

**CRIMINAL PROCEDURE AND INVESTIGATIONS  
BILL 2015**

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**Explanatory Memorandum**

1. This Bill is promoted by the Department of Home Affairs.
2. The Bill introduces a regime for disclosure by the prosecution to the accused of information generated during the investigation of an offence which may be considered capable of undermining the case for the prosecution and for disclosure by the accused to the prosecution of his or her defence. The Bill also places duties upon the Department of Home Affairs to prepare codes of practice for the conduct of interviews by persons investigating offences and the recording and disclosure of information from criminal investigations, provides for wasted costs orders and amends the Summary Jurisdiction Act 1989 in order to permit a case which has been committed to the Court of General Gaol Delivery for sentence from a summary court to be dealt with at a convenient time.
3. *Clause 1* gives the resulting Act its short title and *clause 2* provides for its commencement to be by a day or days appointed by the Department of Home Affairs. An appointed day order may include consequential, incidental, transitional and saving provisions.
4. *Clause 3(1)* provides for section 26 of the resulting Act to expire on the day after its promulgation or on the day after the last provision is brought into operation.
5. *Clause 4* deals with the application of the disclosure regime. It applies where an accused pleads not guilty to a summary offence, where an accused indicates or is taken to indicate that he or she will plead not guilty to an offence triable either way or an offence listed in Schedule 2 to the *Summary Jurisdiction Act 1989* or where an accused is committed for trial to the Court of General Gaol Delivery in relation to an offence triable on information only.
6. *Clause 5* sets out the initial duty on the prosecution to make disclosure within the relevant period for the section. Material which has not previously been disclosed and which might reasonably be considered capable of undermining the prosecution case must be disclosed or else a statement must be given by the prosecution to the effect that there is no such material. The clause provides for the method of disclosure in relation to different categories of material and states that material must not be disclosed where a court (on the application of the prosecutor) concludes that it would not be in the public interest.
7. *Clause 6* sets out the duty on the accused to provide a defence statement to the court, the prosecution and any other party to the case within the relevant period in circumstances where the prosecution have complied or purported to comply

with their duty under clause 5. The defence statement must set out the nature of the accused's defence, indicate matters of fact with which the accused takes issue with the prosecution, particulars of fact on which the accused proposes to rely by way of defence, points of law which the accused wishes to take and must give details of any alibi (including the name, address and date of birth of any relevant witness).

8. *Clause 7* requires the accused to give the court, prosecution and any other parties to the case within the relevant period either an updated defence statement or a statement that there is no change to the existing statement.
9. *Clauses 8 and 9* require the accused to give the court and the prosecutor within the relevant period a notice giving details of any witnesses (including expert witnesses) the accused proposes to call at the trial.
10. *Clause 10* states that a defence statement or updated defence statement which is given by an advocate on behalf of an accused must be signed by the accused and requires the court to warn the accused where the accused may have failed to comply with the disclosure obligations under the Act.
11. *Clause 11* places a duty upon the prosecution to keep under review the question of whether there is prosecution material that it should disclose and, if it decides that there is, requires disclosure of that material. There is, once again, an exception to disclosure by the prosecution where this would be contrary to the public interest. In addition, material must not be disclosed where the disclosure would be prohibited by section 1 of the *Interception of Communications Act 1988*.
12. *Clause 12* allows the accused to apply to the court for an order for disclosure against the prosecution where the accused has reasonable cause to believe that there is material held by the prosecution which ought to have been disclosed but has not been. Once again, the exceptions set out in clause 11 apply to material in this case.
13. *Clause 13* allows the proceedings against the accused to be stayed where the prosecution does not act within the relevant period. A failure by the prosecution to act in these circumstances may not, of itself, constitute grounds for staying the proceedings. Where, however, the delay in question would deny the accused a fair trial the failure of the prosecution may be used to stay the proceedings.
14. *Clause 14* sets out sanctions where an accused fails to provide a defence statement or updated defence statement or fails to provide one within the relevant period, sets out inconsistent defences, fails to provide a witness notice (either at all or during the relevant period) or at trial puts forward a defence (whether on legal or factual grounds) which has not been disclosed or calls witnesses who have not previously been identified. In these cases the court or any other party may make such comment as seems appropriate and proper inferences may be drawn by the court or the jury. An accused may not be convicted solely on the basis of such inferences.

15. *Clause 15* confers powers on the Department of Home Affairs to make regulations for the purpose of determining time limits for the purpose of various provisions in the Act and for dealing with associated matters.
16. *Clause 16* allows the accused to apply to the court for a review of the question of whether material should not be disclosed as being in the public interest.
17. *Clause 17* sets out the uses that may be made of material which has been disclosed to the accused and provides for it to be a contempt of court where the requirements of the section are breached.
18. *Clause 18* confers powers on the Clerk of the Rolls to make rules in relation to various matters in the Bill.
19. *Clause 19* makes provision in connection with the transition between the regime set up by the Bill and the existing common law regime and in relation to the interaction between the new regime and other enactments which may have an impact on the legal duties concerned.
20. *Clause 20* requires the Department of Home Affairs to prepare a code of practice giving guidance on the conduct of interviews with witnesses for the accused. The code should provide guidance on the persons who may be present at the interview and the information to be provided to the witness. The clause also stipulates the persons who should have regard to the code and deals with the consequences of failure to have regard to it.
21. *Clauses 21 and 22* relate to the obligation of the Department of Home Affairs to prepare a code of practice giving guidance on the conduct of criminal investigations. Matters to be covered by the code include the taking of all reasonable steps for the purpose of the investigation, the recording, inspection, revelation and retention of information. The code is to make provision for those who must have regard to it and for the consequences of failure so to do. *Clause 22* gives examples of the kinds of provision that may be included in the code.
22. *Clause 23* provides for a code under section 19 and section 20 to be brought into operation by means of order and sets out the Tynwald procedure for making such an order. It also provides for a court or tribunal to take into account failure to comply with various provisions of the code where they are relevant to a question arising in the proceedings before it.
23. *Clause 24* provides that, in relation to the revelation of material by police officers or other investigators or to persons involved in the prosecution of offences, any rule introduced by a code under clause 23 is paramount over the common law regime that previously obtained.
24. *Clause 25* provides for the Court of General Gaol Delivery or a court of summary jurisdiction to disallow costs or to order an advocate to meet any wasted costs in criminal proceedings (determined in accordance with regulations). The clause allows for an appeal against such a ruling.
25. *Clause 26* provides for an accused who has been dealt with by a court of summary jurisdiction and who has been committed to the Court of General

Gaol Delivery for sentence to be sent to any convenient sitting of that court rather than to the next sitting.

