(i) whether what has been found is something that the person is entitled to seize; or

(ii) the extent to which what has been found contains something that the person is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what the person has found as it is necessary to remove from the premises to enable that to be determined.

(2) Where—

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which that person would be entitled to seize but for its being comprised in something else that the person has (apart from this subsection) no power to seize;

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

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that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—

- (a) how long it would take to carry out the determination or separation on those premises;
- (b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
- (c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
- (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- (e) in the case of separation, whether the separation—
 - (i) would be likely; or
 - (ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,

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to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 22(6) of this Act (powers of seizure not to include power to seize anything that a constable has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).

(5) This section applies to each of the powers of seizure specified in Part 1 of Schedule 1A.

(6) The Department may by order amend Schedule 1A by adding entries to, or removing entries from, any Part of that Schedule.

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

Additional powers of seizure from the person

P2001/16/51

26B. (1) Where—

- (a) a person carrying out a lawful search of any person finds something that the person has reasonable grounds for believing may be or may contain something for which that person is authorised to search;
- (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle the person, if that person found it, to seize whatever it is that the person has grounds for believing that thing to be or to contain; and
- (c) in all the circumstances it is not reasonably practicable for it to be determined, at the time and place of the search—

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- (i) whether what was found is something that the person is entitled to seize; or
- (ii) the extent to which what was found contains something that the person is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what that person has found as it is necessary to remove from that place to enable that to be determined.

(2) Where—

- (a) a person ("A") carrying out a lawful search of any person finds something ("the seizable property") which A would be entitled to seize but for its being comprised in something else that A has (apart from this subsection) no power to seize;
- (b) the power under which that person would have power to seize the seizable property is a power to which this section applies; and
- (c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, at the time and place of the search, from that in which it is comprised,

A's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable, at the time and place of a search, for something to be determined, or for something to be separated from something else, shall be confined to the following—

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- (a) how long it would take to carry out the determination or separation at that time and place;
- (b) the number of persons that would be required to carry out that determination or separation at that time and place within a reasonable period;
- (c) whether the determination or separation would (or would if carried out at that time and place) involve damage to property;
- (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
- (e) in the case of separation, whether the separation—
 - (i) would be likely; or
 - (ii) if carried out by the only means that are reasonably practicable at that time and place, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

(4) Section 22(6) of this Act (powers of seizure not to include power to seize anything that a constable has reasonable grounds for believing is legally privileged) shall not apply to the power of seizure conferred by subsection (2).

(5) This section applies to each of the powers of seizure specified in Part 2 of Schedule 1A.

Notice of exercise of power under section 26A or 26B

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P2001/16/52

26C.(1) Where a person exercises a power of seizure conferred by section 26A, it shall (subject to subsections (2) and (3)) be that person's duty, on doing so, to give to the occupier of the premises a written notice—

- (a) specifying what has been seized in reliance on the powers conferred by that section;
- (b) specifying the grounds on which those powers have been exercised;
- (c) setting out the effect of sections 26J to 26L;
- (d) specifying the name and address of the person to whom notice of an application under section 26J(2) to the appropriate judicial authority in respect of any of the seized property must be given; and
- (e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 26D(2).

(2) Where it appears to the person exercising on any premises a power of seizure conferred by section 26A—

- (a) that the occupier of the premises is not present on the premises at the time of the exercise of the power; but
- (b) that there is some other person present on the premises who is in charge of the premises,

subsection (1) of this section shall have effect as if it required the notice under that subsection to be given to that other person.

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(3) Where it appears to the person exercising a power of seizure conferred by section 26A that there is no one present on the premises to whom notice may be given for the purposes of complying with subsection (1), that person shall, before leaving the premises, instead of complying with that subsection, attach a notice such as is mentioned in that subsection in a prominent place to the premises.

(4) Where a person exercises a power of seizure conferred by section 26B it shall be the duty of that person, on doing so, to give a written notice to the person from whom the seizure is made—

- (a) specifying what has been seized in reliance on the powers conferred by that section;
- (b) specifying the grounds on which those powers have been exercised;
- (c) setting out the effect of sections 26J to 26L;
- (d) specifying the name and address of the person to whom notice of any application under section 26J(2) to the appropriate judicial authority in respect of any of the seized property must be given; and
- (e) specifying the name and address of the person to whom an application may be made to be allowed to attend the initial examination required by any arrangements made for the purposes of section 26D(2).

(5) The Department may by regulations provide that a person who exercises a power of seizure conferred by section 26A shall be required to give

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a notice such as is mentioned in subsection (1) of this section to any person, or send it to any place, described in the regulations.

- (6) Regulations under subsection (5) shall be laid before Tynwald.

Return or retention of seized property

Examination and return of property seized under section 26A or 26B

P2001/16/53

26D.(1) This section applies where anything has been seized under a power conferred by section 26A or 26B.

(2) It shall be the duty of the person for the time being in possession of the seized property in consequence of the exercise of that power to secure that there are arrangements in force which (subject to section 26L) ensure—

- (a) that an initial examination of the property is carried out as soon as reasonably practicable after the seizure;
- (b) that that examination is confined to whatever is necessary for determining how much of the property falls within subsection (3);
- (c) that anything which is found, on that examination, not to fall within subsection (3) is separated from the rest of the seized property and is returned as soon as reasonably practicable after the examination of all the seized property has been completed; and
- (d) that, until the initial examination of all the seized property has been completed and anything which does not fall within subsection (3) has been returned, the seized property is kept separate from anything seized under any other power.

- (3) The seized property falls within this subsection to the extent only—

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- (a) that it is property for which the person seizing it had power to search when that person made the seizure but is not property the return of which is required by section 26E;
- (b) that it is property the retention of which is authorised by section 26G; or
- (c) that it is something which, in all the circumstances, it will not be reasonably practicable, following the examination, to separate from property falling within paragraph (a) or (b).

(4) In determining for the purposes of this section the earliest practicable time for the carrying out of an initial examination of the seized property, due regard shall be had to the desirability of allowing the person from whom it was seized, or a person with an interest in that property, an opportunity of being present or (if such a person chooses) of being represented at the examination.

(5) In this section, references to whether or not it is reasonably practicable to separate part of the seized property from the rest of it are references to whether or not it is reasonably practicable to do so without prejudicing the use of the rest of that property, or a part of it, for purposes for which (disregarding the part to be separated) the use of the whole or of a part of the rest of the property, if retained, would be lawful.

Obligation to return items subject to legal privilege

P2001/16/54

26E. (1) If, at any time after a seizure of anything has been made in exercise of a power of seizure to which this section applies—

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- (a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
 - (i) is an item subject to legal privilege; or
 - (ii) has such an item comprised in it; and
- (b) in a case where the item is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2),

it shall be the duty of that person to secure that the item is returned as soon as reasonably practicable after the seizure.

(2) Property in which an item subject to legal privilege is comprised falls within this subsection if—

- (a) the whole or a part of the rest of the property is property falling within subsection (3) or property the retention of which is authorised by section 26G; and
- (b) in all the circumstances, it is not reasonably practicable for that item to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that item) its use, if retained, would be lawful.

(3) Property falls within this subsection to the extent that it is property for which the person seizing it had power to search when that person made the seizure, but is not property which is required to be returned under this section or section 26F.

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- (4) This section applies—
- (a) to the powers of seizure conferred by sections 26A and 26B;
 - (b) to each of the powers of seizure specified in Parts 1 and 2 of Schedule 1A; and
 - (c) to any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Part comes into operation.

Obligation to return excluded and special procedure material

P2001/16/55

26F. (1) If, at any time after a seizure of anything has been made in exercise of a power to which this section applies—

- (a) it appears to the person for the time being having possession of the seized property in consequence of the seizure that the property—
 - (i) is excluded material or special procedure material or
 - (ii) has any excluded material or any special procedure material comprised in it,
- (b) its retention is not authorised by section 26G; and
- (c) in a case where the material is comprised in something else which has been lawfully seized, it is not comprised in property falling within subsection (2) or (3),

it shall be the duty of that person to secure that the item is returned as soon as reasonably practicable after the seizure.

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(2) Property in which any excluded material or special procedure material is comprised falls within this subsection if—

(a) the whole or a part of the rest of the property is property for which the person seizing it had power to search when that person made the seizure but is not property the return of which is required by this section or section 26E; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(3) Property in which any excluded material or special procedure material is comprised falls within this subsection if—

(a) the whole or a part of the rest of the property is property the retention of which is authorised by section 26G; and

(b) in all the circumstances, it is not reasonably practicable for that material to be separated from the rest of that property (or, as the case may be, from that part of it) without prejudicing the use of the rest of that property, or that part of it, for purposes for which (disregarding that material) its use, if retained, would be lawful.

(4) This section applies (subject to subsection (5)) to each of the powers of seizure specified in Part 3 of Schedule 1A.

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(5) In its application to the powers of seizure conferred by section 169(4) of the Proceeds of Crime Act 2008 [c.13] this section shall have effect with the omission of every reference to special procedure material.

(6) In this section, except in its application to—

- (a) the power of seizure conferred by section 11(2);
- (b) either of the powers of seizure conferred by the provisions of paragraphs 1 and 3 of Schedule 5 to the Anti-Terrorism and Crime Act 2003 [c. 6]; and
- (c) the power of seizure conferred by paragraph 14 of Schedule 5 to that Act of 2003, so far only as the power in question is conferred by reference to paragraph 1 of that Schedule,

“special procedure material” means special procedure material consisting of documents or records other than documents.

Property seized by constables

P2001/16/56

26G.(1) The retention of—

- (a) property seized on any premises by a constable who was lawfully on the premises; and
- (b) property seized by a constable carrying out a lawful search of any person,

is authorised by this section if the property falls within subsection (2) or (3).

(2) Property falls within this subsection to the extent that there are reasonable grounds for believing—

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(a) that it is property obtained in consequence of the commission of an offence; and

(b) that it is necessary for it to be retained in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Property falls within this subsection to the extent that there are reasonable grounds for believing—

(a) that it is evidence in relation to any offence; and

(b) that it is necessary for it to be retained in order to prevent its being concealed, lost, altered or destroyed.

(4) Nothing in this section authorises the retention (except in pursuance of section 26E(2)) of anything at any time when its return is required by section 26E.

Retention of seized items

P2001/16/57

26H.(1) This section has effect in relation to the provisions of enactments specified in an order made by the Department which are about the retention of items which have been seized and are referred to in this section as “the relevant provisions”.

(2) The relevant provisions shall apply in relation to any property seized in exercise of a power conferred by section 26A or 26B as if the property had been seized under the power of seizure by reference to which the power under that section was exercised in relation to that property.

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(3) Nothing in any of sections 26D to 26G authorises the retention of any property at any time when its retention would not (apart from the provisions of this Part) be authorised by the relevant provisions.

(4) Nothing in any of the relevant provisions authorises the retention of anything after an obligation to return it has arisen under this Part.

Person to whom seized property is to be returned

P2001/16/58

26I. (1) Where—

- (a) anything has been seized in exercise of any power of seizure; and
- (b) there is an obligation under this Part for the whole or any part of the seized property to be returned,

the obligation to return it shall (subject to the following provisions of this section) be an obligation to return it to the person from whom it was seized.

(2) Where—

- (a) any person is obliged under this Part to return anything that has been seized to the person from whom it was seized; and
- (b) the person under that obligation is satisfied that some other person has a better right to that thing than the person from whom it was seized,

the duty to return it shall, instead, be a duty to return it to that other person or, as the case may be, to the person appearing to the person under that obligation to have the best right to the thing in question.

