



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

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon R K Harmer MHK*

### **INTRODUCTION**

1. These explanatory notes relate to the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020 ("the Bill"). They have been prepared by the Cabinet Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

3. In the opinion of the Member moving the legislation, the provisions of the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020 are compatible with the Convention rights.

### **FINANCIAL IMPLICATIONS**

4. It is not anticipated that the resulting Act will involve any significant change to Government income or expenditure.

### **BACKGROUND**

5. Some positive operational changes to practices and protocols, across Government, Courts, Tribunals and Local Authorities, were made during the Island's response to the 2020 coronavirus pandemic [SARS-CoV-2] (COVID-19) and were afforded a legal footing through Regulations under the Emergency Powers Act 1936, therefore it is proposed that these changes be retained and made permanent.
6. The Bill will put onto a legal footing the good practices that were under consideration to be provided for through primary legislation in the future, which were accelerated during the emergency period.

## SUMMARY OF PURPOSE AND SCOPE

7. The purpose of the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020 ("the Bill") is that positive operational changes to practices and protocols resulting from the Island's response to the 2020 coronavirus pandemic [SARS-CoV-2] (COVID-19), and contained within the provisions of the Bill can:
  - Stand ready to be used during another emergency alongside the Civil Contingencies provisions and Public Health Act 1990 to enhance the Island's response; and
  - Can be used as part of business as usual to enhance service delivery.
8. In summary, the Bill:
  - Introduces amendments to the Criminal Justice, Police and Courts Act 2007 to provide for live audio and video links in various court proceedings.
  - Introduces amendments to the Police Powers and Procedures Act 1998 and the Criminal Law Act 1981 relation to provisions of bail.
  - Provides for any decisions taken by a Local Authority under the relevant Emergency Powers Act 1936 Regulations to remain valid and lawful and that any decision taken at a virtual meeting of a local authority and subsequently ratified was, and is, valid.
  - Seeks to implement a legal framework, governance of decision making, financial penalty and ability for the Department of Health and Social Care to move a person from a departmental facility.
  - During the Island's response to the 2020 coronavirus pandemic [SARS-CoV-2] (COVID-19), the Emergency Powers Act 1936 was used to make Regulations in relation to numerous matters including:
    - Potentially infectious persons and Directions
    - Border restrictions and Directions
    - Face coverings
    - Closure of businesses
    - Control of events and gatherings

The Public Health Act 1990 ("the 1990 Act") would provide for Regulations to made in the event of a future need, however the Act does not provide for custody for an offence under such Regulations nor fixed penalty notices for such offences. The amendments to the Act within the Courts, Tribunals and Local Authority Procedures, and Miscellaneous Provisions Bill 2020 make for such enforcement.

## COMMENTARY ON CLAUSES

### PART 1 – INTRODUCTORY

9. **Clause 1** of the Bill provides for the short title of the Act, should the Bill be passed.
10. **Clause 2** provides for the commencement of the resulting Act, by Appointed Day Order by the Council of Ministers.

### PART 2 – COURTS AND TRIBUNALS

11. **Clause 3** introduces amendments to the Criminal Justice, Police and Courts Act 2007 ("the 2007 Act").
12. **Clause 4** omits section 29 (use of live television links at preliminary hearings) of the 2007 Act.
13. **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 new section provides, among other things, 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. The Court has to be satisfied that it is in the interests of justice to use live links and, importantly, all parties have the right to make representations before any decision to use them is made. This will provide for preliminary and incidental proceedings if required in the interests of justice. The court must consider all the circumstances of the case and naturally the age and vulnerability etc. of a witness would be part of this consideration.
14. **Clause 6** omits section 31 (effect of, and rescission of, direction) of the 2007 Act.
15. **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.
16. **Clause 8** inserts a new section 32A into the 2007 Act 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.
17. **Clause 9** amends section 33 (directions to jury) of the 2007 Act to make a consequential amendment in reference to live links.
18. **Clause 10** makes a consequential amendment to section 35 (rules of court) of the 2007 Act to reflect the new live link provisions.
19. **Clause 11** amends section 38 (interpretation of Part 9) of the 2007 Act. The subsections insert new definitions of "bail" and "eligible criminal proceedings" and provide additional interpretative provisions as to the meaning and extent of live links. Representatives of the press and members of the general public are observers not participants in the Court proceedings.
20. **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.