26. The Bill is expected to be cost-neutral and revenue neutral to Government and is not expected to affect existing human resource provision.
27. 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*

## CRIMINAL PROCEDURE AND INVESTIGATIONS BILL 2015

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*Ellan Vannin*

# CRIMINAL PROCEDURE AND INVESTIGATIONS BILL 2015

1 **A BILL** to make provision about criminal procedure and criminal  
2 investigations.

**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:—

## 3 **PART 1 – INTRODUCTORY**

### 4 **1 Short title**

5 The short title of this Act is the Criminal Procedure and Investigations Act 2015.

### 6 **2 Commencement**

7 (1) This Act (apart from this section, section 3 and section 1) comes into  
8 operation on such day or days as the Department of Home Affairs may  
9 by order appoint and different days may be appointed for different  
10 purposes of this Act.

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

### 14 **3 Expiry**

15 (1) Section 26 expires on the day after its promulgation.

16 (2) The expiry does not —

17 (a) revive the *Summary Jurisdiction Act 1989* as it operated before the  
18 amendment made by this Act commenced;

19 (b) revive anything not in operation or existing when the amendment  
20 commenced; or

21 (c) affect the continuing operation of the amendment.

## PART 2 – DISCLOSURE

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### 4 Application

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(1) This Part applies where the circumstances mentioned in subsection (2) or (3) occur in relation to an accused who is to undergo a criminal trial into an alleged offence into which no criminal investigation has been begun before the commencement of this section.

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(2) The circumstances are that the accused has pleaded not guilty in relation to an alleged offence mentioned in subsection (1) which is a summary offence.

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(3) The circumstances are that in relation to any alleged offence mentioned in subsection (1) –

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(a) there has been an indication that the accused will plead not guilty –

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(i) given by the accused under section 15A of the *Summary Jurisdiction Act 1989*; or

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(ii) given by the accused's advocate under section 15B of that Act; or

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(b) in accordance with section 15A(8), or 15B(5) of that Act an accused is taken to indicate that he or she would plead not guilty; or

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(c) an accused is committed for trial under section 6 of that Act in relation to an offence triable on information only.

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(4) For the purposes of this section a criminal investigation is an investigation that police officers or other persons have a duty to conduct with a view to its being ascertained –

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(a) whether a person should be charged with an offence; or

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(b) whether a person charged with an offence is guilty of it.

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### 5 Initial duty of prosecutor to disclose

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P1996/25/3&4

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(1) The prosecutor must –

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(a) disclose to the accused any prosecution material –

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(i) that has not previously been disclosed to the accused; and

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(ii) that might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused; or

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(b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).

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37

(2) For the purposes of this section prosecution material is material –



- 1 (a) that is in the prosecutor's possession, and came into that  
2 possession in connection with the case for the prosecution against  
3 the accused; or
- 4 (b) that, in pursuance of a code prepared under section 21 and in  
5 operation by virtue of an order under section 23, the prosecutor  
6 has inspected in connection with the case for the prosecution  
7 against the accused.
- 8 (3) In the case of material consisting of information recorded in any form,  
9 the prosecutor discloses it for the purposes of this section —
- 10 (a) by securing that a copy is made of it and that the copy is given to  
11 the accused; or
- 12 (b) if the prosecutor thinks that is not practicable or not desirable, by  
13 allowing the accused to inspect it at a reasonable time and a  
14 reasonable place or by taking steps to secure that the accused is  
15 allowed to do so,
- 16 and a copy may be in such form as the prosecutor thinks fit and need not  
17 be in the same form as that in which the information has already been  
18 recorded.
- 19 (4) In the case of material consisting of information that has not been  
20 recorded, the prosecutor discloses it for the purposes of this section by  
21 securing that it is recorded in such form as the prosecutor thinks fit  
22 and —
- 23 (a) by securing that a copy is made of it and that the copy is given to  
24 the accused; or
- 25 (b) if the prosecutor thinks that is not practicable or not desirable, by  
26 allowing the accused to inspect it at a reasonable time and a  
27 reasonable place or by taking steps to secure that the accused is  
28 allowed to do so.
- 29 (5) In the case of material not consisting of information, the prosecutor  
30 discloses it for the purposes of this section by allowing the accused to  
31 inspect it at a reasonable time and a reasonable place or by taking steps  
32 to secure that the accused is allowed to do so.
- 33 (6) Material must not be disclosed under this section to the extent that the  
34 court, on an application by the prosecutor, concludes it is not in the  
35 public interest to disclose it and orders accordingly.
- 36 (7) Material must not be disclosed under this section to the extent that it is  
37 material the disclosure of which is prohibited by section 1 of the  
38 *Interception of Communications Act 1988*.
- 39 (8) The prosecutor must act under this section during the period which, by  
40 virtue of section 15 is the relevant period for this section.
- 41 (9) Where, before acting under this section, the prosecutor was given a  
42 document in pursuance of a code prepared under section 21 and in

1 operation by virtue of an order under section 23, the prosecutor must  
2 give the document to the accused at the same time as acting under this  
3 section.

## 4 **6 Disclosure by accused**

5 P1996/25/5, 6&6A

6 (1) Where —

- 7 (a) the prosecutor complies or purports to comply with section 5; and  
8 (b) copies of documents containing evidence have been given to the  
9 accused,

10 the accused must give a defence statement to the court, the prosecutor  
11 and any other party within the period which, by virtue of section 15, is  
12 the relevant period for the purposes of this section.