(3) Where different persons claim to be entitled to the return of anything that is required to be returned under this Part, that thing may be

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retained for as long as is reasonably necessary for the determination in accordance with subsection (2) of the person to whom it must be returned.

(4) References in this Part to the person from whom something has been seized, in relation to a case in which the power of seizure was exercisable by reason of that thing having been found on any premises, are references to the occupier of the premises at the time of the seizure.

(5) References in this section to the occupier of any premises at the time of a seizure, in relation to a case in which—

- (a) a notice in connection with the entry or search of the premises in question, or with the seizure, was given to a person appearing in the occupier's absence to be in charge of the premises; and
- (b) it is practicable, for the purpose of returning something that has been seized, to identify that person but not to identify the occupier of the premises,

are references to that person.

Remedies and safeguards

Application to the appropriate judicial authority

P2001/16/59

26J. (1) This section applies where anything has been seized in exercise, or purported exercise, of a relevant power of seizure.

(2) Any person with a relevant interest in the seized property may apply to the appropriate judicial authority, on one or more of the grounds mentioned in subsection (3), for the return of the whole or a part of the seized property.

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(3) Those grounds are—

- (a) that there was no power to make the seizure;
- (b) that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 26E(2);
- (c) that the seized property is or contains any excluded material or special procedure material which—
 - (i) has been seized under a power to which section 26F applies;
 - (ii) is not comprised in property falling within section 26F(2) or (3);and
- (iii) is not property the retention of which is authorised by section 26G;
- (d) that the seized property is or contains something seized under section 26A or 26B which does not fall within section 26D(3);

and subsections (5) and (6) of section 26F shall apply for the purposes of paragraph (c) as they apply for the purposes of that section.

(4) Subject to subsection (6), the appropriate judicial authority, on an application under subsection (2), shall—

- (a) if satisfied as to any of the matters mentioned in subsection (3), order the return of so much of the seized property as is property in relation to which the authority is so satisfied; and
- (b) to the extent that that authority is not so satisfied, dismiss the application.

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- (5) The appropriate judicial authority—
- (a) on an application under subsection (2);
 - (b) on an application made by the person for the time being having possession of anything in consequence of its seizure under a relevant power of seizure; or
 - (c) on an application made—
 - (i) by a person with a relevant interest in anything seized under section 26A or 26B; and
 - (ii) on the grounds that the requirements of section 26D(2) have not been or are not being complied with,

may give such directions as the authority thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.

(6) On any application under this section, the appropriate judicial authority may authorise the retention of any property which—

- (a) has been seized in exercise, or purported exercise, of a relevant power of seizure; and
- (b) would otherwise fall to be returned,

if that authority is satisfied that the retention of the property is justified on grounds falling within subsection (7).

(7) Those grounds are that (if the property were returned) it would immediately become appropriate—

- (a) to issue, on the application of the person who is in possession of the property at the time of the application under this section, a warrant

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in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or

(b) to make an order under—

(i) paragraph 4 of Schedule 1;

(ii) section 105H or 105I of the Income Tax Act 1970 [XXI p.260]; or

(iii) paragraph 5 of Schedule 5 to the Anti-Terrorism and Crime Act 2003 [c.6],

under which the property would fall to be delivered up or produced to the person mentioned in paragraph (a).

(8) Where any property which has been seized in exercise, or purported exercise, of a relevant power of seizure has parts (“part A” and “part B”) comprised in it such that—

(a) it would be inappropriate, if the property were returned, to take any action such as is mentioned in subsection (7) in relation to part A;

(b) it would (or would but for the facts mentioned in paragraph (a)) be appropriate, if the property were returned, to take such action in relation to part B; and

(c) in all the circumstances, it is not reasonably practicable to separate part A from part B without prejudicing the use of part B for purposes for which it is lawful to use property seized under the power in question,

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the facts mentioned in paragraph (a) shall not be taken into account by the appropriate judicial authority in deciding whether the retention of the property is justified on grounds falling within subsection (7).

(9) If a person fails to comply with any order or direction made or given by a Deemster in exercise of any jurisdiction under this section—

- (a) the authority may deal with that person as if that person had committed a contempt of the High Court; and
- (b) any enactment relating to contempt of the High Court shall have effect in relation to the failure as if it were such a contempt.

(10) The relevant powers of seizure for the purposes of this section are—

- (a) the powers of seizure conferred by sections 26A and 26B;
- (b) each of the powers of seizure specified in Parts 1 and 2 of Schedule 1A; and
- (c) any power of seizure (not falling within paragraph (a) or (b)) conferred on a constable by or under any enactment, including an enactment passed after this Act.

(11) References in this section to a person with a relevant interest in seized property are references to—

- (a) the person from whom it was seized;
- (b) any person with an interest in the property; or
- (c) any person, not falling within paragraph (a) or (b), who had custody or control of the property immediately before the seizure.

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(12) For the purposes of subsection (11)(b), the persons who have an interest in seized property shall, in the case of property which is or contains an item subject to legal privilege, be taken to include the person in whose favour that privilege is conferred.

Cases where duty to secure arises

P2001/16/60

26K.(1) Where property has been seized in exercise, or purported exercise, of any power of seizure conferred by section 26A or 26B, a duty to secure arises under section 26L in relation to the seized property if—

- (a) a person entitled to do so makes an application under section 26J for the return of the property;
- (b) at least one of the conditions set out in subsections (2) and (3) is satisfied; and
- (c) notice of the application is given to a relevant person.

(2) The first condition is that the application is made on the grounds that the seized property is or contains an item subject to legal privilege that is not comprised in property falling within section 26E(2).

(3) The second condition is that—

- (a) the seized property was seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers specified in subsection (6); and
- (b) the application—

- (i) is made on the ground that the seized property is or contains something which does not fall within section 26D(3); and

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- (ii) states that the seized property is or contains special procedure material or excluded material.

(4) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure conferred by section 169(4) of the Proceeds of Crime Act 2008 [c.13] the second condition is satisfied only if the application states that the seized property is or contains excluded material.

(5) In relation to property seized by a person who had, or purported to have, power under this Part to seize it by virtue only of one or more of the powers of seizure specified in Part 3 of Schedule 1A but not by virtue of—

- (a) the power of seizure conferred by section 11(2);
- (b) either of the powers of seizure conferred by paragraphs 1 and 3 of Schedule 5 to the Anti-Terrorism and Crime Act 2003 [c. 6]; or
- (c) either of the powers of seizure conferred by paragraph 14 of Schedule 5 to that Act of 2003 so far as they are conferred by reference to paragraph 1 of that Schedule,

the second condition is satisfied only if the application states that the seized property is or contains excluded material or special procedure material consisting of documents or records other than documents.

(6) The powers mentioned in subsection (3) are—

- (a) the powers of seizure specified in Part 3 of Schedule 1A;
- (b) the powers of seizure conferred by the provisions of Parts II and III (except section 11(2));

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- (c) the powers of seizure conferred by the provisions of paragraph 10 of Schedule 5 to the Act of 2003; and
- (d) the powers of seizure conferred by the provisions of paragraph 14 of that Schedule so far as they are conferred by reference to paragraph 10 of that Schedule.

(7) In this section “a relevant person” means any one of the following—

- (a) the person who made the seizure;
- (b) the person for the time being having possession, in consequence of the seizure, of the seized property;
- (c) the person named for the purposes of subsection (1)(d) or (4)(d) of section 26C in any notice given under that section with respect to the seizure.

The duty to secure

P2001/16/61

26L. (1) The duty to secure that arises under this section is a duty of the person for the time being having possession, in consequence of the seizure, of the seized property to ensure that arrangements are in force which secure that the seized property (without being returned) is not, at any time after the giving of the notice of the application under section 26K(1), either—

- (a) examined or copied; or
- (b) put to any use to which its seizure would, apart from this subsection, entitle it to be put,

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except with the consent of the applicant or in accordance with the directions of the appropriate judicial authority.

(2) Subsection (1) shall not have effect in relation to any time after the withdrawal of the application to which the notice relates.

(3) Subsection (9) of section 26J shall apply in relation to any jurisdiction conferred on the appropriate judicial authority by this section as it applies in relation to the jurisdiction conferred by that section.

Use of inextricably linked property

P2001/16/62

26M.(1) This section applies to property, other than property which is for the time being required to be secured in pursuance of section 26L, if—

- (a) it has been seized under any power conferred by section 26A or 26B or specified in Part 1 or 2 of Schedule 1A; and
- (b) it is inextricably linked property.

(2) Subject to subsection (3), it shall be the duty of the person for the time being having possession, in consequence of the seizure, of the inextricably linked property to ensure that arrangements are in force which secure that that property (without being returned) is not at any time, except with the consent of the person from whom it was seized, either—

- (a) examined or copied; or
- (b) put to any other use.

(3) Subsection (2) does not require that arrangements under that subsection should prevent inextricably linked property from being put to any use falling within subsection (4).

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(4) A use falls within this subsection to the extent that it is use which is necessary for facilitating the use, in any investigation or proceedings, of property in which the inextricably linked property is comprised.

(5) Property is inextricably linked property for the purposes of this section if it falls within any of subsections (6) to (8).

(6) Property falls within this subsection if—

(a) it has been seized under a power conferred by section 26A or 26B;
and

(b) but for subsection (3)(c) of section 26D, arrangements under subsection (2) of that section in relation to the property would be required to ensure the return of the property as mentioned in subsection (2)(c) of that section.

(7) Property falls within this subsection if—

(a) it has been seized under a power to which section 26E applies; and
(b) but for paragraph (b) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.

(8) Property falls within this subsection if—

(a) it has been seized under a power of seizure to which section 26F applies; and

(b) but for paragraph (c) of subsection (1) of that section, the person for the time being having possession of the property would be under a duty to secure its return as mentioned in that subsection.

Construction of Part IIA

Copies

P2001/16/63

26N.(1) Subject to subsection (2)-

- (a) in this Part, “seize” includes “take a copy of”, and cognate expressions shall be construed accordingly;
 - (b) this Part shall apply as if any copy taken under any power to which any provision of this Part applies were the original of that of which it is a copy; and
 - (c) for the purposes of this Part, except sections 26A and 26B, the powers to obtain hard copies of information which is stored in electronic form shall be treated as powers of seizure, and references to seizure and to seized property shall be construed accordingly.
- (2) Subsection (1) does not apply to section 26H.

General interpretation of Part IIA

P2001/16/64

26O.(1) In this Part—

“appropriate judicial authority” means a Deemster;

“documents” includes information recorded in any form;

“item subject to legal privilege” shall be construed in accordance with section 13;

“premises” includes any vehicle, stall or moveable structure (including an offshore installation) and any other place whatever, whether or not occupied as land;

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“return”, in relation to seized property, shall be construed in accordance with section 26I, and cognate expressions shall be construed accordingly;

“seize”, and cognate expressions, shall be construed in accordance with section 26N(1);

“seized property”, in relation to any exercise of a power of seizure, means anything seized in exercise of that power; and

“vehicle” includes any vessel, aircraft or hovercraft.

