

**COURTS, TRIBUNALS AND LOCAL AUTHORITY
PROCEDURES, AND MISCELLANEOUS PROVISIONS
BILL 2020**

Explanatory Memorandum

1. This Bill is promoted by Mr Harmer MHK.

Part 1 - Introductory

2. *Clause 1* of the Bill provides for the short title of the resulting Act.
3. *Clause 2* provides for the commencement of the resulting Act.

Part 2 – Courts & Tribunals

4. *Clause 3* introduces amendments to the Criminal Justice, Police and Courts Act 2007 (“the 2007 Act”).
5. *Clause 4* omits section 29 (use of live television links at preliminary hearings) of the 2007 Act.
6. *Clause 5* amends section 30 of the 2007 Act by substituting a new section to deal with live audio and live video links (“live links”) in various criminal proceedings. The substituting section 30 provides, inter alia, for a live link to take place at the direction of the relevant court; specifies the proceedings in which live links may be used; sets out the conditions for their use; and the factors to be considered in directing the use, and revocation, of a direction dealing with a live link.
7. *Clause 6* omits section 31 (effect of, and rescission of, direction) of the 2007 Act.
8. *Clause 7* amends section 32 (courts permitted to sit at other localities) of the 2007 Act to make consequential amendments in respect of live links.
9. *Clause 8* inserts a new section 32A which provides that a person who takes part in proceedings by a live link is to be treated as complying with any requirements to attend court and as being present in court.
10. *Clause 9* amends section 33 (directions to jury) to make a consequential amendment referring to live links.
11. *Clause 10* makes a consequential amendment to section 35 (rules of court) to reflect the new live link provisions.
12. *Clause 11* amends section 38 (interpretation of Part 9).
 - 12.1 Subsection (2) to insert new definitions of “bail” and “eligible criminal proceedings”.

- 12.2 Subsection (3) to (5) provide additional interpretative provisions as to the meaning and extent of live links.
13. *Clause 12* inserts a new Schedule into the 2007 Act which sets out the prohibitions and limitations on the use of live links. Among other things it sets out the conditions governing the conduct of proceedings wholly by way of live audio link, the conditions governing the conduct of proceedings wholly by way of live video link, and conditions relating to the use of live links in other specified circumstances and proceedings.
14. *Clause 13* provides for the use of live links for tribunal purposes.
- 14.1 Subsection (1) provides that no rule of law shall prevent the use of live links in tribunals.
- 14.2 Subsection (2) requires regard to be had to all the circumstances of the case in deciding whether the use of a live link is appropriate.
- 14.3 Subsection (3) provides that a person “appearing” by live link is deemed to be in attendance at the tribunal.
- 14.4 Subsection (4) defines certain terms.
- 14.5 Subsection (5) provides an extended definition of a live audio link.
- 14.6 Subsection (6) provides an extended definition of a live video link.

Part 3 - Bail

15. *Clause 14* introduces amendments to the Police Powers and Procedures Act 1998 (“the 1998 Act”).
16. *Clause 15* amends section 20 (entry for the purposes of arrest etc) of the 1998 Act to provide the circumstances where entry into premises for the purposes of an arrest may be made. Section 20 is extended to cover entry to arrest a person subject to a duty to surrender to custody, who failed to attend at a police station at an appointed time, and a person who has failed to comply with bail conditions.
17. *Clause 16* amends section 50 (bail for the purposes of Part IV) of the 1998 Act to add a cross-reference to new section 50A as inserted by clause 17.
18. *Clause 17* inserts a new section 50A into the 1998 Act. New section 50A deals with bail with conditions. The conditions may be imposed for the purposes of ensuring that the accused surrenders to custody, does not interfere with witnesses and for the accused’s own protection.
19. *Clause 18* amends section 52 (power of arrest for failure to answer police bail) of the 1998 Act to provide for a power of arrest in circumstances where there are reasonable suspicions that a person has breached the conditions of bail.
20. *Clause 19* introduces amendments to the Criminal Law Act 1981 (“the 1981 Act”).
21. *Clause 20* amends section 5 (arrest of person granted bail) of the 1981 Act.
- 21.1 Subsection (1) introduces the amendments to section 5.

- 21.2 Subsection (2) amends subsection (1) of section 5 to introduce the concept of a “surrender condition”.
- 21.3 Subsection (3) amends subsection (2)(a) of Section 5 of the 1981 Act to substitute a reference to “surrendering to custody” in place of the current reference to “appearing before a court”.
- 21.4 Subsection (4) amends subsection (3) of section 5 of the 1981 Act to insert a consequential reference to the surrender condition (see 21.1 above) so as to bring a breach of that condition within the purview of a justice of the peace.