13 (2) For the purposes of this section a defence statement is a written  
14 statement —

- 15 (a) setting out the nature of the accused's defence, including any  
16 particular defences on which the accused intends to rely;  
17 (b) indicating the matters of fact on which the accused takes issue  
18 with the prosecution;  
19 (c) setting out, in the case of each such matter, why the accused takes  
20 issue with the prosecution;  
21 (d) setting out particulars of the matters of fact on which the accused  
22 intends to rely for the purpose of the accused's defence; and  
23 (e) indicating any point of law (including any point as to the  
24 admissibility of evidence or an abuse of process) which the  
25 accused wishes to take, and any authority on which he or she  
26 intends to rely for that purpose.

27 (3) A defence statement that discloses an alibi must give particulars of it,  
28 including —

- 29 (a) the name, address and date of birth of any witness the accused  
30 believes is able to give evidence in support of the alibi, or as many  
31 of those details as are known to the accused when the statement is  
32 given; and  
33 (b) any information in the accused's possession which might be of  
34 material assistance in identifying or finding any such witness in  
35 whose case any of the details mentioned in paragraph (a) are not  
36 known to the accused when the statement is given.

37 (4) For the purposes of this section evidence in support of an alibi is  
38 evidence tending to show that by reason of the presence of the accused at  
39 a particular place or in a particular area at a particular time he or she was  
40 not, or was unlikely to have been, at the place where the offence is  
41 alleged to have been committed at the time of its alleged commission.

1 (5) The Department of Home Affairs may by regulations make provision as  
2 to the details of the matters that, by virtue of subsection (2), are to be  
3 included in defence statements.

4 (6) Regulations under this section do not have effect unless approved by  
5 Tynwald.

## 6 7 Updated disclosure by accused

7 P1996/25/6B

8 (1) Where the accused has, before the beginning of the relevant period for  
9 this section, given a defence statement under section 6, he or she must  
10 during that period give to the court and the prosecutor either —

11 (a) a defence statement under this section (an “**updated defence**  
12 **statement**”); or

13 (b) a statement of the kind mentioned in subsection (4).

14 (2) The relevant period for this section is determined under section 15.

15 (3) An updated defence statement must comply with the requirements  
16 imposed by or under section 6 by reference to the state of affairs at the  
17 time when the statement is given.

18 (4) Instead of an updated defence statement, the accused may give a written  
19 statement stating that he or she has no changes to make to the defence  
20 statement that was given under section 6.

21 (5) Where there are other accused in the proceedings, the accused must also  
22 within the relevant period for this section give either an updated defence  
23 statement or a statement of the kind mentioned in subsection (4) to each  
24 other accused.

## 25 8 Notification of intention to call defence witnesses

26 P1996/25/6C

27 (1) The accused must give to the court and the prosecutor a notice indicating  
28 whether he or she intends to call any persons (other than himself or  
29 herself) as witnesses at trial and, if so —

30 (a) giving the name, address and date of birth of each such proposed  
31 witness, or as many of those details as are known to the accused  
32 when the notice is given; and

33 (b) providing any information in the accused’s possession which  
34 might be of material assistance in identifying or finding any such  
35 proposed witness in whose case any of the details mentioned in  
36 paragraph (a) are not known to the accused when the notice is  
37 given.

38 (2) Details do not have to be given under this section to the extent that they  
39 have already been given under section 6(3).

1 (3) The accused must give a notice under this section during the period  
2 which, by virtue of section 15, is the relevant period for this section.

3 (4) If, following the giving of a notice under this section, the accused —

4 (a) decides to call a person (other than himself or herself) who is not  
5 included in the notice as a proposed witness, or decides not to call  
6 a person who is so included; or

7 (b) discovers any information which, under subsection (1), he or she  
8 would have had to include in the notice if aware of it when giving  
9 the notice,

10 the accused must give an appropriately amended notice to the court and  
11 the prosecutor.

## 12 9 Notification of names of experts instructed by accused

13 P1996/25/6D

14 (1) If the accused instructs a person with a view to the person providing any  
15 expert opinion for possible use as evidence at the trial of the accused, the  
16 accused must give to the court and the prosecutor a notice specifying the  
17 person's name and address.

18 (2) A notice does not have to be given under this section specifying the  
19 name and address of a person whose name and address have already  
20 been given under section 8.

21 (3) A notice under this section must be given during the period which, by  
22 virtue of section 15, is the relevant period for this section.

## 23 10 Disclosure by accused: further provisions

24 P1996/25/6E(1)&(2)

25 (1) Where an accused's advocate purports to give on behalf of the  
26 accused —

27 (a) a defence statement under section 6 or 7; or

28 (b) a statement of the kind mentioned in section 7(4),

29 the statement must be signed by the accused and a statement which is so  
30 signed is taken to be given with the authority of the accused unless the  
31 contrary is proved.

32 (2) If it appears to the court at any hearing taking place before the trial that  
33 an accused has failed to comply fully with section 6, 7 or 8, so that there  
34 is a possibility of comment being made or inferences drawn under  
35 section 14(4), the court must warn the accused accordingly.

## 36 11 Continuing duty of prosecutor to disclose

37 P1996/25/7A

38 (1) This section applies at all times —

- 1 (a) after the prosecutor has complied or purported to comply with  
2 section 5; and
- 3 (b) before the accused is acquitted or convicted or the prosecutor  
4 decides not to proceed with the case concerned.
- 5 (2) The prosecutor must keep under review the question whether at any  
6 given time (and, in particular, following the giving of a defence  
7 statement) there is prosecution material that —
- 8 (a) might reasonably be considered capable of undermining the case  
9 for the prosecution against the accused or of assisting the case for  
10 the accused; and
- 11 (b) has not been disclosed to the accused.
- 12 (3) If at any time there is any such material as is mentioned in subsection (2)  
13 the prosecutor must disclose it to the accused as soon as is reasonably  
14 practicable (or within the period mentioned in subsection (5)(a), where  
15 that applies).
- 16 (4) In applying subsection (2) by reference to any given time the state of  
17 affairs at that time (including the case for the prosecution as it stands at  
18 that time) must be taken into account.
- 19 (5) Where the accused gives a defence statement under section 6 or 7 —
- 20 (a) if as a result of that statement the prosecutor is required by this  
21 section to make any disclosure, or further disclosure, the  
22 prosecutor must do so during the period which, by virtue of  
23 section 15, is the relevant period for this section; and
- 24 (b) if the prosecutor considers that he or she is not so required, the  
25 prosecutor must during that period give to the accused a written  
26 statement to that effect.
- 27 (6) For the purposes of this section prosecution material is material —
- 28 (a) in the prosecutor's possession that came into the prosecutor's  
29 possession in connection with the case for the prosecution against  
30 the accused; or
- 31 (b) which, in pursuance of a code prepared under section 21 and in  
32 operation by virtue of an order under section 23, the prosecutor  
33 has inspected in connection with the case for the prosecution  
34 against the accused.
- 35 (7) Subsections (3) to (5) of section 5 (method by which prosecutor discloses)  
36 apply for the purposes of this section as they apply for the purposes of  
37 that section.
- 38 (8) Material must not be disclosed under this section to the extent that the  
39 court, on an application by the prosecutor, concludes it is not in the  
40 public interest to disclose it and orders accordingly.