(2) In this Part references, in relation to a time when seized property is in any person’s possession in consequence of a seizure (“the relevant time”), to something for which the person making the seizure had power to search shall be construed—

(a) where the seizure was made on the occasion of a search carried out on the authority of a warrant, as including anything of the description of things the presence or suspected presence of which provided grounds for the issue of the warrant;

(b) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which on that occasion was believed by that person to be, or to appear to be, of a particular description, as including—

(i) anything which at the relevant time is believed by the person in possession of the seized property, or (as the case may be) appears to that person, to be of that description; and

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- (ii) anything which is in fact of that description;
- (c) where the property was seized in the course of a search on the occasion of which it would have been lawful for the person carrying out the search to seize anything which there were on that occasion reasonable grounds for believing was of a particular description, as including—
 - (i) anything which there are at the relevant time reasonable grounds for believing is of that description; and
 - (ii) anything which is in fact of that description;
- (d) where the property was seized in the course of a search to which neither paragraph (b) nor paragraph (c) applies, as including anything which is of a description of things which, on the occasion of the search, it would have been lawful for the person carrying it out to seize otherwise than under section 26A and 26B.
- (3) References in subsection (2) to a search include references to any search authorised by virtue of any enactment.
- (4) In this Part—
 - (a) references to excluded material shall be construed in accordance with section 14 (meaning of “excluded material”); and
 - (b) references to special procedure material shall be construed in accordance with section 17 (meaning of “special procedure material”).

Supplemental provisions of Part IIA

Application to customs officers

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P2001/16/65

26P. The powers conferred by section 77(2) (application of provisions relating to police officers to customs officers) shall have effect in relation to the provisions of this Part as they have effect in relation to the other provisions of this Act.

Consequential applications and amendments of enactments

26Q. (1) Schedule 1B (which applies enactments in relation to provision made by this Part and contains minor and consequential amendments) shall have effect.

(2) The Department may by order amend Part 1 of Schedule 1B by adding entries to, or removing entries from, that Part of that Schedule.

(3) An order under this section may amend any other enactment if it is necessary as a consequence of the addition or removal of an entry in Part 1 of Schedule 1B.

(4) An order under this section shall not come into operation unless it is approved by Tynwald.”.

Insertion of new Schedules 1A and 1B

48. After Schedule 1 of the Police Powers and Procedures Act 1998 [c.9] insert—

“SCHEDULE 1A

POWERS OF SEIZURE

Sections 26A(5), 26B(5), 26E(4)(b), 26F(4), 26J(10)(b), 26K(5) &(6), 26M(1)(a)

PART 1

POWERS TO WHICH SECTION 26A APPLIES

Obscene Publications and Indecent Advertisements Act 1907 [VIII p.91]

1. Each of the powers of seizure conferred by section 3 (power to search for and seize obscene materials and documents relating to a connected business).

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Forgery Act 1952 [XVIII p.6]

2. The power of seizure conferred by section 15 (seizure of forgeries and counterfeits and of things used for making them etc).

Betting Act 1970 [XXI p.220]

3. The power of seizure conferred by paragraph 8 of Schedule 3 (in relation to offences involving general betting duty).

Misuse of Drugs Act 1976 [c.21]

4. Each of the powers of seizure conferred by the provisions of section 23(2) and (3) (power to search for and seize controlled drugs and related documents).

Theft Act 1981 [c.21]

5. The power of seizure conferred by section 28(1) (seizure of goods suspected of being stolen).

Customs and Excise Management Act 1986 [c.34]

6. The power of seizure conferred by section 124C(4) (seizure of evidence of fraud offences).

Computer Security Act 1992 [c.1]

7. The power of seizure conferred by section 13(4) (seizure of evidence of offences under that Act).

Value Added Tax Act 1996 [c.1]

8. The power of seizure conferred by paragraph 12 of Schedule 12 (seizure of evidence of fraudulent evasion of VAT etc).

Police Powers and Procedures Act 1998 [c.9]

9. Each of the powers of seizure conferred by the provisions of Part II or III (police powers of entry, search and seizure).

Criminal Justice Act 2001 [c.4]

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10. (1) The power of seizure conferred by section 13(2) (seizure of publications consisting of or containing prohibited material).

(2) The power of seizure conferred by paragraph 4(2) of Schedule 3 (seizure of indecent photographs or pseudo-photographs of children).

Anti-Terrorism and Crime Act 2003 [c.6]

11. Each of the powers of seizure conferred by the provisions of paragraphs 1, 3, 10 and 14 of Schedule 5 (powers for use in terrorism investigations).

Proceeds of Crime Act 2008 [c.13]

12. The power of seizure conferred by section 169(4) (seizure of material likely to be of substantial value to certain investigations).

PART 2

POWERS TO WHICH SECTION 26B APPLIES

Misuse of Drugs Act 1976 [c.21]

13. Each of the powers of seizure conferred by the provisions of section 23(2) and (3) (power to search for and seize controlled drugs and related documents).

Police Powers and Procedures Act 1998 [c.9]

14. Each of the powers of seizure conferred by the provisions of Part II or III (police powers of entry, search and seizure).

Anti-Terrorism and Crime Act 2003 [c.6]

15. (1) The power of seizure conferred by section 32(4) (seizure on the occasion of a search of a suspected terrorist).

(2) Each of the powers of seizure conferred by the provisions of paragraphs 1, 3, 10 and 14 of Schedule 5 (powers for use in terrorism investigations).

PART 3

POWERS TO WHICH SECTION 26F APPLIES

Obscene Publications and Indecent Advertisements Act 1907 [VIII p.91]

16. Each of the powers of seizure conferred by section 3 (power to search for and seize obscene materials and documents relating to a connected business).

Forgery Act 1952 [XVIII p.6]

17. The power of seizure conferred by section 15 (seizure of forgeries and counterfeits and of things used for making them etc).

Theft Act 1981 [c.21]

18. The power of seizure conferred by section 28(3) (power to search for and seize goods suspected of being stolen).

Computer Security Act 1992 [c.1]

19. The power of seizure conferred by section 13(4) (seizure of evidence of offences under that Act).

Police Powers and Procedures Act 1998 [c.9]

20. The power of seizure conferred by section 11 (police powers of entry, search and seizure).

Criminal Justice Act 2001 [c.4]

21. The power of seizure conferred by paragraph 4(2) of Schedule 3 (seizure of indecent photographs or pseudo-photographs of children).

Anti-Terrorism and Crime Act 2003 [c.6]

22. (1) Each of the powers of seizure conferred by the provisions of paragraphs 1 and 3 of Schedule 5 (powers for use in terrorism investigations).

(2) The power of seizure conferred by paragraph 14 of Schedule 5, so far only as the power in question is conferred by reference to paragraph 1 of that Schedule.

Proceeds of Crime Act 2008 [c.13]

23. The power of seizure conferred by section 169(4) (seizure of material likely to be of substantial value to certain investigations).

SCHEDULE 1B
APPLICATIONS AND MINOR AND CONSEQUENTIAL
AMENDMENTS

PART 1

APPLICATION OF ENACTMENTS

Section 26Q

Forfeiture of seized items

1. (1) The provisions mentioned in sub-paragraph (2) (which are about the forfeiture etc of items which have been seized) shall apply in relation to an item seized under section 26A as if the item had been seized under the power of seizure in reliance on which it was seized.

(2) Those provisions are—

(a) section 3 of the Obscene Publications and Indecent Advertisements Act 1907 [VIII p.91];

(b) section 15 of the Forgery Act 1952 [XVIII p.6].

Disclosure of information

2. Any provision which—

(a) restricts the disclosure, or permits the disclosure only for limited purposes or in limited circumstances, of information obtained through the exercise of a power of seizure specified in Part 1 or 2 of Schedule 1A; or

(b) confers power to make provision which does either or both of those things,

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shall apply in relation to information obtained under section 26A or 26B in reliance on the power in question as it applies in relation to information obtained through the exercise of that power.

Interpretation

3. For the purposes of this Part, an item is seized, or information is obtained, under section 26A or 26B in reliance on a power of seizure if the item is seized, or the information obtained, in exercise of so much of any power conferred by that section as is exercisable by reference to that power of seizure.

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

4. (1) In each of the provisions mentioned in sub-paragraph (2) (which confer powers to require the production of information contained in a computer in a visible and legible form)—

(a) for “contained in a computer” there shall be substituted “stored in any electronic form”; and

(b) after “in which it is visible and legible” there shall be inserted “or from which it can readily be produced in a visible and legible form”.

(2) Those provisions are—

(a) sections 22(4) and 23(1) of this Act;

(b) section 124D(4) of the Customs and Excise Management Act 1986

[c.34];

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- (c) paragraph 13(4) of Schedule 12 to the Value Added Tax Act 1996
[c.1].

5. In paragraph 5 of Schedule 1 to this Act (power to require the production of information contained in a computer in a visible and legible form)—

- (a) for “contained in a computer” there shall be substituted “stored in any electronic form”; and
- (b) in paragraph (a), after “in which it is visible and legible” there shall be inserted “or from which it can readily be produced in a visible and legible form”.”.

Powers of arrest

Substitution of sections 27 and 28

P2005/15/10

- 49.** (1) For sections 27 and 28 of the Police Powers and Procedures Act 1998 [c.9] (arrest without warrant) substitute—

“Arrest without warrant: constables

P1984/60/24

- 27.** (1) A constable may arrest without a warrant—
- (a) anyone who is about to commit an offence;
- (b) anyone who is in the act of committing an offence;
- (c) anyone whom the constable has reasonable grounds for suspecting to be about to commit an offence;
- (d) anyone whom the constable has reasonable grounds for suspecting to be committing an offence.

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(2) If a constable has reasonable grounds for suspecting that an offence has been committed, the constable may arrest without a warrant anyone whom the constable has reasonable grounds to suspect of being guilty of that offence.

(3) If an offence has been committed, a constable may arrest without a warrant—

(a) anyone who is guilty of the offence;

(b) anyone whom the constable has reasonable grounds for suspecting to be guilty of it.

(4) The power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are—

(a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person is that person's real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person in question—

(i) causing physical injury to himself or herself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

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(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person in question;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

Arrest without warrant: other persons

P1984/60/24A

28. (1) A person other than a constable may arrest without a warrant—

(a) anyone who is in the act of committing an offence triable on information;

(b) anyone whom the person has reasonable grounds for suspecting to be committing an offence triable on information.

(2) Where an offence triable on information has been committed, a person other than a constable may arrest without a warrant—

(a) anyone who is guilty of the offence;

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- (b) anyone whom the person has reasonable grounds for suspecting to be guilty of it.
- (3) The power of summary arrest conferred by subsection (1) or (2) is exercisable only if—
 - (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
 - (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.
- (4) The reasons are to prevent the person in question (“A”) –
 - (a) causing physical injury to A or to any other person;
 - (b) suffering physical injury;
 - (c) causing loss of or damage to property; or
 - (d) making off before a constable can assume responsibility for A.”.
- (2) Sections 27 and 28 of the Police Powers and Procedures Act 1998 (as substituted by this section) are to have effect in relation to any offence whenever committed.

Section 49: supplementary

- 50.** (1) The following enactments are repealed—
- (a) section 2(3) of the Protection from Harassment Act 2000[c.12];
 - (b) section 19(2) of the Criminal Justice Act 2001 [c.4];
 - (c) paragraph 6(1) and (2) of Schedule 14 to the Anti-Terrorism and Crime Act 2003 [c.6];

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(d) the Criminal Justice (Arrestable Offences) Act 2004 [c.4].

(2) The Department may by order make any provision repealing or amending any provision of an enactment (other than this Act) which is inconsistent with, or is unnecessary or requires modification in consequence of, section 28 of the 1998 Act.

(3) An order under subsection (2) shall not come into operation unless it is approved by Tynwald.

Bail elsewhere than at police station

Amendment of section 33

51. (1) Section 33 of the Police Powers and Procedures Act 1998 [c.9] (arrest elsewhere than at police station) is amended as follows.

