
CUSTODY (AMENDMENT) BILL 2016

Explanatory Memorandum

1. This Bill is promoted by Mr Watterson on behalf of the Department of Home Affairs.
2. The Bill amends the *Custody Act 1995*, the *Criminal Justice, Police and Courts Act 2007*, the *Criminal Justice Act 2001* and the *Prisoner Escorts Act 2008*.
3. *Clauses 1, 2 and 3* deal with citation and commencement of the resulting Act and contain interpretation provisions.
4. *Clause 4* provides for the expiry of the resulting Act after it is fully in operation.
5. *Clause 5* amends section 12 of the *Custody Act 1995* to require the Department of Home Affairs to ensure that all detainees (of either sex) who have not attained the age of 18 are, so far as is practicable, kept apart from adult detainees. On the basis of the legislation in its current form this requirement only applies in relation to male detainees who have not attained the age of 21.
6. *Clause 6* amends the power to make custody rules contained in sections 16 and 17 of the *Custody Act 1995* to require custody rules to make provision for the healthcare of detainees and to confer a power on the Department of Home Affairs to give directions or guidance about the exercise of functions under the rules. The provision repeals section 13(1)(b) of the *Custody Act 1995* which requires the appointment of a medical officer to an institution and makes further provision which is consequential upon this change.
7. *Clause 7* substitutes the existing section 18 of the *Custody Act 1995* and inserts a new section 18A into the Act. The substituted section 18 requires custody rules to provide for the establishment of a board whose title will be chosen by the Department for Home Affairs and whose membership and functions will be provided for by custody rules. The functions must include requirements for members of the board to visit penal institutions on a frequent basis in order to hear complaints by detainees, and to report to the Department any matter which they think it expedient to report. Rules may, additionally, provide for the board to consider the character, conduct and prospects of detainees. Finally, in relation to the administrative aspects of boards, custody rules may provide for the procedures to be followed by a monitoring board or may confer discretion upon a board to regulate its own procedure. The new section 18A requires the Department to make arrangements by means of regulations for the frequent monitoring of police cells and cells located in court buildings by members of a board. Functions of boards in relation to these cells are broadly similar to their functions in relation to penal institutions (the hearing of complaints by detainees, satisfying themselves about the quality of treatment and making reports to the Department). In view of the power of the Department of Home

Affairs to choose a name for the new board, section 42 of the *Criminal Justice, Police and Courts Act 2007* (which provides for the board to be known as the “Independent Monitoring Board”) is repealed.

8. *Clause 8* inserts a new section 18B into the *Custody Act 1995*. The new section augments the power to make Custody Rules in order to allow provision to be made for the appointment of independent adjudicators. Their function is to hear charges of contraventions of offences under the rules allegedly committed by detainees in prescribed cases and to decide upon penalties for such contraventions in cases where guilt is established. Custody rules may provide for the procedure to be followed by adjudicators when hearing cases and allow for adjudicators to regulate their own procedure in the absence of specific provision. The clause also repeals subsection (1)(c) of section 17 of the *Custody Act 1995* and amends section 17(4)(c) of that Act. The effect of the first of these changes is to remove a restriction on the provision which may currently be made by custody rules. This restriction prevents the rules from conferring power on the officer in charge of an institution to order cellular confinement for a period in excess of 3 days, or in the case currently of the Independent Monitoring Board a period in excess of 56 days. The second requires custody rules to provide for special treatment in relation to detainees aged under 18 years of age; this alters the current position which requires such treatment to be made in relation to detainees aged under 21.
9. *Clause 9 and Schedule*. Clause 9 introduces a new Schedule 1A to be inserted into the *Custody Act 1995*. The new Schedule makes provision in relation to how articles and cash within institutions are dealt with and makes further provision in connection with operational security. The Schedule makes provision for two different categories of article (the first (“List A”) consisting of controlled drugs, explosive substances, firearms and other weapons and the second (“List B”) consisting of alcoholic liquor, mobile telephones, cameras, sound recording devices and any other articles which may be prescribed). Offences are created with differing penalties (10 years custody for conviction on information in relation to a List A article and 12 months custody or a fine not exceeding £5,000 or both in relation to a List B article) where a person conveys or causes to be conveyed an article from either list into an institution without authorisation. The Schedule provides for the seizure of unauthorised articles and cash found either within the institution or in the possession of detainees. An unauthorised article may be destroyed or disposed of by the officer in charge of an institution and where the officer in charge reasonably believes that an article which is authorised is being used for the purposes of concealing an unauthorised article or for causing harm to the detainee or others or where its presence may prejudice the security or operation of the institution the authorised article in question is to be treated as if it were unauthorised. In the case of cash which has been seized, custody rules must provide for its safekeeping and for an appeal to a court of summary jurisdiction against its detention. The Schedule provides for the making of an order by a court of summary jurisdiction in relation to cash which is not returned to a person and that order may include an order for the