Part 4 – Local Authority Meetings

- 22. *Clause 21* defines certain terms used in Part 4 of the Bill.
- 23. *Clause 22* provides that despite the expiry of the Emergency Powers (Coronavirus) (Local Departmental) Regulations 2020, any acts or omissions under those Regulations remain valid and lawful. It also provides for the continuation of certain appointments until May 2021 (if necessary) and for such appointments to continue on the terms on which they were made.
- 24. *Clause 23* provides that any decision taken at a virtual meeting of a local authority and subsequently ratified was, and is, valid.

Part 5 – Miscellaneous Provisions

Division 1 – Departmental Facilities

- 25. *Clause 24* defines certain terms used in Division 1 of Part 5 (Departmental Facilities).
- 26. *Clause 25* specifies that the section applies where a person occupies a Departmental facility and no longer needs to do so or the facility is required for someone else.
- 27. *Clause 26* provides for the procedure to be followed in removing a person from Departmental facilities.
 - 27.1 Subsection (1) provides that the person in question (O) (or O’s representatives) must be given notice of the removal of O from the facility and to be afforded reasonable time to do so.
 - 27.2 Subsection (2) provides that that the person removing O may use all reasonable steps to do so.
 - 27.3 Subsection (3) provides that where practicable, O should be removed to another Departmental facility.
 - 27.4 Subsection (4) provides that nothing in the section requires the Department to give effect to O’s wishes as to where O would like to be accommodated.

- 27.5 Subsection (5) sets out the circumstances where care package arrangements need to be arranged or initiated.
- 27.6 Subsection (6) provides that a constable may assist in the removal of O.
28. *Clause 27* provides that where O refuses to vacate premises a daily occupation fee may be charged.
- 28.1 Subsection (1) provides that O may be charged the daily occupation fee where O does not vacate Departmental facility.
- 28.2 Subsection (2) makes provision similar to that in subsection (1) in respect of O's representatives.
- 28.3 Subsection (3) provides for the calculation of the daily occupation fee.

Division 2 – Public Health

29. *Clause 28* amends the Public Health Act 1990 (“the 1990 Act”).
- 29.1 Subsection (1) introduces the amendments.
- 29.2 Subsection (2) amends section 51C of the 1990 Act to provide that the effect of a pandemic may be addressed in regulations.
- 29.3 Subsection (3) amends section 51F to provide for a penalty of 3 months custody for breach of the section 51C regulations.

Division 3 - General

30. *Clause 29* provides the Council of Ministers with a general regulation making power for the purpose of giving full effect to the Act.

Schedule

31. The *Schedule* contains the provisions to be inserted as the Schedule to the Criminal Justice, Police and Courts Act 2007 (see paragraph 13 above).
32. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

COURTS, TRIBUNALS AND LOCAL AUTHORITY PROCEDURES, AND MISCELLANEOUS PROVISIONS BILL 2020

Index

Section	Page
PART 1 – INTRODUCTORY	7
1 Short title.....	7
2 Commencement	7
PART 2 – COURTS AND TRIBUNALS	8
DIVISION 1- CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007	8
3 Amendment of the Criminal Justice, Police and Courts Act 2007	8
4 Repeal of section 29	8
5 Amendment of section 30	8
6 Repeal of section 31	11
7 Amendment of section 32	11
8 New section 32A	11
9 Amendment of section 33	11
10 Amendment of section 35	12
11 Amendment of section 38	12
12 New Schedule.....	14
DIVISION 2 -PROCEDURE OF TRIBUNALS	14
13 Use of live video links and live audio links for tribunal purposes.....	14
PART 3 - BAIL	15
14 Amendment of the Police Powers and Procedures Act 1998	15
15 Amendment of section 20	15
16 Amendment of section 50	15
17 New section 50A	15
18 Amendment of section 52	16
19 Amendment of the Criminal Law Act 1981	16
20 Amendment of section 5	16

PART 4 - LOCAL AUTHORITY MEETINGS	17
21 Interpretation	17
22 Local authority meetings.....	17
23 Ratification	18
PART 5 – MISCELLANEOUS PROVISIONS	18
DIVISION 1 - DEPARTMENTAL FACILITIES	18
24 Interpretation	18
25 Application of this Part.....	19
26 Vacation procedure	19
27 Occupation fee	20
DIVISION 2 - PUBLIC HEALTH	20
28 Amendment of the Public Health Act 1990	20
DIVISION 3 – GENERAL	21
29 Regulations.....	21
SCHEDULE	23
SCHEDULE TO BE INSERTED INTO THE CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007	23