(2) For subsection (1) substitute—

“(1) Subsection (1A) applies where a person is, at any place other than a police station—

(a) arrested by a constable for an offence; or

(b) taken into custody by a constable after being arrested for an offence by a person other than a constable.

(1A) The person must be taken by a constable to a police station as soon as practicable after the arrest.

(1B) Subsection (1A) has effect subject to section 33A (release on bail) and subsection (5) (release without bail).”.

(3) For subsection (5) substitute—

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“(5) A person arrested by a constable at any place other than a police station must be released without bail if the condition in subsection (5A) is satisfied.

(5A) The condition is that, at any time before the person arrested reaches a police station, a constable is satisfied that there are no grounds for keeping the person under arrest or releasing the person on bail under section 33A.”.

(4) For subsections (7) and (8) substitute—

“(7) Nothing in subsection (1A) or in section 33A prevents a constable delaying taking a person to a police station or releasing the person on bail if the condition in subsection (7A) is satisfied.

(7A) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(8) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released on bail.”.

(5) In subsection (9) for “subsection (1)” substitute “subsection (1A) or section 33A”.

Insertion of new sections 33A to 33D

52. After section 33 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Bail elsewhere than at police station

33A.(1) A constable may release on bail a person who is arrested or taken into custody in the circumstances mentioned in section 33(1).

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(2) A person may be released on bail under subsection (1) at any time before that person arrives at a police station.

(3) A person released on bail under subsection (1) must be required to attend a police station.

(4) No other requirement may be imposed on the person as a condition of bail.

(5) The police station which the person is required to attend may be any police station.

Bail under section 33A: notices

33B. (1) Where a constable grants bail to a person under section 33A, the constable must give that person a notice in writing before that person is released.

(2) The notice must state—

(a) the offence for which the person was arrested; and

(b) the ground on which the person was arrested.

(3) The notice must inform the person that the person is required to attend a police station.

(4) It may also specify the police station which the person is required to attend and the time when the person is required to attend.

(5) If the notice does not include the information mentioned in subsection (4), the person must subsequently be given a further notice in writing which contains that information.

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(6) The person may be required to attend a different police station from that specified in the notice under subsection (4) or (5) or to attend at a different time.

(7) The person must be given notice in writing of any such change as is mentioned in subsection (6) and more than one such notice may be given to the person.

Bail under section 33A: supplemental

33C.(1) A person who has been required to attend a police station is not required to do so if the person is given notice in writing that the person's attendance is no longer required.

(2) If a person is required to attend a police station which is not a designated police station that person must be—

(a) released; or

(b) taken to a designated police station,

not more than 6 hours after the arrival of that person at the police station.

(3) Nothing in the Bail Act 1952 [XVIII p.78] applies in relation to bail under section 33A.

(4) Nothing in section 33A or 33B or in this section prevents the re-arrest without a warrant of a person released on bail under section 33A if new evidence justifying a further arrest has come to light since that person's release.

Failure to answer to bail under section 33A

33D.(1) A constable may arrest without a warrant a person who—

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(a) has been released on bail under section 33A subject to a requirement to attend a specified police station; but

(b) fails to attend the police station at the specified time.

(2) A person arrested under subsection (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) In subsection (1), “specified” means specified in a notice under subsection (1) or (5) of section 33B or, if notice of change has been given under subsection (7) of that section, in that notice.

(4) For the purposes of—

(a) section 33 (subject to the obligation in subsection (2)); and

(b) section 34,

an arrest under this section is to be treated as an arrest for an offence.”.

Conditional cautions

Insertion of new Part IIIA

53. After Part III of the Police Powers and Procedures Act 1998 [c.9] insert—

**“PART IIIA
CONDITIONAL CAUTIONS**

Conditional cautions

P2003/44/22

36A.(1) An authorised person may give a conditional caution to a person aged 16 or over (“the offender”) if each of the five requirements in section 36B is satisfied.

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(2) In this Part “conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution are those which have either or both of the following objects—

- (a) facilitating the rehabilitation of the offender;
- (b) ensuring that the offender makes reparation for the offence.

(4) In this Part “authorised person” means—

- (a) a constable;
- (b) an officer of customs and excise designated as an investigating officer by the Treasury; or
- (c) a person authorised by the Attorney General for the purposes of this section.

The five requirements

P2003/44/23

36B. (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 given to the offender in respect of the offence.

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(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.

Failure to comply with conditions

P2003/44/24

36C. (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the person for the offence in question.

(2) The document mentioned in section 36B(5) is to be admissible in such proceedings.

(3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

(4) Section 75(1) of the Summary Jurisdiction Act 1989 [c.15] does not apply to such proceedings if the offender has signed the document referred

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to in section 36B(5) within 6 months from the time when the offence was committed.

Code of practice: conditional cautions

P2003/44/25

36D.(1) The Department must prepare 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 may be given; and
 - (g) the monitoring of compliance with conditions attached to such cautions.
- (3) After preparing a draft of the code the Department—
 - (a) must publish the draft;
 - (b) must consider any representations made to it about the draft; and
 - (c) may amend the draft accordingly.

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(4) A code must not come into operation unless it is approved by Tynwald.

Assistance of probation officers

P2003/44/26

36E. A probation officer 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.

Youth conditional cautions

36F.(1) Where a conditional caution is given to a young person aged 16 or 17, the conditional caution is to be known as a “youth conditional caution”.

(2) A youth conditional caution may not be given if the offender has previously been convicted of an offence.

(3) Where a youth conditional caution is given to a young person aged 16, the explanation and warning mentioned in section 36B(4) must be given in the presence of an appropriate adult.

Interpretation of Part IIIA

P2006/44/27

36G. In this Part—

“appropriate adult”, in relation to a young person, means—

- (a) the young person’s parent or guardian;
- (b) if the young person is in the care of the Department of Health and Social Security, a person representing that Department; or

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(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

“authorised person” has the meaning given by section 36A(4);

“conditional caution” has the meaning given by section 36A(2);

“the offender” has the meaning given by section 36A(1);

“youth conditional caution” has the meaning given by section 36F(1).”.

Use of video and telephone links for detention

Insertion of new section 43A

54. After section 43 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Use of telephone for review under section 43

P2001/16/73

43A.(1) This section applies, notwithstanding anything in section 43, where in the case of a person who has been arrested but not charged—

(a) it is not reasonably practicable for an officer of at least the rank of inspector to be present in the police station where that person is held to carry out any review of that person’s detention that is required by subsection 43(1)(b); and

(b) the review is not one which regulations under section 48A authorise to be carried out using video-conferencing facilities, or is one which it is not reasonably practicable, in the circumstances, to carry out using any such facilities.

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(2) The review may be carried out by an officer of at least the rank of chief inspector who has access to a means of communication by telephone to persons in the police station where the arrested person is held.

(3) Where any review is carried out under this section by an officer who is not present at the station where the arrested person is held—

(a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;

(b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and

(c) the requirements under section 43(12) and (13) for—

(i) the arrested person; or

(ii) an advocate representing the arrested person,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such an advocate, to be given an opportunity to make representations in a manner authorised by subsection (4).

(4) Representations are made in a manner authorised by this subsection—

(a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—

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(i) orally by telephone to that officer; or

(ii) in writing to that officer by means of those facilities; and

(b) in any other case, if they are made orally by telephone to that officer.

(5) In this section “video-conferencing facilities” has the same meaning as in section 48A.”.

Insertion of new section 48A

55. After section 48 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Use of video-conferencing facilities for decisions about detention

P2001/16/73

48A.(1) Subject to the following provisions of this section, the Department may by regulations provide that, in the case of an arrested person who is held in a police station, some or all of the functions mentioned in subsection (2) may be performed (notwithstanding anything in the preceding provisions of this Part) by an officer who—

(a) is not present in that police station; but

(b) has access to the use of video-conferencing facilities that enable him or her to communicate with persons in that station.

(2) Those functions are—

(a) the functions in relation to an arrested person taken to a police station that is not a designated police station which, in the case of an arrested person taken to a station that is a designated police

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station, are functions of a custody officer under section 40, 41 or 43; and

- (b) the function of carrying out a review under section 43(1)(b) (review, by an officer of at least the rank of inspector, of the detention of person arrested but not charged).

(3) Regulations under this section shall specify the use to be made in the performance of the functions mentioned in subsection (2) of the facilities mentioned in subsection (1).

(4) Regulations under this section shall not authorise the performance of any of the functions mentioned in subsection (2)(a) by such an officer as is mentioned in subsection (1) unless he or she is a custody officer for a designated police station.

(5) Where any functions mentioned in subsection (2) are performed in a manner authorised by regulations under this section—

- (a) any obligation of the officer performing those functions to make a record in connection with the performance of those functions shall have effect as an obligation to cause another officer to make the record; and

- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer.

(6) Where the functions mentioned in subsection (2)(b) are performed in a manner authorised by regulations under this section, the requirements under section 43(12) and (13) for—

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- (a) the arrested person; or
- (b) an advocate representing the arrested person,

to be given any opportunity to make representations (whether in writing or orally) to the person performing those functions shall have effect as a requirement for that person, or such an advocate, to be given an opportunity to make representations in a manner authorised by subsection (7).

(7) Representations are made in a manner authorised by this subsection—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer performing the functions, if they are made either—
 - (i) orally to that officer by means of the video-conferencing facilities used by him or her for performing those functions; or
 - (ii) in writing to that officer by means of the facilities available for the immediate transmission of the representations; and
- (b) in any other case if they are made orally to that officer by means of the video-conferencing facilities used by him or her for performing the functions.

(8) Regulations under this section may make different provision for different cases and may be made so as to have effect in relation only to the police stations specified or described in the regulations.

(9) Regulations under this section shall not come into operation unless they are approved by Tynwald.

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(10) Any reference in this section to video-conferencing facilities, in relation to any functions, is a reference to any facilities (whether a live television link or other facilities) by means of which the functions may be performed with the officer performing them, the person in relation to whom they are performed and any legal representative of that person all able to both see and to hear each other.” .

Police bail

Insertion of new section 50A

56. (1) After section 50 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Conditions for bail after arrest

50A. (1) Where a person is released on bail under this Part, that person may be required to comply, before release on bail or later, with such requirements as appear to the custody officer to be necessary to secure that the person—

- (a) surrenders to custody;
- (b) does not commit an offence while on bail;
- (c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or herself or any other person.

(2) If it appears to the custody officer that a person who is to be released on bail is unlikely to remain in the Island until the time appointed to surrender to custody, that person may be required, before release on bail, to give security for surrender to custody.

(3) Where a custody officer has granted bail under this Part any custody officer serving at the same station may, at the request of the person to

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whom it was granted, vary the conditions of bail and in doing so may impose conditions or more onerous conditions.

(4) Where a custody officer—

(a) imposes conditions under subsection (1); or

(b) varies or imposes conditions under subsection (3),

the custody officer shall, with a view to enabling that person to consider requesting that or another custody officer, or making an application to a court of summary jurisdiction, to vary the conditions, give reasons for imposing or varying the conditions.

(5) The reasons given under subsection (4) shall be noted in the custody record and a copy of that note shall be given to the person concerned who may by complaint appeal to a court of summary jurisdiction against the decision of the custody officer.

(6) On an appeal under subsection (5) a court of summary jurisdiction may grant bail or vary the conditions and in doing so may impose more onerous conditions.

(7) On determining an application under subsection (6) the court shall—

(a) remand the applicant, in custody or on bail in accordance with the determination; and

(b) where the court withholds bail or grants bail the grant of bail made by the custody officer shall lapse.”.