21. **Clause 13** provides for the use of live links for tribunal purposes. The subsections deal with circumstances in deciding whether the use of a live link is appropriate, that the appearance via a live link is deemed to be an attendance at the hearing, and the definition of certain terms and extends the definition of a live audio link. Clause 13 remains as a free-standing clause and does not seek to amend the Tribunals Act 2006 which makes provision for the appointment, constitution, tenure of office and proceedings of certain tribunals.

It applies to the Tribunals referred to in Schedule 2 [of the Tribunals Act 2006 ("the 2006 Act")] and makes provision for their constitution (s3 and s4) the resignation of members and chairs of such tribunals, how to fill a vacancy in such a tribunal (s5A), the making of rules regulating the practice and procedure of such Tribunals and the staff of such tribunals (section 8 and 9). Tribunals in Schedule 2 are governed by the 2006 Act and the Rules made under it. A number of other Tribunals are provided for by specific separate legislation and therefore, should the clause have amended the Tribunals Act 2006, these other primary pieces of legislation would not have followed suit.

### **PART 3 – BAIL**

22. **Clause 14** introduces amendments to the Police Powers and Procedures Act 1998 ("the 1998 Act").
23. **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.
24. **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 15.
25. **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 protection of the accused.
26. **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.
27. **Clause 19** introduces amendments to the Criminal Law Act 1981 ("the 1981 Act").
28. **Clause 20** amends section 5 (arrest of person granted bail) of the 1981 Act. The subsections make amendments to various subsections of the Section 5 of the 1981 Act.

### **PART 4 – LOCAL AUTHORITY MEETINGS**

29. **Clause 21** defines certain terms used in Part 4 of the Bill.

30. **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.
31. **Clause 23** provides that any decision taken at a virtual meeting of a local authority and subsequently ratified was, and is, valid. This is to cover those decisions which were made before the regulations came into force where the Local Authority determine that there is a need to put these on a secure legal footing. It is not an instruction to the Local Authorities but provides a ratification mechanism should they wish to use it.

## **PART 5 – MISCELLANEOUS PROVISIONS**

### DIVISION 1 – DEPARTMENTAL FACILITIES

32. **Clause 24** defines certain terms used in Division 1 of Part 5 (Departmental Facilities).
33. **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. An individual would be determined on a clinical decision as being fit for discharge and where Clause 26 applies with the necessary care package.
34. **Clause 26** provides for the procedure to be followed in removing a person from Departmental facilities. The subsections provide for the various considerations and protocols in the event of removing a person from a facility, including giving notice and time, making sure care package arrangements are initiated. It is intended that the authorised person would either be the healthcare professional in charge of the person's care or acting on that healthcare professional's advice. As a matter of best practice any advice from the person's healthcare professional should be in writing. This clause allows for the provision of care packages addresses any ongoing need and specific requirement in the stepped down care setting (if care is still required).

The Department is currently preparing a standard operating procedure for the practical implementation. It is considered that this Clause does not infringe Article 8 of the ECHR.

35. **Clause 27** and its subsections provides that where a person refuses to vacate premises a daily occupation fee may be charged and the calculation thereof.

## DIVISION 2 – PUBLIC HEALTH

36. **Clause 28** amends the Public Health Act 1990 (“the 1990 Act”). The subsections amend sections 51C and 51F of the 1990 Act to provide that the effect of a pandemic may be addressed in regulations and to provide for a penalty of 3 months custody for breach such regulations.

## DIVISION 3 – GENERAL

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

## SCHEDULE

38. The **Schedule** contains the provisions to be inserted as the Schedule to the Criminal Justice, Police and Courts Act 2007.