- 1 (9) Material must not be disclosed under this section to the extent that it is  
2 material the disclosure of which is prohibited by section 1 of the  
3 *Interception of Communications Act 1988*.

## 4 **12 Application by accused for disclosure**

5 P1996/25/8

- 6 (1) This section applies where —
- 7 (a) the accused has given a defence statement under section 6 or 7;  
8 and
- 9 (b) the prosecutor has complied with section 11(5), has purported to  
10 comply with it or has failed to comply with it.
- 11 (2) If the accused has at any time reasonable cause to believe that there is  
12 prosecution material required by section 11 to be disclosed to the accused  
13 that has not been, he or she may apply to the court for an order requiring  
14 the prosecutor to so disclose it.
- 15 (3) For the purposes of this section prosecution material is material —
- 16 (a) that is in the prosecutor's possession and came into the  
17 prosecutor's possession in connection with the case for the  
18 prosecution against the accused;
- 19 (b) that, in pursuance of a code prepared under section 21 and in  
20 operation by virtue of an order under section 23, the prosecutor  
21 has inspected in connection with the case for the prosecution  
22 against the accused; or
- 23 (c) that falls within subsection (4).
- 24 (4) Material falls within this subsection if in pursuance of a code prepared  
25 under section 21 and in operation by virtue of an order under section 23  
26 the prosecutor is entitled, on request, to a copy of it or the opportunity to  
27 inspect it in connection with the case for the prosecution against the  
28 accused.
- 29 (5) Material must not be disclosed under this section to the extent that the  
30 court, on an application by the prosecutor, concludes it is not in the  
31 public interest to disclose it and orders accordingly.
- 32 (6) Material must not be disclosed under this section to the extent that it is  
33 material the disclosure of which is prohibited by section 1 of the  
34 *Interception of Communications Act 1988*.

## 35 **13 Prosecutor's failure to observe time limits**

36 P1996/25/10

- 37 (1) This section applies if the prosecutor purports to act under section 5 or  
38 section 11(5) after the end of the period which, by virtue of section 15, is  
39 the relevant period for section 5 or 11 as the case may be.

- 1 (2) Subject to subsection (3), the failure to act during the period concerned  
2 does not on its own constitute grounds for staying the proceedings for  
3 abuse of process.
- 4 (3) Subsection (2) does not prevent the failure constituting such grounds if it  
5 involves such delay by the prosecutor that the accused is denied a fair  
6 trial.

## 7 **14 Faults in disclosure by accused**

8 P1996/25/11

- 9 (1) This section applies in the 2 cases set out in subsections (2) and (3).
- 10 (2) The first case is where section 6 applies and the accused —
- 11 (a) fails to give an initial defence statement;
- 12 (b) gives an initial defence statement but does so after the end of the  
13 period which, by virtue of section 15, is the relevant period for  
14 section 6;
- 15 (c) is required by section 7 to give either an updated defence  
16 statement or a statement of the kind mentioned in subsection (4)  
17 of that section but fails to do so;
- 18 (d) gives an updated defence statement or a statement of the kind  
19 mentioned in section 7(4) but does so after the end of the period  
20 which, by virtue of section 15, is the relevant period for section 7;
- 21 (e) sets out inconsistent defences in the accused's defence statement;  
22 or
- 23 (f) at trial —
- 24 (i) puts forward a defence which was not mentioned in his or  
25 her defence statement or is different from any defence set  
26 out in that statement;
- 27 (ii) relies on a matter, or any particular of a matter, of fact that  
28 was not mentioned in his or her defence statement in  
29 breach of the requirements imposed by or under section 6;
- 30 (iii) adduces evidence in support of an alibi without having  
31 given particulars of the alibi in his or her defence  
32 statement; or
- 33 (iv) calls a witness to give evidence in support of an alibi  
34 without having complied with section 6(3)(a) or (b) as  
35 regards the witness in his or her defence statement.
- 36 (3) The second case is where the accused —
- 37 (a) gives a witness notice but does so after the end of the period  
38 which, by virtue of section 15, is the relevant period for section 8;  
39 or

- 1 (b) at his or her trial calls a witness (other than himself or herself) not  
2 included, or not adequately identified, in a witness notice.
- 3 (4) Where this section applies —
- 4 (a) the court or any other party may make such comment as appears  
5 appropriate;
- 6 (b) the court or jury may draw such inferences as appear proper in  
7 deciding whether the accused is guilty of the offence concerned.
- 8 (5) Where —
- 9 (a) this section applies by virtue of subsection (2)(f)(ii); and
- 10 (b) the matter which was not mentioned is a point of law (including  
11 any point as to the admissibility of evidence or an abuse of  
12 process) or an authority,
- 13 comment by another party under subsection (4)(a) may be made only  
14 with the leave of the court.
- 15 (6) Where this section applies by virtue of subsection (3), comment by  
16 another party under subsection (4)(a) may be made only with the leave  
17 of the court.
- 18 (7) Where the accused puts forward a defence that is different from any  
19 defence set out in his or her defence statement, in doing anything under  
20 subsection (4) or in deciding whether to do anything under it the court  
21 must have regard —
- 22 (a) to the extent of the differences in the defences; and
- 23 (b) to whether there is any justification for it.
- 24 (8) Where the accused calls a witness whom he or she has failed to include,  
25 or to identify adequately, in a witness notice, in doing anything under  
26 subsection (4) or in deciding whether to do anything under it the court  
27 must have regard to whether there is any justification for the failure.
- 28 (9) A person cannot be convicted of an offence solely on an inference drawn  
29 under subsection (4).
- 30 (10) Where the accused has given a statement of the kind mentioned in  
31 section 7(4), then, for the purposes of subsections (2)(f)(ii) and (iv), the  
32 question as to whether there has been a breach of the requirements  
33 imposed by or under section 6 or a failure to comply with section 6(3)(a)  
34 or (b) must be determined —
- 35 (a) by reference to the state of affairs at the time when that statement  
36 was given; and
- 37 (b) as if the defence statement was given at the same time as that  
38 statement.
- 39 (11) In this section —