(2) In section 52 of that Act, after subsection (1) insert—

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“(1A) A constable may arrest without warrant any person who, having been released on bail under this Part (except section 33A (bail elsewhere than at police station)), is, without reasonable cause, in contravention of any requirement imposed under section 50A(1).”.

Child arrested for serious arrestable offence

Amendment of section 55

57. In section 55 of the Police Powers and Procedures Act 1998 [c.9] (children), for “homicide” substitute “a serious arrestable offence”.

Intimate searches and intimate samples

Amendment of section 58

58. In section 58(1) of the Police Powers and Procedures Act 1998 [c.9] (intimate searches), for “chief inspector” substitute “inspector”.

Amendment of section 65

59. In section 65(1)(a) and section 65(2)(a) of the Police Powers and Procedures Act 1998 [c.9] (intimate samples), for “chief inspector” substitute “inspector”.

Police powers relating to drugs

Insertion of new section 58A

P2005/17/5

60. After section 58 of the Police Powers and Procedures Act 1998 [c. 9] insert—

“X-rays and ultrasound scans

P1984/60/55A

58A.(1) If an officer of at least the rank of inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—

(a) may have swallowed a Class A drug; and

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- (b) was in possession of it with the appropriate criminal intent before his or her arrest,

the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him or her unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a constable must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital;
- (b) a registered medical practitioner's surgery; or
- (c) some other place used for medical purposes.

(5) The custody record of the person must also state—

- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

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(6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).

(7) Every annual report under section 4A of the Police Act 1993 [c.11] must contain information about x-rays which have been taken and ultrasound scans which have been carried out under this section in the area to which the report relates during the period to which it relates.

(8) The information about such x-rays and ultrasound scans must be presented separately and must include—

- (a) the total number of x-rays;
- (b) the total number of ultrasound scans;
- (c) the results of the x-rays;
- (d) the results of the ultrasound scans.

(9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—

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

may draw such inferences from the refusal as appear proper.

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(10) In this section—

“the appropriate criminal intent” has the same meaning as in section 58;

“Class A drug” has the same meaning as in section 2 of the Misuse of Drugs Act 1976 [c.21];

“suitably qualified person” means—

- (a) a registered medical practitioner; or
- (b) a registered nurse.”.

Visual recording of interviews

Insertion of new section 63A

61. After section 63 of the Police Powers and Procedures Act 1998 [c.9] insert—

“Visual recording of interviews

P1984/60/60A

63A.(1) The Department may by order—

- (a) provide for codes of practice in connection with the visual recording of interviews held by police officers at police stations;
and

- (b) require the visual recording of interviews which are so held, and require the visual recording of those interviews, to be in accordance with the code for the time being in operation under this section.

(2) In this section—

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- (a) references to any interview are references to an interview of a person suspected of a criminal offence; and
- (b) references to a visual recording include references to a visual recording in which an audio recording is comprised.”.

Fingerprints

Amendment of section 64

62. (1) Section 64 of the Police Powers and Procedures Act 1998 [c.9] (fingerprinting) is amended as follows.

(2) After subsection (2) insert—

“(2A) The fingerprints of a person who is not detained at a police station may only be taken with the appropriate consent.”.

(3) For subsection (6) substitute—

“(6) The fingerprints of a person detained at a police station may be taken without the appropriate consent if the person has been—

- (a) convicted of a recordable offence; or
- (b) given a caution in respect of a recordable offence which, at the time of caution, he or she has admitted.”.

Samples taken elsewhere than at police station

Amendment of section 65

63. (1) Section 65 of the Police Powers and Procedures Act 1998 [c.9] (intimate samples) is amended as follows.

(2) After subsection (2) insert—

“(2A) An intimate sample may be taken at a place other than a police station from a person who is not in police detention—

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(a) if a police officer of at least the rank of inspector authorises it to be taken; and

(b) if the appropriate consent is given.

(2B) Subsection (2A) is in addition to subsection (2).”.

(3) In subsection (3), for “(1) or (2)” substitute “(1), (2) or (2A)”.

(4) In subsection (4), for “(1) or (2)” substitute “(1), (2) or (2A)”.

(5) In subsection (9), for “a person at a police station” substitute “a person who is not in police detention”.

Amendment of section 66

64. (1) Section 66 of the Police Powers and Procedures Act 1998 [c.9] (other samples) is amended as follows.

(2) After subsection (2) insert—

“(2A) A non-intimate sample may be taken at a place other than a police station from a person who is not in police detention—

(a) if a police officer of at least the rank of inspector authorises it to be taken; and

(b) if the appropriate consent is given.”.

(3) In subsection (6), for “subsection (3)” substitute “subsection (2A) or (3)”.

(4) In subsection (7), for “subsection (3)” substitute “subsection (2A) or (3)”.

(5) In subsection (7A), for “subsection (3)” substitute “subsection (2A) or (3)”.

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(6) In subsection (10), for “subsection (3)” substitute “subsection (2A) or (3)”.

(7) In subsection (12), for “a person at a police station” substitute “a person who is not in police detention”.

Amendment of section 67

65. (1) Section 67 of the Police Powers and Procedures Act 1998 [c.9] (fingerprints and samples: supplementary provisions) is amended as follows.

(2) After section 67(1A) (inserted by section 62(5)) insert—

“(1B) Where—

- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) applies; and
 - (b) the person has given his or her consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of information derived from them,
- the fingerprints or impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in that subsection.

(1C) A consent given for the purposes of subsection (1B) is not capable of being withdrawn.”.

Photographing of suspects

Amendment of section 68A

P2005/15/116

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66. (1) Section 68A of the Police Powers and Procedures Act 1998 [c.9] (photographing of suspects etc) is amended as follows.

(2) After subsection (1) insert—

“(1A) A person falling within subsection (1B) may, on the occasion of the relevant event referred to in subsection (1B), be photographed elsewhere than at a police station—

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1B) A person falls within this subsection if he or she has been—

(a) arrested by a constable for an offence; or

(b) taken into custody by a constable after being arrested for an offence by a person other than a constable.”.

(3) In subsection (4)(a), after “prosecution” insert “or to the enforcement of a sentence”.

(4) In subsection (5), after paragraph (b) insert “; and

(c) “sentence” includes any order made by a court in the Island when dealing with an offender in respect of his or her offence.”

(5) After subsection (6) insert—

“(6A) In this section, a “photograph” includes a moving image, and corresponding expressions shall be construed accordingly.”.

Codes of practice

Substitution of section 75

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67. (1) For section 75 of the Police Powers and Procedures Act 1998 [c.9]
(codes of practice) substitute—

“Codes of practice

P1984/60/66

The Department shall by order provide for codes of practice in connection
with—

- (a) the exercise by police officers of statutory powers—
 - (i) to search a person without first arresting him or her;
 - (ii) to search a vehicle or vessel without making an arrest; or
 - (iii) to arrest a person;
- (b) the detention, treatment, questioning and identification of persons
by police officers;
- (c) searches of premises by police officers;
- (d) the seizure and treatment of property found by police officers on
persons, premises, vehicles or vessels; and
- (e) the exercise by police officers of any other statutory or common
law powers.”.

Amendment of section 76

68. (1) Section 76 of the Police Powers and Procedures Act 1998 [c.9]
(codes of practice: supplementary) is amended as follows.

(2) In section 76(2), for “section 63 or 75” substitute “section 63, 63A
or 75”.

(3) After section 76(3) insert—

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“(3A) An order bringing a code, or a revision of a code, into operation may include transitional or saving provisions.”.

PART 21
AMENDMENTS TO THE CRIMINAL JUSTICE
(EXCLUSION OF NON-RESIDENT OFFENDERS) ACT 1998

Exclusion orders

Amendment of section 1

69. In section 1(2)(a) of the Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998 [c.10] (orders excluding persons from the Island), for “the period of 5 years” substitute “such period as the court making the exclusion order determines,”.

Insertion of new section 3A

70. After section 3 of the Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998 [c.10] insert—

“Revocation etc of exclusion orders in exceptional cases

3A.(1) Where an exclusion order is in force and on the application of the offender, it appears to a court of summary jurisdiction that, having regard to the personal circumstances of the applicant, it would be equitable for the order to be revoked or suspended, the court may—

(a) if the order was made by a court of summary jurisdiction, revoke or amend the order or suspend it for such period as the court considers equitable;

(b) if the order was made by a Court of General Gaol Delivery, refer the application to that court,

and, where the court deals with the offender’s case under paragraph (b) it shall send to the Chief Registrar such particulars of the case as may be desirable.

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(2) Where an application is referred to the Court of General Gaol Delivery under subsection (1)(b), the court may revoke or amend the order or suspend it for such period as the court considers equitable.

(3) Where an application is refused, the applicant may appeal to the High Court against the decision in the same manner as an appeal against sentence.”.

PART 22

AMENDMENTS TO THE PUBLIC ORDER ACT 1998

Persons acting in an anti-social manner

Insertion of new section 3A

71. After section 3 of Public Order Act 1998 [c.11] insert—

“Power to require information from persons acting in anti-social manner

P2002/30/50

3A. (1) If a constable in uniform has reason to believe that a person has been acting, or is acting, in an anti-social manner (within the meaning of section 28 of the Criminal Justice Act 2001 [c. 4] (anti-social behaviour orders)), the constable may require that person to give his or her name and address to the constable.

(2) Any person who—

(a) fails to give his or her name and address when required to do so under subsection (1); or

(b) gives a false or inaccurate name or address in response to a requirement under that subsection,

commits an offence and is liable, on summary conviction, to a fine not exceeding £1,000.”.

Hatred against persons on certain grounds

Insertion of new Part IA

72. (1) In the Public Order Act 1998 [c.11], after Part 1 insert —

“PART IA

**HATRED OF PERSONS ON GROUNDS OF RACE, RELIGION,
DISABILITY OR SEXUAL ORIENTATION**

Meaning of “hatred” for the purposes of this Part

Meaning of “hatred”

P1986/64/29A

3B. In this Part “hatred” means hatred against a group of persons defined by reference to —

- (a) race;
- (b) religious belief or lack of religious belief;
- (c) disability; or
- (d) sexual orientation.

Acts intended to stir up hatred

Use of words or behaviour or display of written material

P1986/64/29B

3C. (1) A person who uses threatening words or behaviour, or displays any written material which is threatening, commits an offence if by doing so he or she intends to stir up hatred.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

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(3) A constable may arrest without warrant anyone the constable reasonably suspects is committing an offence under this section.

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he or she was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

Publishing or distributing written material

P1986/64/29C

3D. (1) A person who publishes or distributes written material which is threatening commits an offence if by doing so he or she intends to stir up hatred.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

Public performance of play

P1986/64/29D

3E. (1) If a public performance of a play is given which involves the use of threatening words or behaviour, any person who presents or directs the performance commits an offence if by doing so he or she intends to stir up hatred.

(2) This section does not apply to a performance given solely or primarily for one or more of the following purposes—

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- (a) rehearsal;
- (b) making a recording of the performance; or
- (c) enabling the performance to be included in a programme service.

(3) But if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in subsection (2)(b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purpose mentioned in subsection (2).

(4) For the purposes of this section—

- (a) a person shall not be treated as presenting a performance of a play by reason only of his or her taking part in it as a performer;
- (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he or she performs otherwise than in accordance with that person's direction; and
- (c) a person shall be taken to have directed a performance of a play given under his or her direction notwithstanding that he or she was not present during the performance,

and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his or her taking part in a performance as a performer.

Distributing, showing or playing a recording

P1986/64/29E

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3F. (1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening commits an offence if by doing so he or she intends to stir up hatred.