Ellan Vannin

COURTS, TRIBUNALS AND LOCAL AUTHORITY PROCEDURES, AND MISCELLANEOUS PROVISIONS BILL 2020

1 **A BILL** to make provision about procedures under the Criminal Justice Police
2 and Courts Act 2007, the Police Powers and Procedures Act 1998 and the
3 Criminal Law Act 1981, and Local Authority procedures in respect of meetings,
4 to make provision in respect of the vacation of Departmental facilities, to amend
5 the Public Health Act 1990; 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:—

6 **PART 1 – INTRODUCTORY**

7 **1 Short title**

8 The short title of this Act is the Courts, Tribunals and Local Authority
9 Procedures, and Miscellaneous Provisions Act 2020.

10 **2 Commencement**

11 (1) This Act, apart from section 1 and this section, comes into operation on
12 such day or days as the Council of Ministers may by order appoint.

13 (2) An order under subsection (1) may include such supplemental,
14 incidental, consequential and transitional provisions as appear to the
15 Council of Ministers to be necessary or expedient.

PART 2 – COURTS AND TRIBUNALS

DIVISION 1- CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

3 **Amendment of the Criminal Justice, Police and Courts Act 2007**

The *Criminal Justice, Police and Courts Act 2007* is amended in accordance with this Part.

4 **Repeal of section 29**

Section 29 (use of live television links at preliminary hearings) is omitted.

5 **Amendment of section 30**

For section 30 (live links in criminal proceedings) there is substituted—

“30 Live links in criminal proceedings

- (1) A person may, if the court so directs, take part in eligible criminal proceedings through a live audio link or a live video link (a “live link direction”).
- (2) A direction under this section may be given for a Deemster, High Bailiff or Justice of the Peace to take part in eligible criminal proceedings through a live link.
- (3) But no direction under this section may be given for any member of a jury to take part in eligible criminal proceedings through a live link.
- (4) In this Part “eligible criminal proceedings” means—
 - (a) any criminal proceedings in a court of summary jurisdiction;
 - (b) any proceedings in a Court of General Gaol Delivery;
 - (c) an appeal in a criminal cause or matter to the Staff of Government Division and any proceedings that are preliminary or incidental to such an appeal;
 - (d) a reference to the Staff of Government Division under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993* and any proceedings that are preliminary or incidental to such a reference.
- (5) A direction may be given under this section—
 - (a) on an application by a party to the proceedings, or
 - (b) of the court’s own motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

- (6) But the court may not give a direction for a person to take part in eligible criminal proceedings through a live link unless—
 - (a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the proceedings in accordance with the direction through such a link, and
 - (b) the parties to the proceedings have been given the opportunity to make representations.
- (7) The power conferred by this section includes power to give a direction—
 - (a) that is applicable to several, or all, of the persons taking part in particular eligible criminal proceedings;
 - (b) that is applicable to a particular person in respect of only some aspects of particular eligible criminal proceedings (such as giving evidence or attending the proceedings when not giving evidence);
 - (c) for a person who is outside the Island to take part in eligible criminal proceedings through a live link.
- (8) The power of the court to give a direction under this section is subject to the provisions of the Schedule (prohibitions and limitations on use of live links).
- (9) The court may vary a live link direction under this section and where it does so the provisions of this Part that apply to the giving of such a direction also apply to its variation.
- (10) If a court gives a live link direction under this section for a person to take part in particular proceedings by giving evidence through a live link, the person may not give evidence except in accordance with the direction.
- (11) The court may rescind a live link direction under this section at any time before or during the eligible criminal proceedings to which it relates, but this does not affect the court’s power to give a further live link direction in relation to the proceedings.
- (12) A live link direction under this section may not be rescinded unless—
 - (a) the court is satisfied that it is in the interests of justice for the direction to be rescinded, and
 - (b) the parties to the proceedings have been given the opportunity to make representations.
- (13) A live link direction under this section may be varied or rescinded by the court on its own motion or on an application by a party.