- 1 (a) “**initial defence statement**” means a defence statement given  
2 under section 6;
- 3 (b) “**updated defence statement**” means a defence statement given  
4 under section 7;
- 5 (c) a reference simply to an accused’s “**defence statement**” is a  
6 reference –
- 7 (i) where the accused has given only an initial defence  
8 statement, to that statement;
- 9 (ii) where the accused has given both an initial and an  
10 updated defence statement, to the updated defence  
11 statement;
- 12 (iii) where the accused has given both an initial defence  
13 statement and a statement of the kind mentioned in section  
14 7(4), to the initial defence statement;
- 15 (d) a reference to evidence in support of an alibi must be construed in  
16 accordance with section 6(4); and
- 17 (e) “**witness notice**” means a notice given under section 8.

## 18 15 Time limits

19 P1996/25/12&13

- 20 (1) This section has effect for the purpose of determining the relevant period  
21 for sections 5(8), 6(1), 7(2), 8(3), 9(3) and 11(5).
- 22 (2) Subject to subsection (4), the relevant period is a period beginning and  
23 ending with such days as the Department of Home Affairs prescribes by  
24 regulations for the purposes of the section concerned.
- 25 (3) Regulations under this section must be laid before Tynwald as soon as  
26 practicable after they are made.
- 27 (4) The regulations may do one or more of the following –
- 28 (a) provide that the relevant period for any section must if the court  
29 so orders be extended (or further extended) by so many days as  
30 the court specifies;
- 31 (b) provide that the court may make such an order only if an  
32 application is made by a prescribed person and if any other  
33 prescribed conditions are fulfilled;
- 34 (c) provide that an application may be made only if prescribed  
35 conditions are fulfilled;
- 36 (d) provide that the number of days by which a period may be  
37 extended are entirely at the court’s discretion;
- 38 (e) provide that the number of days by which a period may be  
39 extended must not exceed a prescribed number;

(f) provide for no limit on the number of applications that may be made to extend a period;

(g) provide that no more than a prescribed number of applications may be made to extend a period,

and references to the relevant period for a section must be construed accordingly.

(5) Conditions mentioned in subsection (4) may be framed by reference to such factors as the Department of Home Affairs thinks fit.

(6) Without limiting the generality of subsection (5), so far as the relevant period for the provisions mentioned in subsection (1) is concerned —

(a) conditions may be framed by reference to the nature or volume of the material concerned; and

(b) the nature of material may be defined by reference to the prosecutor's belief that the question of non-disclosure on grounds of public interest may arise.

(7) As regards a case in relation to which no regulations under this section have come into operation for the purposes of section 5, section 5(8) has effect as if it read —

“(8) The prosecutor must act under this section as soon as is reasonably practicable after —

(a) the accused pleads not guilty in relation to an alleged offence which is a summary offence;

(b) there has been an indication that the accused would plead not guilty —

(i) given by the accused under section 15A of the *Summary Jurisdiction Act 1989*; or

(ii) given by an accused's advocate under section 15B of that Act; or

(c) in accordance with section 15A(8), or 15B(5) of that Act an accused is taken to indicate that he or she would plead not guilty; or

(d) an accused is committed for trial under section 6 of that Act in relation to an offence triable on information only.”.

(8) As regards a case in relation to which no regulations under this section have come into operation for the purposes of section 11, section 11(5) has effect as if —

(a) in paragraph (a) for the words from “during the period” to the end; and

(b) in paragraph (b) for the words “during that period”,

there were substituted “as soon as is reasonably practicable after the accused gives the statement in question”.

- 1 (9) In subsection (4) “**prescribed**” means prescribed by regulations under  
2 this section.

## 3 16 Public interest

4 P1996/25/14&16

- 5 (1) At any time —  
6 (a) after a court makes an order under section 5(6), 11(8) or 12(5); and  
7 (b) before the accused is acquitted or convicted or the prosecutor  
8 decides not to proceed with the case concerned,  
9 the accused may apply to the court for a review of the question whether  
10 it is still not in the public interest to disclose material affected by its  
11 order.  
12 (2) In such a case the court must review that question, and if it concludes  
13 that it is in the public interest to disclose material to any extent —  
14 (a) it must so order; and  
15 (b) it must take such steps as are reasonable to inform the prosecutor  
16 of its order.  
17 (3) Where the prosecutor is informed of an order made under subsection (2)  
18 the prosecutor must act accordingly having regard to this Part (unless he  
19 or she decides not to proceed with the case concerned).  
20 (4) Where —  
21 (a) an application is made under section 5(6), 11(8), 12(5) or  
22 subsection (1);  
23 (b) a person claiming to have an interest in the material applies to be  
24 heard by the court; and  
25 (c) the person shows that he or she was involved (whether alone or  
26 with others and whether directly or indirectly) in the prosecutor’s  
27 attention being brought to the material,  
28 the court must not make an order under any of those sections or  
29 subsection (2) unless the person applying under paragraph (b) has been  
30 given an opportunity to be heard.

## 31 17 Confidentiality

32 P1996/25/17&18

- 33 (1) If the accused is given or allowed to inspect a document or other object  
34 under —  
35 (a) section 5, 11 or 16; or  
36 (b) an order under section 12,  
37 then, subject to subsections (2) to (4), the accused must not use or  
38 disclose it or any information recorded in it.