(2) In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

Broadcasting or including programme in programme service

P1986/64/29F

3G. (1) If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) commits an offence if he or she intends to stir up hatred.

(2) The persons are—

(a) the person providing the programme service;

(b) any person by whom the programme is produced or directed; and

(c) any person by whom offending words or behaviour are used.

Inflammatory material

Possession of inflammatory material

P1986/64/29G

3H. (1) A person who has in his or her possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view to—

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- (a) in the case of written material, its being displayed, published, distributed, or included in a programme service whether by himself or herself or another; or
- (b) in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself or herself or another,

commits an offence if by doing so he or she intends hatred to be stirred up.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he or she has, or it may reasonably be inferred that he or she has, in view.

Powers of entry and search

P1986/64/29H

3I. (1) If a justice of the peace is satisfied by information on oath laid by a constable that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 3H, the justice may issue a warrant under his or her hand authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(2) A constable entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

(3) In this section “premises” means any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;

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- (b) any offshore installation as defined in section 1(3) of the Mineral Workings (Offshore Installations) (Isle of Man) Act 1974 [c.33];
and
- (c) any tent or movable structure.

Power to order forfeiture

P1986/64/29I

3J. (1) A court by or before which a person is convicted of—

- (a) an offence under section 3C relating to the display of written material; or
- (b) an offence under section 3D, 3F or 3H,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section shall not take effect until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned.

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

- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Protection of freedom of expression

P1986/64/29J

3K. Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

Supplementary provisions

Savings for reports of parliamentary or judicial proceedings

P1986/64/29K

3L. (1) Nothing in this Part applies to a fair and accurate report of proceedings in Tynwald, the Council or the Keys.

(2) Nothing in this Part applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

Procedure and punishment

P1986/64/29L

3M. (1) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 3C to 3H creates one offence.

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

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

Offences by corporations

P1986/64/29M

3N. (1) Where a body corporate commits an offence under this Part and it is shown that the offence was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he or she as well as the body corporate commits the offence and liable to be proceeded against and punished accordingly.

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

Interpretation

P1986/64/29N

3O. In this Part—

“distribute”, and related expressions, shall be construed in accordance with section 3D(2) (written material) and section 3F(2) (recordings);

“dwelling” means any structure or part of a structure occupied as a person’s home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a

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tent, caravan, vehicle, vessel or other temporary or movable structure;

“hatred” has the meaning given by section 3B;

“programme” means any item which is included in a programme service;

“programme service” has the same meaning as in the Broadcasting Act 1993 [c.12];

“publish”, and related expressions, in relation to written material, shall be construed in accordance with section 3D(2);

“recording” has the meaning given by section 3F(2), and “play” and “show”, and related expressions, in relation to a recording, shall be construed in accordance with that provision;

“written material” includes any sign or other visible representation.”.

(2) In section 27 of the Police Powers and Procedures Act 1998 [c.9], after subsection (7) insert—

“(8) Subsections (4) and (5) do not apply in relation to an offence under Part IA of the Public Order Act 1998 [c.11].”.

Removal of persons

Insertion of new Part IB

73. After Part IA of the Public Order Act 1998 [c.11] (inserted by section 72) insert—

“PART IB
REMOVAL OF PERSONS

Dispersal of groups and removal of persons under 16 to their place of residence

3P. (1) This section applies where a relevant officer has reasonable grounds for believing—

- (a) that any members of the public have been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of 10 or more persons in public places in any locality (the “relevant locality”); and
- (b) that anti-social behaviour is a significant and persistent problem in the relevant locality.

(2) The relevant officer may give an authorisation that the powers conferred on a constable in uniform by subsections (3) to (7) are to be exercisable for a period specified in the authorisation which does not exceed 6 months.

(3) Subsection (4) applies if a constable in uniform has reasonable grounds for believing that the presence or behaviour of a group of 10 or more persons in any public place in the relevant locality has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed.

(4) Subject to subsection (5), the constable may give one or more of the following directions—

- (a) a direction requiring the persons in the group to disperse (either immediately or by such time and in such way as the constable may specify);

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- (b) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality or any part of the relevant locality (either immediately or by such time and in such way as the constable may specify); and
 - (c) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality or any part of the relevant locality for such period (not exceeding 24 hours) from the giving of the direction as the constable may specify;
- (5) A direction under subsection (4) may not be given in respect of a group of persons—
- (a) who are engaged in conduct which is lawful under section 18 of the Trade Unions Act 1991 [c.20] (picketing); or
 - (b) who are taking part in a public procession intended—
 - (i) to demonstrate support for or opposition to the views or actions of any person or body of persons;
 - (ii) to publicise a cause or campaign; or
 - (iii) to mark or commemorate an event.
- (6) If, between the hours of 9pm and 6am, a constable in uniform finds a person in any public place in the relevant locality who the constable has reasonable grounds for believing—
- (a) is under the age of 16; and

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- (b) is not under the effective control of a parent or a responsible person aged 18 or over,

the constable may remove the person to the person's place of residence unless the constable has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.

(7) In this section any reference to the presence or behaviour of a group of persons is to be read as including a reference to the presence or behaviour of any one or more of the persons in the group.

(8) The Department may by order amend the number of persons specified in subsections (1)(a) and (3).

(9) An order under subsection (8) must not come into operation unless it is approved by Tynwald.

Authorisations: supplemental

3Q. (1) An authorisation—

- (a) must be in writing;
- (b) must be signed by the relevant officer giving it; and
- (c) must specify—
 - (i) the relevant locality;
 - (ii) the grounds on which the authorisation is given; and
 - (iii) the period during which the powers conferred by section 3P(3) to (6) are exercisable.

(2) Publicity must be given to an authorisation by either or both of the following methods—

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- (a) publishing an authorisation notice in a newspaper circulating in the Island;
 - (b) posting an authorisation notice in some conspicuous place or places within the relevant locality.
- (3) An “authorisation notice” is a notice which—
- (a) states the authorisation has been given;
 - (b) specifies the relevant locality; and
 - (c) specifies the period during which the powers conferred by section 3P(3) to (6) are exercisable.
- (4) Subsection (2) must be complied with before the beginning of the period mentioned in subsection (3)(c).
- (5) An authorisation may be withdrawn by any relevant officer.
- (6) The withdrawal of an authorisation does not affect the exercise of any power pursuant to that authorisation which occurred prior to its withdrawal.
- (7) The giving or withdrawal of an authorisation does not prevent the giving of a further authorisation in respect of a locality which includes the whole or any part of the relevant locality to which the earlier authorisation relates.
- (8) In this section “authorisation” means an authorisation under section 3P.

Powers under section 3P: supplemental

- 3R.** (1) A direction under section 3P(4)—

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- (a) may be given orally;
- (b) may be given to any person individually or to two or more persons together; and
- (c) may be withdrawn or varied by the person who gave it.

(2) A person who knowingly contravenes a direction given under section 3P(4) commits an offence and is liable on summary conviction to—

- (a) a fine not exceeding £2,500; or
- (b) custody for a term not exceeding 3 months,

or to both.

(3) Where the power under section 3P(6) is exercised, any local authority whose area includes the whole or part of the relevant locality must be notified of that fact.

Code of practice

3S. (1) The Department of Home Affairs may issue a code of practice about—

- (a) the giving or withdrawal of authorisations under section 3P; and
- (b) the exercise of the powers conferred by section 3P(3) to (6).

(2) A code of practice under this section must not come into operation unless it is approved by Tynwald.

(3) In giving or withdrawing an authorisation under section 3P, a relevant officer must have regard to any code of practice for the time being in force under this section.

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(4) In exercising the powers conferred by section 3P(3) to (6), a constable in uniform must have regard to any code of practice for the time being in force under this section.

Interpretation

3T. In this Part—

“anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons;

“public place” means—

- (a) any highway; and
- (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“relevant officer” means a police officer of or above the rank of chief inspector.”.

PART 23

AMENDMENTS TO THE CRIMINAL JUSTICE ACT 2001

On the spot penalties for disorderly behaviour

Insertion of new Part 7A

74. After Part 7 of the Criminal Justice Act 2001 [c.4] insert—

‘PART 7A

ON THE SPOT PENALTIES FOR DISORDERLY BEHAVIOUR

Offences to which this Part applies

Offences leading to penalties on the spot

P2001/16/1

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27A.(1) For the purposes of this Part, “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—

<i>Offence creating provision</i>	<i>Description of offence</i>
Section 1(1) of the Criminal Damage Act 1981 (c. 19)	Destroying or damaging property
Section 8(2) of the Criminal Law Act 1981 (c.20)	Wasting police time or giving false report
Section 1 of the Theft Act 1981 (c. 21)	Theft
Section 28(1)(b) of the Telecommunications Act 1984 (c.11)	Using public telecommunications system for sending message known to be false in order to cause annoyance
Section 7 of the Fire Services Act 1984 (c. 19)	Knowingly giving a false alarm of fire
Section 23 of the Licensing Act 1995 (c. 8)	Sale of liquor to minors etc
Section 33(1) or (2) of the Licensing Act 1995 (c. 8)	Drunkenness etc on premises
Section 34(1) or (2) of the Licensing Act 1995 (c. 8)	Procuring drink for drunken persons
Section 73(1) of the Licensing Act 1995 (c. 8)	Consumption of liquor by minors
Section 74A(1) of the Licensing Act 1995 (c. 8)	Agents etc obtaining liquor for minors
Section 75(1) or (2) of the Licensing Act 1995 (c. 8)	Public drunkenness
Section 76(1) of the Licensing Act 1995 (c. 8)	Drinking in public places

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Section 3 of the Public Order Act 1998 (c.11)	Behaviour likely to cause harassment, alarm or distress
Section 4(1) of the Fireworks Act 2004 (c. 9)	Restrictions on fireworks displays

(2) The Department of Home Affairs may by order amend an entry in the table or add or remove an entry.

(3) An order under subsection (2) may make such amendment of any provision of this Part as the Department of Home Affairs considers appropriate in consequence of any change in the table made by the order.

(4) An order made under subsection (2) must not come into operation unless it is approved by Tynwald.

Penalty notices and penalties

Penalty notices

P2001/16/2

27B. (1) A constable who has reason to believe that a person aged 16 or over has committed a penalty offence may give him or her a penalty notice in respect of the offence.

(2) Unless the notice is given in a police station, the constable giving it must be in uniform.

(3) At a police station, a penalty notice may be given only by an authorised constable.

(4) In this Part, “penalty notice” means a notice offering the opportunity, by paying a penalty in accordance with this Part, to discharge any liability to be convicted of the offence to which the notice relates.

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(5) “Authorised constable” means a constable authorised on behalf of the Chief Constable to give penalty notices.

(6) The Department of Home Affairs may by order—

(a) amend subsection (1) by substituting for the age for the time being specified in that subsection a different age which is not lower than

10; and

(b) if that different age is lower than 16, make provision as follows—

(i) where a person whose age is lower than 16 is given a penalty notice, for a parent or guardian of that person to be notified of the giving of the notice; and

(ii) for that parent or guardian to be liable to pay the penalty under the notice.

(7) The provision which may be made by virtue of subsection (6)(b) includes provision amending, or applying (with or without modifications), this Part or any other enactment (whenever passed or made).

(8) An order made under subsection (6) must not come into operation unless it is approved by Tynwald.

Amount of penalty and form of penalty notice

P2001/16/3

27C.(1) The penalty payable in respect of a penalty offence is such amount as the Department of Home Affairs may specify by order.

(2) The Department of Home Affairs may specify different amounts for persons of different ages.

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(3) But the Department of Home Affairs may not specify an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence.