cash to be forfeited. Provision is also made for the creation of further offences in relation to the unauthorised taking of photographs, making of sound recordings within institutions or removal of restricted documents from institutions (penalty 12 months on summary conviction or a fine not exceeding £5,000) and a power is conferred upon the Department to install CCTV cameras within an institution. Provision is made concerning the use and the disclosure of material obtained from CCTV. An officer in charge of an institution may disclose such material to a person other than an employee of the institution or the Department where this is proportionate and where this is necessary (a) in the interests of national security, (b) for the purpose of the prevention, detection, investigation of crime, (c) in the interests of public safety, (d) for securing order in the institution or (e) for the protection of health or morals. The Schedule provides for the destruction of material obtained from CCTV no later than 3 months after it was obtained unless its retention is authorised by the officer in charge. The officer in charge must review a decision to retain material beyond 3 months after each further 3 monthly period.

10. *Clause 10* amends section 19A of the *Custody Act 1995* to allow for testing of detainees for a wider category of substances than presently allowed. Under the amended provision tests may be carried out to determine if a detainee has in his or her body controlled drugs, alcohol, tobacco or psychoactive substances other than controlled drugs, alcohol or tobacco.
11. *Clause 11* amends section 23 of the *Custody Act 1995* and Schedule 2 to the Act. Both of these relate to the early release of detainees. The amendment to section 23 allows custody rules to make provision in relation to the procedures to be followed by the Parole Committee when discharging their functions and the amendment to Schedule 2 allows the Department to revoke a licence which has been granted to a detainee by the Committee where it appears to the Department that the circumstances justifying the release of a detainee on licence no longer obtain. Where a licence is revoked by the Department the detainee may be detained in accordance with his or her original sentence and the case is referred to the Parole Committee who must review the case within one month. A duty is also imposed on the Department to release a detainee where the grounds which brought about the detainee's recall originally no longer obtain.
12. *Clause 12* inserts a new section 23A into the *Custody Act 1995* to allow the Department to order a temporary release of certain detainees in circumstances where an institution becomes so overcrowded that the health of the detainees as a whole may be affected or where the security of the institution may be prejudiced. The power to release in these circumstances does not apply to persons detained for life, who have been sentenced to custody for 4 or more years, sex offenders or life detainees who have been transferred from elsewhere to the Island.
13. *Clause 13* amends section 38 of the *Criminal Justice Act 2001*. That section allows a court to pass an extended sentence on a person guilty of a violent or sexual crime where it considers that the period for which the offender would be released on licence would not be adequate for the purpose of preventing further

offences and for his or her rehabilitation. The amendment provides that such an extended sentence may not be imposed unless the period of custody the court imposes would be at least 4 years.

14. *Clause 14* inserts a new Part 8A into the *Criminal Justice, Police and Courts Act 2007*. This allows the Chief Registrar to make arrangements (after consultation with the Department for Home Affairs, the Chief Constable and such other persons as he or she considers appropriate) for the appointment of suitable persons as court security officers. Persons may not be appointed unless they have received adequate training and are capable of carrying out the functions in question. The Part permits court security officers while acting in the execution of their duty to search persons seeking to enter court premises and to seize and retain any article in the possession of such a person. For the purpose of maintaining order, securing the safety of people in the court building or preventing interference to court business court security officers may restrain a person within a court building or exclude a person from such a building. The Deemsters may make rules about the retention of articles seized or surrendered and particular provision may be made by such rules in relation to knives. Unclaimed items may also be dealt with by provision made in the rules. Finally the Part provides for those who assault or obstruct court security officers to be guilty of offences (12 months custody or a fine of £5,000 in the case of an assault and in the case of obstruction a fine not exceeding £1,000).
15. *Clause 15* amends the *Prisoner Escorts Act 2008* and imposes a requirement on the Department of Home Affairs to consult with the Chief Registrar and the Chief Constable together with such other persons as it thinks appropriate before making arrangements under section 1 of that Act (the provision deals with the appointment of prisoner escorts). In addition the clause clarifies the categories of premises covered by section 1. Premises covered are: an institution; a hospital; a police station; a building where the business of a court is carried on and any premises in the British Islands of a similar description to any of these. In addition, the clause makes amendments to section 2 of the *Prisoner Escorts Act 2008* which are consequential upon the changes to arrangements for monitoring of institutions made by clause 6.
16. The Bill is expected to be revenue neutral and is not expected to incur additional costs to Government. The Bill is designed to enable existing human resources to continue to be deployed in the most efficient and effective roles.
17. 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