- 1 (2) The accused may use or disclose the object or information —
- 2 (a) in connection with the proceedings for whose purposes he or she
- 3 was given the object or allowed to inspect it;
- 4 (b) with a view to the taking of further criminal proceedings (for
- 5 instance, by way of appeal) with regard to the matter giving rise
- 6 to the proceedings mentioned in paragraph (a); or
- 7 (c) in connection with the proceedings first mentioned in paragraph
- 8 (b).
- 9 (3) The accused may use or disclose —
- 10 (a) the object to the extent that it has been displayed to the public in
- 11 open court; or
- 12 (b) the information to the extent that it has been communicated to the
- 13 public in open court,
- 14 but the preceding provisions of this subsection do not apply if the object
- 15 is displayed or the information is communicated in proceedings to deal
- 16 with a contempt of court under this section.
- 17 (4) If —
- 18 (a) the accused applies to the court for an order granting permission
- 19 to use or disclose the object or information; and
- 20 (b) the court makes such an order,
- 21 the accused may use or disclose the object or information for the purpose
- 22 and to the extent specified by the court.
- 23 (5) An application under subsection (4) may be made and dealt with at any
- 24 time, and in particular after the accused has been acquitted or convicted
- 25 or the prosecutor has decided not to proceed with the case concerned;
- 26 but this is subject to rules made by virtue of section 18.
- 27 (6) Where —
- 28 (a) an application is made under subsection (4); and
- 29 (b) the prosecutor or a person claiming to have an interest in the
- 30 object or information applies to be heard by the court,
- 31 the court must not make an order granting permission unless the person
- 32 applying under paragraph (b) has been given an opportunity to be
- 33 heard.
- 34 (7) Nothing in this section affects any other restriction or prohibition on the
- 35 use or disclosure of an object or information, whether the restriction or
- 36 prohibition arises under an enactment (whenever passed) or otherwise.
- 37 (8) It is a contempt of court for a person knowingly to use or disclose an
- 38 object or information recorded in it if the use or disclosure is in
- 39 contravention of this section.

- 1 (9) A person who is guilty of a contempt under this section may be dealt  
2 with as follows –
- 3 (a) a court of summary jurisdiction may commit the person to  
4 custody for a specified period not exceeding 6 months or impose  
5 on the person a fine not exceeding £5,000 or both;
- 6 (b) a court of General Gaol Delivery may commit the person to  
7 custody for a specified period not exceeding 2 years or impose a  
8 fine on the person or both.
- 9 (10) If –
- 10 (a) a person is guilty of a contempt under this section; and
- 11 (b) the object concerned, or a copy of it, is in the person’s possession,  
12 the court finding the person guilty may order that the object or the copy  
13 as the case may be is forfeited and dealt with in such manner as the court  
14 may order.
- 15 (11) The power of the court under subsection (10) includes power to order the  
16 object or copy as the case may be to be destroyed or to be given to the  
17 prosecutor or to be placed in his or her custody for such period as the  
18 court may specify.
- 19 (12) If –
- 20 (a) the court proposes to make an order under subsection (10); and
- 21 (b) the person found guilty, or any other person claiming to have an  
22 interest in the object or copy as the case may be, applies to be  
23 heard by the court,
- 24 the court must not make the order unless the applicant has been given an  
25 opportunity to be heard.
- 26 (13) An object or information is inadmissible as evidence in civil proceedings  
27 if to adduce it would in the opinion of the court be likely to constitute a  
28 contempt under this section.
- 29 (14) In subsection (13), “**the court**” means the court before which the civil  
30 proceedings are being taken.

## 31 18 Rules of court

32 P1996/25/19&20(3)&(4)

- 33 (1) The power of the Clerk of the Rolls to make rules under section 91 of the  
34 *Summary Jurisdiction Act 1989* includes power to make such provision as  
35 is mentioned in subsections (2) and (3).
- 36 (2) The rules may make provision as to the practice and procedure to be  
37 followed in relation to –
- 38 (a) proceedings to deal with a contempt of court under section 17;

- 1 (b) an application under section 5(6), 11(8), 12(2) or (5), 16(1) and (4)  
2 or 17(4), (6) or (12);
- 3 (c) an application under regulations made under section 15;
- 4 (d) an order under section 5(6), 11(8), 12(2) or (5), 16(2) and 17(4) or  
5 (10);
- 6 (e) an order under regulations made under section 15.
- 7 (3) The rules may, with regard to any proceedings before a court of  
8 summary jurisdiction relating to an alleged offence, make provision —
- 9 (a) requiring any party to the proceedings to disclose to the other  
10 party or parties any expert evidence which he or she proposes to  
11 adduce in the proceedings;
- 12 (b) prohibiting a party who fails to comply in respect of any evidence  
13 with any requirement imposed by virtue of paragraph (a) from  
14 adducing that evidence without the leave of the court.
- 15 (4) Rules made by virtue of subsection (3) —
- 16 (a) may specify the kinds of expert evidence to which they apply;
- 17 (b) may exempt facts or matters of any description specified in the  
18 rules.

## 19 Other rules as to disclosure

20 P1996/25/20(1)&21

- 21 (1) A duty under any of sections 5 to 12 must not affect or be affected by any  
22 duty arising under any other enactment with regard to material to be  
23 provided to or by the accused or a person representing the accused.
- 24 (2) Where this Part applies as regards things falling to be done after the  
25 accused indicates that he or she will plead not guilty to the alleged  
26 offence, the rules of common law that —
- 27 (a) were effective immediately before the commencement of this  
28 section; and
- 29 (b) relate to the disclosure of material by the prosecutor,  
30 do not apply as regards things falling to be done after that time in  
31 relation to the alleged offence.
- 32 (3) Subsection (2) does not affect the rules of common law as to whether  
33 disclosure is in the public interest.