- 1 (14) An application referred to in subsection (13) may not be made
2 unless there has been a material change of circumstances since the
3 direction was given.
- 4 (15) If a hearing takes place in relation to the giving or rescinding of a
5 live link direction under this section, the court may require or
6 permit a person to take part in that hearing through a live link.
- 7 (16) In deciding whether to give or rescind a live link direction under
8 this section the court must consider all the circumstances of the
9 case.
- 10 (17) Those circumstances include in particular —
- 11 (a) in the case of a live link direction relating to a witness —
- 12 (i) the importance of the witness's evidence to the
13 proceedings;
- 14 (ii) whether a direction might tend to inhibit any party
15 to the proceedings from effectively testing the
16 witness's evidence;
- 17 (b) in the case of a live link direction relating to any
18 participant in the proceedings—
- 19 (i) the availability of the person;
- 20 (ii) the need for the person to attend in person;
- 21 (iii) any representations made by the person;
- 22 (iv) the suitability of the facilities at the place where the
23 person would take part in the proceedings in
24 accordance with the direction;
- 25 (v) whether the person will be able to take part in the
26 proceedings effectively if that person takes part in
27 accordance with the direction.
- 28 (18) The court must state in open court its reasons for refusing an
29 application for a live link direction under this section and, if it is a
30 court of summary jurisdiction, must cause them to be entered in
31 the order book.
- 32 (19) Where any person (P) takes part in eligible criminal proceedings
33 through a live audio link other than for the purpose of giving
34 evidence, a court must not at those proceedings, —
- 35 (a) refuse bail for a person (B), or
36 (b) revoke bail for B,
37 where B objects to the refusal or revocation.
- 38 (20) A court may not deal with a person for contempt of court
39 (including enquiring into conduct and imposing punishment) at
40 eligible criminal proceedings in which any person takes part,

1 | other than for the purpose of giving evidence, through a live
2 | audio link.”

3 | **6 Repeal of section 31**

4 | Section 31 (effect of, and rescission of, direction) is omitted.

5 | **7 Amendment of section 32**

6 | In section 32 (courts permitted to sit at other locations), in subsection (1) —

- 7 | (a) for paragraph (a) there is substituted —
8 | | “(a) a person is to take part in eligible criminal proceedings
9 | | before the court through a live audio link or a live video
10 | | link;”
11 | (b) in paragraph (b), for “receiving such evidence” there is
12 | substituted “such participation”.

13 | **8 New section 32A**

14 | After section 32 there is inserted —

15 | **“32A Requirement to attend court: perjury**

- 16 | (1) A person who takes part in eligible criminal proceedings in
17 | accordance with a live link direction under section 30 is to be
18 | treated as complying with any requirement however imposed or
19 | expressed for that person to attend or appear before court, or to
20 | surrender to the custody of the court, for the purposes of
21 | participation in those proceedings.
22 | (2) A person who takes part in eligible criminal proceedings in
23 | accordance with a live link direction under section 30 is to be
24 | treated as present in court for the purposes of those proceedings.
25 | (3) A statement made on oath by a witness outside the Island and
26 | given in evidence through a live audio link or a live video link in
27 | accordance with a live link direction under section 30 is to be
28 | treated for the purposes of section 1 of the *Perjury Act 1952* as
29 | having been made in the proceedings in which it is given in
30 | evidence.”

31 | **9 Amendment of section 33**

32 | In section 33 (directions to jury), in subsection (1) for “a live link” there is
33 | substituted “a live audio link or a live video link by a witness (including the
34 | defendant)”.

10 Amendment of section 35

Section 35 (rules of court) is amended as follows —

- (a) in subsection (2)—
 - (i) in paragraph (a), omit “or 31”;
 - (ii) in paragraph (b), for “live links” there is substituted “live audio links and live video links”;
- (b) in subsection (3)—
 - (i) in paragraph (a), omit “uncontested”;
 - (ii) in paragraph (c), omit “or 31”.

11 Amendment of section 38

(1) Section 38 (interpretation of Part 9) is amended as follows.

(2) In subsection (1) at the appropriate places there are inserted the following definitions —

“**bail**” includes remand to accommodation provided for that purpose by the Department of Health and Social Care under section 76(1) of the *Children and Young Persons Act 2001*;

“**eligible criminal proceedings**” has the meaning given in section 30(4);”.

(3) For subsection (2) there is substituted—

“(2) A reference to a person taking part in eligible criminal proceedings includes giving evidence in the proceedings and attending the proceedings when not giving evidence.

(2A) A “live audio link”, in relation to a person (P) taking part in eligible criminal proceedings, is a live telephone link or other arrangement which—

- (a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and
- (b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.