(4) A penalty notice must—

- (a) be in a form approved by the Department of Home Affairs;
- (b) state the alleged offence;
- (c) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (d) specify the suspended enforcement period (as to which see section 27E) and explain its effect;
- (e) state the amount of the penalty;
- (f) state that the penalty is to be paid to the Chief Registrar and state the address at which the penalty may be paid; and
- (g) inform the person to whom it is given of his or her right to ask to be tried for the alleged offence and explain how that right may be exercised.

(5) An order under subsection (1) must be laid before Tynwald.

Effect of penalty notice

P2001/16/4

27D.(1) This section applies if a penalty notice is given to a person (“A”) under section 27B.

(2) If A asks to be tried for the alleged offence, proceedings may be brought against him or her.

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- (3) Such a request must be made by a notice given by A—
 - (a) in the manner specified in the penalty notice; and
 - (b) before the end of the period of suspended enforcement (as to which see section 27E).
- (4) A request which is made in accordance with subsection (3) is referred to in this Part as a “request to be tried”.
- (5) If, by the end of the suspended enforcement period—
 - (a) the penalty has not been paid in accordance with this Part; and
 - (b) A has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty may be registered under section 27H for enforcement against A as a fine.

General restriction on proceedings

P2001/16/5

27E. (1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 21 days beginning with the date on which the notice was given (“the suspended enforcement period”).

(2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

(3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

Guidance

P2001/16/6

27F. The Department of Home Affairs may issue guidance—

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- (a) about the exercise of the discretion given to constables by this Part;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of this Part.

Procedure

Payment of penalty

P2001/16/7

27G.(1) If a person to whom a penalty notice is given decides to pay the penalty, he or she must pay it to the Chief Registrar at the address specified in the notice.

(2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).

(3) Subsection (4) applies if a person—

- (a) claims to have made payment by that method; and
- (b) shows that the letter was posted.

(4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.

(5) Subsection (2) is not to be read as preventing the payment of a penalty by other means.

(6) A letter is properly addressed for the purposes of subsection (2) if it is addressed in accordance with the requirements specified in the penalty notice.

Registration certificates

P2001/16/8

27H.(1) The Chief Constable may, in respect of any registrable sum, issue a certificate (a “registration certificate”) stating that the sum is registrable for enforcement against the defaulter as a fine.

(2) If that officer issues a registration certificate, he or she must cause it to be sent to the Chief Registrar.

(3) A registration certificate must—

(a) give particulars of the offence to which the penalty notice relates,;
and

(b) state the name and last known address of the defaulter and the amount of the registrable sum.

(4) “Registrable sum” means a sum that may be registered under this section as a result of section 27D(5).

(5) “Defaulter” means the person against whom that sum may be registered.

Registration of sums payable in default

P2001/16/9

27I. (1) If the Chief Registrar receives a registration certificate, he or she must register the registrable sum for enforcement as a fine in such manner as he or she considers appropriate.

(2) The Chief Registrar must give the defaulter notice of the registration.

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(3) The notice must—

- (a) specify the amount of the sum registered; and
- (b) give the information with respect to the offence which was included in the registration certificate under section 27H.

(4) If a sum is registered as a result of this section, any enactment referring (in whatever terms) to a fine imposed, or other sum adjudged to be paid, on conviction by a court applies as if the registered sum were a fine imposed by that court on the conviction of the defaulter on the date on which the sum was registered.

Enforcement of fines

P2001/16/10

27J. (1) In this section—

“fine” means a sum which is enforceable as a fine as a result of section 27I; and

“proceedings” means proceedings for enforcing a fine.

(2) Subsection (3) applies if, in any proceedings, the defaulter claims that he or she was not the person to whom the penalty notice concerned was issued.

(3) The court may adjourn the proceedings for a period of not more than 28 days for the purpose of allowing that claim to be investigated.

(4) On the resumption of proceedings that have been adjourned under subsection (3), the court must accept the defaulter's claim unless it is shown,

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on a balance of probabilities, that he or she was the recipient of the penalty notice.

- (5) The court may set aside a fine in the interests of justice.
- (6) If the court does set a fine aside it must—
 - (a) give such directions for further consideration of the case as it considers appropriate; or
 - (b) direct that no further action is to be taken in respect of the allegation that gave rise to the penalty notice concerned.

Interpretation

Interpretation of Part 7A

P2001/16/11

27K. In this Part—

“defaulter” has the meaning given in section 27H(5);

“penalty notice” has the meaning given in section 27B(4);

“penalty offence” has the meaning given in section 27A(1);

“registrable sum” has the meaning given in section 27H(4).”.

Anti-social behaviour orders

Amendment of section 28

75. (1) Section 28 of the Criminal Justice Act 2001 [c.4] (anti-social behaviour orders) is amended as follows.

(2) In subsection (1)(a) the words “not of the same household as himself” are repealed.

(3) After subsection (4) insert—

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“(4A) An anti-social behaviour order may also impose conditions with which the defendant must comply.”.

(4) After subsection (6) insert—

“(6A) The conditions which may be imposed under an anti-social behaviour order are those which facilitate the rehabilitation of the defendant.”.

(5) In subsection (10) after “subsection (3A)” insert “or fails without reasonable excuse to comply with any conditions imposed under an anti-social behaviour order”.

Amendment of section 28A

76. (1) Section 28A of the Criminal Justice Act 2001 [c.4] (anti-social behaviour sentence) is amended as follows.

(2) In subsection (2)(a) the words “not of the same household as the defendant” are repealed.

(3) After subsection (3) insert—

“(3A) An anti-social behaviour sentence may also impose conditions with which the defendant must comply.”.

(4) After subsection (4) insert—

“(4A) The conditions which may be imposed under an anti-social behaviour sentence are those which facilitate the rehabilitation of the defendant.”.

(5) In subsection (7) after “anti-social behaviour sentence” insert “or fails without reasonable excuse to comply with any conditions imposed under an anti-social behaviour sentence”.

Anti-social behaviour injunctions

Insertion of new sections 28B to 28D

77. After section 28A of the Criminal Justice Act 2001 [c.4] insert—

“Anti-social behaviour injunction

P1996/52/153A

28B. (1) This section applies to conduct—

(a) which is capable of causing nuisance or annoyance to any person;
and

(b) which directly or indirectly relates to or affects the housing
management functions of a relevant body.

(2) The High Court on the application of a relevant body may grant an
injunction (an anti-social behaviour injunction) if each of the following two
conditions is satisfied.

(3) The first condition is that the person against whom the injunction is
sought is engaging, has engaged or threatens to engage in conduct to which
this section applies.

(4) The second condition is that the conduct is capable of causing
nuisance or annoyance to any of the following—

(a) a person with a right (of whatever description) to reside in or
occupy housing accommodation owned or managed by the relevant
body;

(b) a person with a right (of whatever description) to reside in or
occupy other housing accommodation in the neighbourhood of
housing accommodation mentioned in paragraph (a);

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- (c) a person engaged in lawful activity in or in the neighbourhood of housing accommodation mentioned in paragraph (a);
 - (d) a person employed (whether or not by the relevant body) in connection with the exercise of the relevant body's housing management functions.
- (5) It is immaterial where conduct to which this section applies occurs.
- (6) An anti-social behaviour injunction prohibits the person in respect of whom it is granted from engaging in conduct to which this section applies.

Injunctions: exclusion and power of arrest

P1996/52/153C

28C.(1) This section applies if the High Court grants an injunction under subsection (2) of section 28B and it thinks that either of the following paragraphs applies—

- (a) the conduct consists of or includes the use or threatened use of violence; or
 - (b) there is a significant risk of harm to a person mentioned in section 28B(4).
- (2) The High Court may include in the injunction a provision prohibiting the person in respect of whom it is granted from entering or being in—
- (a) any premises specified in the injunction;
 - (b) any area specified in the injunction.
- (3) The High Court may attach a power of arrest to any provision of the injunction.

Injunctions: supplementary

P1996/52/153E

28D.(1) This section applies for the purposes of sections 28B and 28C.

(2) An injunction may—

- (a) be made for a specified period or until varied or discharged;
- (b) have the effect of excluding a person from that person's normal place of residence.

(3) An injunction may be varied or discharged by the High Court on an application by—

- (a) the person in respect of whom it is made;
- (b) the relevant body.

(4) If the High Court thinks it just and convenient it may grant or vary an injunction without the respondent having been given such notice as is otherwise required by rules of the High Court.

(5) If the High Court acts under subsection (4) it must give the person against whom the injunction is made an opportunity to make representations in relation to the injunction as soon as it is practicable for that person to do so.

(6) Housing accommodation includes—

- (a) flats, lodging-houses and hostels;
- (b) any yard, garden, outhouses and appurtenances belonging to the accommodation or usually enjoyed with it;
- (c) in relation to a neighbourhood, the whole of the housing accommodation owned or managed by a relevant landlord in the

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neighbourhood and any common areas used in connection with the accommodation.

(7) The housing management functions of a relevant body include—

(a) functions conferred by or under any enactment;

(b) the powers and duties of the body as the holder of an estate or interest in housing accommodation.

(8) Harm includes serious ill-treatment or abuse (whether physical or not).

(9) “Relevant body” means the Department of Local Government and the Environment, a local authority or such other persons or bodies as the Department of Home Affairs may by order specify.

(10) An order under subsection (9) must not come into operation unless it is approved by Tynwald.”.

Registration of sex offenders

Amendment of Schedule 1

78. (1) Schedule 1 to the Criminal Justice Act 2001 [c.4] is amended as follows.

(2) In the Table set out in paragraph 1(3), immediately above the row commencing “A person of any other description” insert the following row (of 2 columns)—

“A person within sub-paragraph (2) (cautions)	A period of 2 years beginning with the relevant date”
---	---

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(3) In paragraph 2 (serious offences which are “scheduled offences”), after sub-paragraph (3) insert—

“(4) The Department of Home Affairs may by order amend this paragraph so as to add offences to or remove offences from the list of scheduled offences in sub-paragraph (1), subject to any transitional provisions which it considers appropriate.

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

(4) After paragraph 3A (travel notification) insert—

“Power of entry and search of relevant offender’s home address

P2003/42/96B and P2006/38/58

3B. (1) If on an application made by a senior police officer a justice of the peace is satisfied that the requirements in sub-paragraph (2) are met in relation to any premises, the justice may issue a warrant authorising a constable—

- (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
- (b) to search the premises for that purpose.

(2) The requirements are—

- (a) that the address of each set of premises specified in the application is an address falling within sub-paragraph (3);
- (b) that the relevant offender is not one to whom sub-paragraph (4) applies;
- (c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in sub-paragraph (1)(a); and

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- (d) that on at least 2 occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this sub-paragraph if—
- (a) it is the address which was last notified in accordance with this Schedule by a relevant offender to the police as his or her home address; or
- (b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.
- (4) This sub-paragraph applies to a relevant offender if he or she is—
- (a) remanded in or committed to custody by order of a court;
- (b) serving a sentence of custody;
- (c) detained in a hospital; or
- (d) outside the Island.
- (5) A warrant issued under this paragraph must specify the one or more sets of premises to which it relates.
- (6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.
- (7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in sub-paragraph (1)(a).

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(8) Where a warrant issued under this paragraph authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.

(9) In this paragraph a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender—

(a) who has in accordance with this Schedule notified the police that the premises specified in the warrant are his or her home address;
or

(b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

(10) In this paragraph—

“relevant offender” means a person subject to notification requirements under this Schedule;

“senior police officer” means a constable of the rank of chief inspector or above.”