## 34 20 Code of practice for police interviews of witnesses notified by accused

35 P1996/25/21A(1)-(3)&(11)

- 36 (1) The Department of Home Affairs must prepare a code of practice which  
37 gives guidance to police officers, and other persons charged with the  
38 duty of investigating offences, in relation to the arranging and  
39 conducting of interviews of persons —

- 1 (a) particulars of whom are given in a defence statement in  
2 accordance with section 6(3); or
- 3 (b) who are included as proposed witnesses in a notice given under  
4 section 8.
- 5 (2) The code must include (in particular) guidance in relation to —
- 6 (a) information that should be provided to the interviewee and the  
7 accused in relation to such an interview;
- 8 (b) the notification of the accused's advocate of such an interview;
- 9 (c) the attendance of the interviewee's advocate at such an interview;
- 10 (d) the attendance of the accused's advocate at such an interview;
- 11 (e) the attendance of any other appropriate person at such an  
12 interview taking into account the interviewee's age or any  
13 disability of the interviewee.
- 14 (3) A code under this section is to be brought into operation by an order  
15 under section 23.
- 16 (4) Any police officer or other person charged with the duty of investigating  
17 offences who arranges or conducts such an interview must have regard  
18 to the code.
- 19 (5) A police officer is liable to disciplinary proceedings for a failure to  
20 comply with any provision of a code prepared under this section and for  
21 the time being in operation by virtue of an order under section 23.
- 22 (6) A failure by a person mentioned in subsection (4) to have regard to any  
23 provision of a code under this section for the time being in operation by  
24 virtue of an order under section 23 does not in itself render the person  
25 liable to any criminal or civil proceedings.

26

### PART 3 — CRIMINAL INVESTIGATIONS

27

#### 21 Code of practice for criminal investigations

28

P1996/25/22&amp;23, 25(3)&amp; 26(1)&amp;(2)

29

- (1) The Department of Home Affairs must prepare a code of practice containing provisions designed to secure —

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- (a) that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued;

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- (b) that information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;

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36

- (c) that any record of such information is retained;

- 1 (d) that any other material which is obtained in the course of a  
2 criminal investigation and may be relevant to the investigation is  
3 retained;
- 4 (e) that information falling within paragraph (b) and material falling  
5 within paragraph (d) is revealed to a person who is involved in  
6 the prosecution of criminal proceedings arising out of or relating  
7 to the investigation and who is identified in accordance with  
8 prescribed provisions;
- 9 (f) that where such a person inspects information or other material in  
10 pursuance of a requirement that it be revealed to the person, and  
11 the person requests that it be disclosed to the accused, the accused  
12 is allowed to inspect it or is given a copy of it;
- 13 (g) that where such a person is given a document indicating the  
14 nature of information or other material in pursuance of a  
15 requirement that it be revealed to the person and the person  
16 requests that it be disclosed to the accused, the accused is allowed  
17 to inspect it or is given a copy of it;
- 18 (h) that the person who is to allow the accused to inspect information  
19 or other material or to give the accused a copy of it must decide  
20 which of those (inspecting or giving a copy) is appropriate;
- 21 (i) that where the accused is allowed to inspect material as  
22 mentioned in paragraph (f) or (g) and the accused requests a copy,  
23 the accused is given one unless the person allowing the inspection  
24 thinks that it is not practicable or not desirable to give the accused  
25 one;
- 26 (j) that a person mentioned in paragraph (e) is given a written  
27 statement that prescribed activities which the code requires have  
28 been carried out.
- 29 (2) The code may include provision —
- 30 (a) that a police officer identified in accordance with prescribed  
31 provisions must carry out a prescribed activity which the code  
32 requires;
- 33 (b) that a police officer so identified must take steps to secure the  
34 carrying out by a person (whether or not a police officer) of a  
35 prescribed activity which the code requires;
- 36 (c) that a duty must be discharged by different people in succession  
37 in prescribed circumstances (as where a person dies or retires).
- 38 (3) The code may include provision about the form in which information is  
39 to be recorded.
- 40 (4) The code may include provision about the manner in which and the  
41 period for which —
- 42 (a) a record of information is to be retained; and



- 1 (b) any other material is to be retained,  
2 and if a person is charged with an offence the period may extend beyond  
3 a conviction or an acquittal.
- 4 (5) The code may include provision about the time when, the form in which,  
5 the way in which, and the extent to which, information or any other  
6 material is to be revealed to the person mentioned in subsection (1)(e).
- 7 (6) The code must be so framed that it does not apply to material intercepted  
8 in obedience to a warrant issued under section 2 of the *Interception of*  
9 *Communications Act 1988*.
- 10 (7) The code may —
- 11 (a) make different provision in relation to different cases or  
12 descriptions of case;
- 13 (b) contain exceptions as regards prescribed cases or descriptions of  
14 case.
- 15 (8) A code prepared under this section and in operation by virtue of an  
16 order under section 23 applies in relation to suspected or alleged offences  
17 into which no criminal investigation has begun before the  
18 commencement of this section.
- 19 (9) A person other than a police officer who is charged with the duty of  
20 conducting an investigation with a view to its being ascertained —
- 21 (a) whether a person should be charged with an offence; or  
22 (b) whether a person charged with an offence is guilty of it,  
23 must in discharging that duty have regard to any relevant provision of a  
24 code which would apply if the investigation were conducted by police  
25 officers.
- 26 (10) A police officer is liable to disciplinary proceedings for a failure to  
27 comply with any provision of a code prepared under this section and for  
28 the time being in operation by virtue of an order under section 23.
- 29 (11) A failure —
- 30 (a) by a police officer to comply with any provision of a code  
31 prepared under this section and for the time being in operation by  
32 virtue of an order under section 23; or  
33 (b) by a person to comply with subsection (9),  
34 does not in itself render him or her liable to any criminal or civil  
35 proceedings.
- 36 (12) In this section —
- 37 (a) “**criminal investigation**” means an investigation conducted by  
38 police officers or other persons with a view to its being  
39 ascertained —

(i) whether a person should be charged with an offence; or

(ii) whether a person charged with an offence is guilty of it;

(b) “**material**” means material of all kinds, and in particular, information and objects of all descriptions;

(c) “**prescribed**” means prescribed by the code; and

(d) “**recording**”, in relation to information, means putting it in a durable or retrievable form (such as writing or tape).

## 22 Examples of disclosure provisions

(1) This section gives examples of the kinds of provision that may be included in the code by virtue of section 21(5).

(2) The code may provide that if the person required to reveal material has possession of material which he or she believes is sensitive the person must give a document which —

(a) indicates the nature of that material; and

(b) states that he or she so believes.