CUSTODY (AMENDMENT) BILL 2016

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Ellan Vannin

CUSTODY (AMENDMENT) BILL 2016

1 **A BILL** to amend the Custody Act 1995; to make provision for court security
 2 officers; to restrict the power to pass extended sentences of custody; and for
 3 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: —

4 *Introductory*

5 **1 Short title**

6 The short title of this Act is the Custody (Amendment) Act 2016.

7 **2 Commencement**

- 8 (1) This Act (other than sections 1 and 3 and this section) comes into
 9 operation on a day appointed by order of the Department of Home
 10 Affairs.
- 11 (2) Different days may be appointed for different provisions and different
 12 purposes.
- 13 (3) An order under subsection (1) may make such transitional and saving
 14 provisions as the Department of Home Affairs considers necessary or
 15 expedient.

16 **3 Interpretation**

17 In this Act “**the Act**” means the *Custody Act 1995*.

18 **4 Expiry**

- 19 (1) This Act expires —
- 20 (a) on the day after its promulgation, if all of its provisions are in
 21 operation on its promulgation; or
- 22 (b) otherwise, on the day after the last provision is brought into
 23 operation.

- 1 (2) The expiry does not —
 2 (a) affect the continuing operation of the amendments made by this
 3 Act; or
 4 (b) revive any provision not in operation when the amendments took
 5 effect.

6 *Amendments of the Custody Act 1995*

7 **5 Detention of persons under 18**

8 For section 12(2) of the Act substitute —

- 9 “(2) The Department must secure that detainees under 18 years of age
 10 are, so far as practicable, detained in a separate institution or in
 11 separate accommodation within an institution.”

12 **6 Custody rules**

13 (1) Section 16 of the Act is amended as follows —

14 (a) after subsection (2) insert —

15 “(2A) Custody rules must make provision for healthcare for detainees.

16 (2B) Custody rules may authorise detainees of a class or description
 17 specified in the rules to be designated by a style or name there
 18 specified.”;

19 (b) at the end insert —

20 “(4) The Department may give to any person, or to persons of any
 21 description, exercising functions under custody rules general
 22 directions or guidance as to the exercise of those functions.”

23 (2) In section 17(3) of the Act, after “in relation to” insert “the operation of
 24 institutions,”.

25 (3) The following provisions of the Act are repealed —

26 (a) section 13(1)(b);

27 (b) section 22(5).

28 **7 Independent monitoring of institutions and other premises**

29 (1) For section 18 of the Act substitute —

30 **“18 Independent monitoring of institutions**

31 (1) Custody rules must provide for the establishment for every
 32 institution of an independent body (a “**board**”) consisting of such
 33 persons appointed at such times, in such manner and for such
 34 terms as may be prescribed.

- 1 (2) A board may be given such title as the Department thinks fit.
- 2 (3) Custody rules must prescribe the functions of a board in respect
3 of each institution for which it is established, and must in
4 particular require members of the board —
- 5 (a) to pay frequent visits to the institution;
- 6 (b) to hear, in private or otherwise at their discretion, any
7 complaints or requests which may be made by detainees;
8 and
- 9 (c) to report to the Department any matter which they
10 consider it expedient to report.
- 11 (4) Custody rules may require the board for an institution to consider
12 periodically the character, conduct and prospects of each of the
13 detainees.
- 14 (5) Custody rules may —
- 15 (a) provide for the procedure to be followed by a board in
16 exercising any function; and
- 17 (b) enable the board (subject to any provision made under
18 paragraph (a)) by rules or otherwise to regulate its own
19 procedure.
- 20 (6) Any member of the board for an institution may at any time enter
21 the institution and must have free access to every part of it and to
22 every detainee.