(2B) Eligible criminal proceedings are conducted wholly as audio proceedings if—

- (a) directions have been given under section 30 for all of the persons taking part in the proceedings to do so through a live audio link, and
- (b) all of those persons take part in the proceedings in accordance with those directions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

- (2C) A “live video link”, in relation to a person (P) taking part in eligible criminal proceedings, is a live television link or other arrangement which—
 - (a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.
- (2D) Eligible criminal proceedings are conducted wholly as video proceedings if—
 - (a) directions have been given, whether under section 30 or any other power, for all of the persons taking part in the proceedings to do so through a live video link, and
 - (b) all of those persons take part in the proceedings in accordance with those directions.”
- (4) In subsection (3)—
 - (a) for the words before paragraph (a) there is substituted—

“A reference to the persons participating in eligible criminal proceedings includes—”;
 - (b) in paragraph (c), for “the High Bailiff or the Justices of the Peace” there is substituted “the member or members of the court”;
 - (c) after paragraph (c) there is inserted—

“(ca) witnesses in the proceedings,”;
 - (d) in paragraph (e), for “the witness” there is substituted “in the proceedings”.
- (5) After subsection (3) there is inserted—

“(3A) Subsections (2A) to (3) apply for the purposes of this Part.”
- (6) For subsection (4) there is substituted—

“(4) The following matters are to be disregarded for the purposes of subsections (2A) and (2C)—

 - (a) the extent (if any) to which a person is unable to—
 - (i) see by reason of any impairment of eyesight, or
 - (ii) hear by reason of any impairment of hearing;
 - (b) the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.”

12 New Schedule

After section 52 (short title and commencement) there is inserted the Schedule (which deals with prohibitions and limitations on the use of live links and has effect for that purpose) set out in the Schedule to this Act.

DIVISION 2 -PROCEDURE OF TRIBUNALS

13 Use of live video links and live audio links for tribunal purposes

(1) No enactment or other rule of law is to be taken to prevent a relevant tribunal from using a live video link or live audio link if it considers it appropriate to do so for the purposes of conducting a hearing.

(2) In deciding whether it is appropriate to use a live audio link or a live video link, a relevant tribunal must have regard to all the circumstances and in particular whether it is in the interest of justice to use such a link.

(3) A person who participates in a hearing of a relevant tribunal by means of a live video link or live audio link is to be regarded for all purposes as being present at the hearing.

(4) In this section —

“live audio link” is to be construed in accordance with subsection (5);

“live video link” is to be construed in accordance with subsection (6);

“relevant tribunal” means any of the following—

(a) a tribunal listed in Part 1 or Part 2 of Schedule 2 to the *Tribunals Act 2006*;

(b) the Advocates Disciplinary Tribunal constituted by section 15A of the *Advocates Act 1976*;

(c) the Interception of Communications Tribunal established by section 8 of the *Interception of Communications Act 1988*.

(5) A “live audio link”, in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live telephone link or other arrangement which—

(a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and

(b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.

(6) A “live video link” in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live television link or other arrangement which—

(a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and

- 1 (b) enables all other persons taking part in the proceedings who are
2 not in the same location as P to see and hear P.

3 **PART 3 - BAIL**

4 **14 Amendment of the Police Powers and Procedures Act 1998**

5 The *Police Powers and Procedures Act 1998* is amended as follows.

6 **15 Amendment of section 20**

7 (1) Section 20 (entry for the purpose of arrest etc) is amended as follows.

8 (2) In subsection (1) after paragraph (b) there is inserted—

- 9 “(ba) of arresting a person who is subject to a duty to surrender
10 to custody (whether at a court or a police station) and
11 whom he reasonably believes has failed to do so;
12 (bb) of arresting a person who has failed to attend at a police
13 station at the time appointed for him to do so;
14 (bc) of arresting a person who has been granted bail subject to
15 conditions if the constable reasonably suspects that he has
16 failed to comply with the conditions;”.

17 **16 Amendment of section 50**

18 In section 50 (bail for the purposes of Part IV) after subsection (6) there is
19 inserted—

- 20 “(7) Section 50A makes further provision about bail granted by a
21 custody officer.”

22 **17 New section 50A**

23 After section 50 there is inserted—

24 **“50A Bail with conditions**

- 25 (1) This section applies if it appears to the custody officer to be
26 necessary that bail granted under section 50 should be subject to
27 conditions.
28 (2) Conditions may be imposed under this section only —
29 (a) for the purpose of securing that the accused—
30 (i) surrenders to custody,
31 (ii) does not offend while on bail, or

(iii) does not interfere with witnesses or otherwise obstruct the course of justice (whether in relation to the accused or any other person); or

(b) for the accused's own protection or, in the case of an accused person who is under the age of 18, the accused's own welfare.

(3) If it appears to the custody officer that a person (P) who is to be released on bail is unlikely to remain in the Island until the time appointed for P's surrender to custody, the custody officer may require P, before release on bail, to give security for P's surrender to custody.

(4) A grant of bail with conditions under this section must require the person to whom bail is granted to appear before a court of summary jurisdiction, or surrender to custody at a police station, in accordance with the grant.

(5) A defendant may apply in writing to a justice of the peace for a review of the conditions attached to a grant of bail, and the justice of the peace is to decide the matter after seeking the written views of the prosecution on the application.