(3) The code may provide that if the person required to reveal material has possession of material which is of a description prescribed under this subsection and which he or she does not believe is sensitive the person must give a document which —

(a) indicates the nature of that material; and

(b) states that he or she does not so believe.

(4) The code may provide that if —

(a) a document is given in pursuance of provision contained in the code by virtue of subsection (2); and

(b) a person identified in accordance with prescribed provisions asks for any of the material,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow the person asking for it to inspect it.

(5) The code may provide that if —

(a) a document is given in pursuance of provision contained in the code by virtue of subsection (3);

(b) all or any of the material is of a description prescribed under this subsection; and

(c) a person is identified in accordance with prescribed provisions as entitled to material of that description,

- 1 the person giving the document must give a copy of the material of that  
2 description to the person so identified or (depending on the  
3 circumstances) must allow the person so identified to inspect it.
- 4 (6) The code may provide that if —
- 5 (a) a document is given in pursuance of provision contained in the  
6 code by virtue of subsection (3);
- 7 (b) all or any of the material is not of a description prescribed under  
8 subsection (5); and
- 9 (c) a person identified in accordance with prescribed provisions asks  
10 for any of the material not of that description,
- 11 the person giving the document must give a copy of the material asked  
12 for to the person asking for it or (depending on the circumstances) must  
13 allow the person asking for it to inspect it.
- 14 (7) The code may provide that if the person required to reveal material has  
15 possession of material which he or she believes is sensitive and of such a  
16 nature that provision contained in the code by virtue of subsection (2)  
17 should not apply with regard to it —
- 18 (a) that provision does not apply with regard to the material;
- 19 (b) the person in question must notify a person identified in  
20 accordance with prescribed provisions of the existence of the  
21 material; and
- 22 (c) the person in question must allow the person so notified to  
23 inspect the material.
- 24 (8) For the purposes of this section material is sensitive to the extent that its  
25 disclosure would be contrary to the public interest.
- 26 (9) In this section “**prescribed**” means prescribed by the code.

## 27 23 Codes of practice: supplementary

28 1998/9/76(3); P1996/25/21A(5)-(9),(12)&(13), 25(2)&(4)&26(3)&(4)

- 29 (1) A code under section 20 or section 21 is to be brought into operation by  
30 order, which order, along with the code, must be laid before Tynwald as  
31 soon as practicable after it is made, and if Tynwald at the sitting at which  
32 the order is laid or at the next following sitting fails to approve the order,  
33 it ceases to have effect.
- 34 (2) The Department of Home Affairs may from time to time revise a code  
35 previously brought into operation under this section; and subsection (1)  
36 applies to a revised code as it applies to the code as first prepared.
- 37 (3) In all criminal and civil proceedings a code in operation at any time by  
38 virtue of an order under this section is admissible in evidence.
- 39 (4) If it appears to a court or tribunal conducting criminal or civil  
40 proceedings that —

1 (a) any provision of a code in operation at any time by virtue of an  
2 order under this section; or

3 (b) any failure mentioned in section 20(6) or section 21(11),

4 is relevant to any question arising in the proceedings, the provision or  
5 failure must be taken into account in deciding the question.

## 6 **24 Common law rules as to criminal investigations**

7 P1996/25/27

8 (1) Where a code referred to in section 21 applies in relation to a suspected  
9 or alleged offence, the rules of common law that —

10 (a) were effective immediately before the day on which the first code  
11 prepared under that section came into operation; and

12 (b) relate to the matter mentioned in subsection (2),

13 do not apply in relation to the suspected or alleged offence.

14 (2) The matter is the revealing of material —

15 (a) by a police officer or other person charged with the duty of  
16 conducting an investigation with a view to it being ascertained  
17 whether a person should be charged with an offence or whether a  
18 person charged with an offence is guilty of it;

19 (b) to a person involved in the prosecution of criminal proceedings.

## 20 **PART 4 — MISCELLANEOUS AND SUPPLEMENTARY**

### 21 **25 Wasted costs orders**

22 (1) In any criminal proceedings —

23 (a) the Court of General Gaol Delivery; or

24 (b) a court of summary jurisdiction,

25 may disallow, or (as the case may be) order the advocate or other  
26 representative concerned to meet, the whole of any wasted costs or such  
27 part of them as may be determined in accordance with regulations made  
28 by the Department of Home Affairs.

29 (2) Regulations must provide that an advocate or other representative  
30 against whom action is taken by a court of summary jurisdiction under  
31 subsection (1) may appeal to the Court of General Gaol Delivery and that  
32 an advocate or other representative against whom action is taken by the  
33 Court of General Gaol Delivery under subsection (1) may appeal to the  
34 Staff of Government Division.

35 (3) In subsection (1), “**wasted costs**” means any costs incurred by a party —

- 1 (a) as a result of any improper, unreasonable or negligent act or  
2 omission on the part of an advocate or other representative or any  
3 person employed by or working on behalf of such an advocate or  
4 representative; or
- 5 (b) which, in the light of any such act or omission occurring after they  
6 were incurred, the court considers it is unreasonable to expect that  
7 party to pay.
- 8 (4) Rules of court may make provision —
- 9 (a) for regulating matters relating to the costs of those proceedings;
- 10 (b) for prescribing scales of costs to be paid to advocates;
- 11 (c) that any functions specified in the rules and relating to the  
12 assessment of costs may be exercised by —
- 13 (i) the court; or
- 14 (ii) an officer of the court or other person authorised for the  
15 purpose.
- 16 (5) Regulations under this section do not have effect unless approved by  
17 Tynwald.

18 **26 Committal for sentence: amendment of Summary Jurisdiction Act 1989**

- 19 (1) The *Summary Jurisdiction Act 1989* is amended as follows.
- 20 (2) In section 17 (committal for sentence) in subsection (3), for the words  
21 “the next Court of General Gaol Delivery” substitute **23** a Court of  
22 General Gaol Delivery **22**.

IN THE KEYS

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**CRIMINAL PROCEDURE AND INVESTIGATIONS  
BILL 2015**

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A **BILL** to make provision  
about criminal procedure and  
criminal investigations.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR WATTERSON

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OCTOBER 2015