(5) For paragraph 7(1) substitute—

“(1) The Department of Home Affairs may by order provide that this Schedule applies, with such modifications as may be specified in the order, in respect of offences under the law of any country or territory outside the Island which correspond to any scheduled offence.

(1A) Without limiting sub-paragraph (1), an order under sub-paragraph (1) may—

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- (a) specify particular countries and territories under whose laws offences which correspond to a scheduled offence may be committed;
- (b) specify offences under the law of a particular country or territory which are to be treated as corresponding to a scheduled offence;
- (c) provide that the order applies in respect of all offences under the law of every country or territory outside the Island which correspond to a scheduled offence (without specifying the country or territory or the offence).”.

Curfew orders

Amendment of Schedule 5

79. After paragraph 4 of Schedule 5 to the Criminal Justice Act 2001 [c.4] insert—

“Revocation etc of curfew orders in exceptional cases

4A. (1) Where a curfew order is in force and on the application of the offender, it appears to a court of summary jurisdiction that, having regard to the personal circumstances of the applicant, it would be appropriate for the order to be revoked, or suspended for a period not exceeding 12 hours, the court may—

- (a) if the order was made by a court of summary jurisdiction, suspend or revoke or amend the order;
- (b) if the order was made by a Court of General Gaol Delivery, refer the application to that court,

and, where the court deals with the offender’s case under paragraph (b) it shall send to the Chief Registrar such particulars of the case as may be desirable.

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(2) Where an application is referred to the Court of General Gaol Delivery under subsection (1)(b), the court may suspend, revoke or amend the order.

(3) Where an application is refused, the applicant may appeal to the Staff of Government Division against the decision in the same manner as an appeal against sentence.

(4) The Department of Home Affairs may by order amend the period specified in subsection (1).

(5) An order under subsection (4) must not come into operation unless it is approved by Tynwald.”.

PART 24
AMENDMENTS TO THE
REHABILITATION OF OFFENDERS ACT 2001

Protection for spent cautions

Insertion of new section 7A

80. After section 7 of the Rehabilitation of Offenders Act 2001 [c.6] insert—

“Protection afforded to spent cautions

P1974/53/8A

7A. (1) Schedule 1A to this Act (protection for spent cautions) has effect.

(2) In this Act “caution” means—

(a) a conditional caution given under section 36A of the Police Powers and Procedures Act 1998 [c.9] (conditional cautions);

(b) any other caution given to a person in the Island in respect of an offence which, at the time the caution is given, that person has admitted;

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- (c) anything corresponding to a caution falling within paragraph (a) or
- (b) (however described) which is given to a person in respect of an offence under the law of a country or territory outside the Island.”.

Insertion of new section 8A

81. After section 8 of the Rehabilitation of Offenders Act 2001 [c.6] insert—

“Unauthorised disclosure of spent cautions

8A. (1) In this section—

- (a) “official record” means a record which—
 - (i) contains information about persons given a caution for any offence or offences; and
 - (ii) is kept for the purposes of its functions by any court, police force, Department, Statutory Board or other public authority in the Island;
- (b) “caution information” means information imputing that a named or otherwise identifiable living person (“the named person”) has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution; and
- (c) “relevant person” means any person who, in the course of his or her official duties (anywhere in the Island), has or at any time has had custody of or access to any official record or the information contained in it.

(2) Subject to the terms of any order made under subsection (5), a relevant person commits an offence if, knowing or having reasonable cause to suspect that any caution information he or she has obtained in the course of his

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or her official duties is caution information, he or she discloses it, otherwise than in the course of those duties, to another person.

(3) In any proceedings for an offence under subsection (2) it is a defence for the defendant to show that the disclosure was made—

(a) to the named person or to another person at the express request of the named person;

(b) to a person whom the defendant reasonably believed to be the named person or to another person at the express request of a person whom he or she reasonably believed to be the named person.

(4) Any person who obtains any caution information from any official record by means of any fraud, dishonesty or bribe commits an offence.

(5) The Department of Home Affairs may by order make such provision as appears to it to be appropriate for excepting the disclosure of caution information derived from an official record from the provisions of subsection (2) in such cases or classes of case as may be specified in the order.

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding £2,500.

(7) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding £5,000, or to custody for a term not exceeding 1 year, or to both.”.

Insertion of new Schedule 1A

82. After Schedule 1 to the Rehabilitation of Offenders Act 2001 [c.6] (rehabilitation periods) insert—

“SCHEDULE 1A

PROTECTION FOR SPENT CAUTIONS

Section 7A

Preliminary

1. (1) For the purposes of this Schedule a caution shall be regarded as a spent caution—

(a) in the case of a conditional caution (as defined in section 7A(2)(a)),
at the end of the relevant period for the caution;

(b) in any other case, at the time the caution is given.

(2) In sub-paragraph (1)(a) “the relevant period for the caution” means (subject to sub-paragraph (3)) the period of 3 months from the date on which the conditional caution was given.

(3) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given—

(a) the relevant period for the caution shall end at the same time as the rehabilitation period for the offence; and

(b) if the conviction occurs after the end of the period mentioned in sub-paragraph (1)(a), the caution shall be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence.

2. (1) In this Schedule “ancillary circumstances”, in relation to a caution, means any circumstances of the following—

(a) the offence which was the subject of the caution or the conduct constituting that offence;

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- (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution);
 - (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end);
 - (d) any judicial review proceedings under a petition of dolence relating to the caution;
 - (e) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions.
- (2) Where the caution relates to 2 or more offences, references in subparagraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “proceedings before a judicial authority” has the same meaning as in section 6(2).

Protection relating to spent cautions and ancillary circumstances

3. (1) A person who is given a caution for an offence shall, from the time the caution is spent, be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary—
- (a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in the Island to

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prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and

- (b) a person shall not, in any such proceedings, be asked and, if asked, shall not be required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.

(2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.

(3) Where a question seeking information with respect to a person's previous cautions, offences, conduct or circumstances is put to him or her or to any other person otherwise than in proceedings before a judicial authority—

- (a) the question shall be treated as not relating to spent cautions or to any ancillary circumstances, and the answer may be framed accordingly; and
- (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution or any ancillary circumstances in his or her answer to the question.

(4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him or her to disclose a spent caution or any ancillary circumstances (whether the caution is his or her own or another's).

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(5) A caution which has become spent or any ancillary circumstances, or any failure to disclose such a caution or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment.

(6) This paragraph has effect subject to paragraphs 4 to 6.

4. The Department of Home Affairs may by order—

- (a) make provision for excluding or modifying the application of either or both of paragraphs (a) or (b) of paragraph 3(3) in relation to questions put in such circumstances as may be specified in the order;
- (b) provide for exceptions from the provisions of sub-paragraphs (4) and (5) of paragraph 3, in such cases or classes of case, and in relation to cautions of such a description, as may be specified in the order.

5. Nothing in paragraph 3 affects—

- (a) the operation of the caution in question; or
- (b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution.

6. (1) Section 5(2), (3) and (4) apply for the purposes of this Schedule as follows.

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(2) Subsection (2) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.

(3) Subsection (3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances ancillary thereto.

(4) Subsection (4) applies for the purpose of excluding the application of paragraph 3(1).".

PART 25
AMENDMENTS TO THE
CHILDREN AND YOUNG PERSONS ACT 2001

Return of children in care

Insertion of new section 49A

83. After section 49 of the Children and Young Persons Act 2001 [c.20] insert—

“Return of child in care

49A.(1) This section applies to a child who is—

- (a) in the care of the Department;
- (b) the subject of an emergency protection order; or
- (c) in police protection.

(2) Where a constable has reason to believe that a child to whom this section applies has run away or is staying away from the responsible person the constable may arrest the child without warrant and return the child to the responsible person.

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(3) If the constable is unable for any reason to return the child to the responsible person, the constable must take the child into police protection.

(4) In this section “the responsible person” means any person who for the time being has care of the child by virtue of the care order, the emergency protection order or section 45, as the case may be.”.

PART 26

AMENDMENTS TO THE FIREWORKS ACT 2004

Fireworks

Amendments to the Fireworks Act 2004

84. (1) the Fireworks Act 2004 [c.9] is amended as follows.

(2) After section 3(2)(d) insert—

“(da) a person or class of persons prescribed in an order made by the Department under section 4(5)(c);”.

(3) For section 4(9) substitute—

“(9) An order under subsection (5)(c) must be laid before Tynwald.”.

(4) For section 8(3) substitute—

“(3) An order under subsection (1) must be laid before Tynwald.”.

PART 27

**AMENDMENTS TO THE CRIMINAL JUSTICE,
POLICE AND COURTS ACT 2007**

Sentencing

Insertion of new section 41A

85. After section 41 of the Criminal Justice, Police and Courts Act 2007 [c.3] insert —

“Increases in sentences for aggravation related to race, religion, disability or sexual orientation

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41A.(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

(i) the victim's membership (or presumed membership) of a racial group;

(ii) the victim's membership (or presumed membership) or non-membership (or presumed non-membership) of a religious group;

(iii) a disability (or presumed disability) of the victim;

(iv) the sexual orientation (or presumed sexual orientation) of the victim; or

(v) the victim's membership (or presumed membership) of an organisation prescribed by an order made by the Department of Home Affairs; or

(b) that the offence is motivated (wholly or partly)—

(i) by hostility towards members of a racial group based on their membership of that group;

(ii) by hostility towards members of a religious group based on their membership or non-membership of that group;

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(iii) by hostility towards persons who have a disability or a particular disability;

(iv) by hostility towards persons who are of a particular sexual orientation; or

(v) by hostility towards members (or non-members) of a group prescribed by an order under paragraph (a)(v).

(3) The court—

(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor; and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of subsection (2)(a) or (b) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section—

“disability” means physical or mental impairment;

“membership” includes association with members of that group;

“presumed” means presumed by the offender.

(6) In this section “racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

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(7) An order under subsection (2)(a)(v) must not come into operation

unless it is approved by Tynwald.”.

CONSULTATION DRAFT



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Department of Home Affairs

CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2009

Alphabetical list of legislation amended by the Bill (Appendix C)

Alphabetical list of Legislation amended by the Bill

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Consultation criteria (Appendix D)

APPENDIX D

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.



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CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL 2009

**List of persons or bodies
consulted regarding this Bill
(Appendix E)**

APPENDIX E

List of persons or bodies consulted regarding this Bill

- Members of Tynwald
- The Attorney General
- Clerk of Tynwald
- Chief Officers of Government Departments and Statutory Boards
- General Registry – members of the Judiciary
- Office of the Data Protection Supervisor
- Customs and Excise Division of the Treasury
- E-Commerce Division of the Treasury
- Local Authorities
- Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Constabulary
- Police Superintendents
- Police Federation
- Police Advisory Group
- Police Consultative Forum
- Police Complaints Commissioner
- Surveillance Commissioner
- Crimestoppers
- Neighbourhood Watch
- Citizens Advice Service
- Council of Voluntary Organisations Isle of Man
- Victim Support
- Alcohol Advisory Service
- D.A.S.H.
- Licensing Forum
- Manx Telecom
- Sure Mobile
- Parole Committee
- Independent Monitoring Boards
- Secure Development Group
- Licensing Court
- Firearms Consultative Committee

- Communications Commission
- Communications Division
- Probation Service
- Isle of Man Prison
- Fire and Rescue Service
- Isle of Man Trades Council
- Industrial Relations Officer
- Gambling Supervision Commission
- Road Transport Licensing Committee
- Positive Action Group
- Mec Vannin



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These documents can be provided in large print or audio tape on request