(6) The decision of the justice of the peace on an application under subsection (5) is final."

18 Amendment of section 52

Section 52 (power of arrest for failure to answer police bail) is amended as follows—

(a) in subsection (1) for "him" there is substituted "that person";

(b) after subsection (1) there is inserted —

"(1A) A person who has been released on bail under this Part may be arrested without warrant by a constable if the constable has reasonable grounds for suspecting that the person has broken any of the conditions of his bail."

19 Amendment of the Criminal Law Act 1981

The Criminal Law Act 1981 is amended as follows.

20 Amendment of section 5

(1) Section 5 (arrest of persons granted bail) is amended as follows.

(2) In subsection (1) —

(a) in paragraph (a) —

- 1 (i) after “time and place required” there is inserted “(“the
2 surrender condition”);
- 3 (ii) for “any such other condition” there is substituted “the
4 surrender condition or any other condition”;
- 5 (b) in paragraph (b), for “the first-mentioned condition” there is
6 substituted “the surrender condition”.
- 7 (3) In subsection (2)(a) for “on which he is required by virtue of his bail to
8 appear before” there is substituted “he is required to surrender to the
9 custody of”.
- 10 (4) In subsection (3) after “admitted to bail” there is inserted “(including for
11 clarity, the surrender condition)”.

12 PART 4 - LOCAL AUTHORITY MEETINGS

13 21 Interpretation

14 In this Part —

15 “**the 1985 Act**” means the *Local Government Act 1985*;

16 “**annual meeting**”, in relation to a local authority, means the meeting of the
17 authority held in pursuance of paragraph 1 of Schedule 1 to the 1985 Act;

18 “**joint board**” means a joint board established or deemed to be established by an
19 order under section 7 of the 1985 Act;

20 “**joint committee**” means a committee appointed by one or more local
21 authorities under section 17 of the 1985 Act or another enactment, but
22 does not include a joint board which is a body corporate;

23 “**local authority**” means (as the case requires) —

24 (a) a local authority within the meaning given by the 1985 Act,

25 (b) a joint board,

26 (c) a joint committee, and

27 (d) a committee or sub-committee of anything within paragraphs (a)
28 to (c);

29 “**local authority meeting**” means a meeting of a local authority;

30 “**the Regulations**” means the Emergency Powers (Coronavirus) (Local
31 Government) Regulations 2020 (SD 2020/0277) as amended from time to
32 time and as continued by the Emergency Powers (Coronavirus)
33 (Continuation) (No.2) Regulations 2020 (SD 2020/0370).

34 22 Local authority meetings

35 Despite the expiry of the Regulations —

- 1 (a) any act or omission of a local authority under and in accordance
2 with the terms of the Regulations continues to be legal, valid and
3 binding;
- 4 (b) any appointment continued under regulation 5(3) of the
5 Regulations continues until the next annual meeting of the local
6 authority in May 2021 or until such earlier time as that local
7 authority may determine, unless the person earlier vacates office;
- 8 (c) if an appointment that would otherwise have been made or
9 required to have been made at an annual meeting of a local
10 authority has been made or is made at a meeting other than the
11 annual meeting of a local authority, such appointment continues
12 until the next annual meeting of that local authority in May 2021
13 or until such earlier time as that local authority may determine,
14 unless the person earlier vacates office;
- 15 (d) any appointment continued under regulation 5(4) of the
16 Regulations continues until 1 May 2021 or until such earlier time
17 as the joint board may determine, unless the person earlier
18 vacates office;
- 19 (e) if an appointment continued under regulation 5(4) of the
20 Regulations continues until a time earlier than 1 May 2021, any
21 successor appointed shall hold office in accordance with the terms
22 of any statutory document governing the joint board in question;
- 23 (f) any appointment continued under regulation 5(5) of the
24 Regulations shall continue in accordance with the terms of that
25 regulation.

26 23 Ratification

27 Any decision taken at a virtual local authority meeting held before the date on
28 which the Regulations came into operation and ratified by the local authority at
29 a meeting held after that date shall be deemed to be legal valid and binding.

30 PART 5 – MISCELLANEOUS PROVISIONS

31 DIVISION 1 - DEPARTMENTAL FACILITIES

32 24 Interpretation

33 In this Part—

- 34 (a) “**Department**” means the Department of Health and Social Care
35 and “**Departmental**” shall be construed accordingly;
- 36 (b) “**Departmental facility**” means any institution, building,
37 structure, room, ward, bed, unit or other place used for, or in

- 1 connection with, the provision of health or social care services (or
2 both) and includes a mobile facility;
- 3 (c) “O” means a person who occupies any Departmental facility for
4 the purpose of receiving care or treatment (or both);
- 5 (d) “O’s representative” means any person the Department considers
6 fulfils that function;
- 7 (e) “P” means a person authorised by the Department;
- 8 (f) references to a person “**occupying**” (howsoever expressed) a
9 Departmental facility shall be read as including a person being
10 present or accommodated in such a facility.

11 **25 Application of this Part**

- 12 (1) This Part applies where P considers, having taken and considered the
13 advice of those concerned in a professional capacity in the care or
14 treatment (or both) of O, that —
- 15 (a) it is no longer necessary for O to remain in occupation of the
16 facility in question or that the facility is required for some other
17 person who requires care or treatment (or both), and
- 18 (b) O can be removed from the facility without undue risk of harm to
19 O’s health or wellbeing.
- 20 (2) P must retain a written record of the advice referred to in subsection (1)
21 including the reasons why it is considered that O can be removed from
22 the facility without undue risk of harm to their health or wellbeing.

23 **26 Vacation procedure**

- 24 (1) Before removing O, P must inform O or O’s representative that O is to be
25 removed from the facility and —
- 26 (a) O must be afforded such time as is reasonable in the
27 circumstances to vacate the facility, or
- 28 (b) where appropriate, O’s representative must be afforded such time
29 as is reasonable in the circumstances to remove O from the
30 facility.
- 31 (2) Where subsection (1) applies, P may take all necessary steps to remove O
32 from the facility notwithstanding any refusal on O’s part or on the part of
33 O’s representatives.
- 34 (3) If practicable in all the circumstances, O must be moved to another
35 Departmental facility in the same institution or facility.
- 36 (4) But nothing in this Part requires the Department to give effect to, or
37 comply with, O’s wishes as to where O is to be accommodated or re-
38 accommodated where it is impracticable to do so in the circumstances or

1 would put others (including staff of any Departmental facility) at risk of
2 harm of any kind.

3 (5) Where O is removed from a Departmental facility and not moved to
4 another Departmental facility, the Department must ensure that an
5 appropriate care package is in place for O.

6 (6) A constable may be called upon to assist in the removal of O and may
7 use reasonable force for that purpose.

8 **27 Occupation fee**

9 (1) Where O without reasonable cause refuses to vacate a Departmental
10 facility in accordance with this Division, O may be charged a daily
11 occupation fee in respect of O's continued occupation of that facility.

12 (2) A representative of O who in any way obstructs the removal of O from a
13 Departmental facility in accordance with this Division may, instead of O,
14 be charged an amount equal to the daily occupation fee O could be
15 charged under subsection (1) for each day O remains in occupation of the
16 Departmental facility in question.

17 (3) The daily occupation fee must not exceed an amount representing the
18 average daily cost for each occupant of the facility, of—

19 (a) the maintenance of the facility and its staff, and

20 (b) the maintenance and treatment of the occupants of the facility.

21 DIVISION 2 - PUBLIC HEALTH

22 **28 Amendment of the Public Health Act 1990**

23 (1) The *Public Health Act 1990* is amended as follows.

24 (2) In section 51C (health protection regulations: domestic), in subsection (1)
25 for “incidence or spread” there is substituted “incidence, spread or
26 effect”.

27 (3) In section 51F (health protection regulations: supplementary) —

28 (a) in subsection (2) after paragraph (h) there is inserted —

29 | “(i) provide for offences to be the subject of a fixed
30 | penalty notice of a prescribed amount, for the
31 | circumstances in which and by whom such a notice
32 | may be given, the procedure in respect of such
33 | notices and the consequences of non-compliance.”;

34 (b) in subsection (5) after paragraph (b), there is inserted—

35 | “(c) custody for a term not exceeding 3 months.”

DIVISION 3 – GENERAL

1
2
3
4
5
6
7
8
9

29 Regulations

- (1) The Council of Ministers may by regulations make such provision as it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Such Regulations may make—
- (a) supplementary, incidental or consequential provision;
 - (b) transitory, transitional or saving provision.
- Tynwald procedure – approval required.

SCHEDULE

**SCHEDULE TO BE INSERTED INTO THE CRIMINAL JUSTICE, POLICE AND
COURTS ACT 2007**

[Section 12]

“SCHEDULE

PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

[Section 30(8)]

PART 1 – GENERAL

1 Other limitations to apply

The limitations imposed under this Schedule are in addition to any other limitations (such as those in section 30(6)) which apply to the exercise of the power to give a direction under section 30.

PART 2 – AUDIO PROCEEDINGS

2 Conduct of proceedings wholly as audio proceedings

- (1) Eligible criminal proceedings may be conducted wholly as audio proceedings only if the proceedings meet one of the following conditions.
- (2) Condition A: the proceedings are preliminary or incidental to a criminal appeal to the Staff of Government Division.
- (3) Condition B: the proceedings are preliminary or incidental to a reference, or the hearing of a reference, under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) Condition C: the proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted.
- (5) Condition D:—
 - (a) the proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and

1 (b) the making of the decision is not disputed (including
2 where the court is minded to refuse or revoke bail of its
3 own motion).

4 (6) But proceedings which meet any of those conditions may not be
5 conducted wholly as audio proceedings if the court is minded to
6 deal with a person for contempt of court (including enquiring into
7 conduct and imposing punishment) at the proceedings.

8 **3 Other use of live audio links in preliminary and incidental**
9 **proceedings etc**

10 (1) This paragraph applies to eligible criminal proceedings which
11 meet any of the conditions in paragraph 2.

12 (2) The defendant may not take part in the proceedings through a
13 live audio link for the purpose of giving evidence.

14 (3) A person (other than the defendant) may not take part in the
15 proceedings through a live audio link for the purpose of giving
16 evidence unless—

17 (a) there are no suitable arrangements by means of which that
18 person could give evidence through a live video link, and

19 (b) the parties agree to that person giving evidence through a
20 live audio link.

21 (4) This paragraph does not apply to proceedings which meet any of
22 the conditions in paragraph 2 if the court is minded to deal with a
23 person for contempt of court (including enquiring into conduct
24 and imposing punishment) at the proceedings.

25 **4 Other use of live audio links in other eligible criminal**
26 **proceedings**

27 (1) This paragraph applies to both of the following—

28 (a) eligible criminal proceedings which do not meet any of the
29 conditions in paragraph 2;

30 (b) eligible criminal proceedings which meet any of those
31 conditions if the court is minded to deal with a person for
32 contempt of court (including enquiring into conduct and
33 imposing punishment).

34 (2) The defendant may not take part in the proceedings through a
35 live audio link.

36 (3) A person (other than the defendant) may not take part in the
37 proceedings through a live audio link unless—

38 (a) that person's participation through the live audio link is
39 only for the purpose of giving evidence in the proceedings,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

- (b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
- (c) the parties agree to that person giving evidence through a live audio link.

- (4) Where this paragraph applies by virtue of sub-paragraph (1)(b), references to the defendant include references to the person whom the court is minded to deal with for contempt of court.
- (5) Where this paragraph applies to proceedings under section 9 or 21 of the *Criminal Jurisdiction Act 1993*, it is for the defendant's representative (if such a representative has been appointed), rather than the defendant, to give any agreement under sub-paragraph (3)(c).
- (6) In this paragraph "defendant's representative" means the person appointed by the court to put the case for the defence.

PART 3 – VIDEO PROCEEDINGS

5 Conduct of proceedings wholly as video proceedings

- (1) Eligible criminal proceedings may be conducted wholly as video proceedings only if the proceedings meet one of the following conditions.
- (2) Condition A : the proceedings are—
 - (a) an appeal to the Staff of Government Division which is an appeal only against sentence,
 - (b) an appeal to that Division arising out of a trial by a court of summary jurisdiction—
 - (i) which is an appeal arising out of a trial by such a court which was itself conducted wholly as video proceedings, and
 - (ii) which the parties agree may be conducted wholly as video proceedings, or
 - (c) preliminary or incidental to any criminal appeal to the Staff of Government Division.
- (3) Condition B: the proceedings are preliminary or incidental to a reference to the Staff of Government Division under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) Condition C: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.

SCHEDULE

1
2
3
4
5
6

- (5) Condition D: the proceedings are a trial in a court of summary jurisdiction, and the parties agree to the proceedings being conducted wholly as video proceedings.
- (6) Condition E: the proceedings are a hearing under section 33 or 33A of the *Summary Jurisdiction Act 1989*. “.



IN THE KEYS

**COURTS, TRIBUNALS AND LOCAL AUTHORITY
PROCEDURES, AND MISCELLANEOUS PROVISIONS
BILL 2020**

A **BILL** to make provision about procedures under the Criminal Justice Police and Courts Act 2007, the Police Powers and Procedures Act 1998 and the Criminal Law Act 1981, and Local Authority procedures in respect of meetings, to make provision in respect of the vacation of Departmental facilities, to amend the Public Health Act 1990; and for connected purposes

Introduced on 13 October 2020

MR HARMER MHK

13 OCTOBER 2020

Published by Authority