23 **18A Independent monitoring of other premises**

- 24 (1) This section applies to the following premises —
- 25 (a) any cell or other place in a police station where persons in
26 police detention are or may be held or interviewed;
- 27 (b) any part of a court building, being a part where defendants
28 in criminal proceedings are or may be held before, during
29 or after their appearance before a court.
- 30 (2) The Department must make regulations providing for —
- 31 (a) the frequent monitoring by one or more members of a
32 body established pursuant to section 18(1) of all premises
33 to which this section applies;
- 34 (b) the access to such premises to be granted to members of
35 the body for the purpose of —
- 36 (i) carrying out such monitoring;
- 37 (ii) informing themselves of the treatment of persons
38 held or otherwise dealt with in such premises; and

(iii) hearing, in private or otherwise at their discretion, any complaints or requests which may be made by such persons; and

(c) the reports to be made by members of any such body to the Department on any matter referred to in paragraph (a) or (b), and any other matter on which they consider it expedient to report.

(3) Before making any regulations under subsection (2) the Department must consult the Chief Constable and such other persons as it considers appropriate.

(4) Regulations under subsection (2) do not have effect unless they are approved by Tynwald.

(5) In this section —

“**court building**” means any building where the business of a court is carried on;

“**police detention**” has the meaning given by section 81(2) of the *Police Powers and Procedures Act 1998*.”.

(2) Section 42 of the *Criminal Justice, Police and Courts Act 2007* is repealed.

8 Appointment and functions of adjudicator

(1) After section 18A of the Act (inserted by section 7) insert —

“18B Independent adjudicators

(1) Custody rules must provide for —

- (a) the appointment by the Appointments Commission, and the tenure of office, of independent adjudicators; and
- (b) the assignment to every institution of one or more adjudicators.

(2) Custody rules may provide for —

- (a) the reference to an adjudicator, in such cases as are prescribed, of any charge of an offence under the rules, and the hearing and determination (including the award of punishment or privation) of such a charge;
- (b) the review by an adjudicator, in such cases as are prescribed, of —
 - (i) a finding that a detainee is guilty of an offence under the rules;
 - (ii) a punishment or privation awarded for such an offence; or

- 1 (iii) both such a finding and such a punishment or
 2 privation.
- 3 (3) Custody rules may —
 4 (a) provide for the procedure to be followed by an adjudicator
 5 in exercising any function; and
 6 (b) enable an adjudicator (subject to any provision made
 7 under paragraph (a)) by rules or otherwise to regulate his
 8 or her own procedure.”.
- 9 (2) In section 17(1) of the Act —
 10 (a) in paragraph (b), for “the Independent Monitoring Board”
 11 substitute “an adjudicator”;
 12 (b) omit paragraph (c).
- 13 (3) In section 17(4)(c) of the Act, for “21” substitute “18”.
- 14 (4) In section 26 of the Act, after “In this Act —” insert —
 15 “**“adjudicator”** means an independent adjudicator appointed under
 16 custody rules;”.

17 9 Security of institutions

- 18 (1) For section 19 of the Act substitute —
 19 **“19 Security of institutions**
 20 | Schedule 1A has effect for promoting the security of institutions.”.
- 21 (2) Insert as Schedule 1A to the *Custody Act 1995* the Schedule set out in the
 22 Schedule to this Act.

23 10 Testing for drugs etc.

- 24 Section 19A of the Act is amended as follows —
 25 (a) in subsection (1), for “has any drug or alcohol in his or her body.”
 26 substitute “has in his or her body —
 27 | (a) any drug, alcohol or tobacco; or
 28 | (b) any residue, derivative or metabolite of a drug,
 29 | alcohol or tobacco.”;
- 30 (b) in subsection (5) —
 31 (i) for the definition of “drug” substitute —
 32 **““drug”** means —
 33 (a) any substance which is a controlled drug within the meaning of
 34 the *Misuse of Drugs Act 1976*; or

(b) any psychoactive substance (not being a controlled drug, alcohol or tobacco) which is prescribed, or of a description which is prescribed, for the purposes of this section;”;

(ii) omit “and” following the definition; and

(iii) at the end insert —

““**psychoactive substance**” means a substance which is capable, by stimulating or depressing a person’s central nervous system, of affecting his or her mental functioning or emotional state.”.

11 Early release of detainees

(1) In section 23 of the Act —

(a) after subsection (2) insert —

“(2A) Custody rules may —

(a) provide for the procedure to be followed by the Parole Committee in exercising any function; and

(b) enable the Committee (subject to any provision made under paragraph (a)) by rules or otherwise to regulate its own procedure.”;

(b) in subsection (2) omit “and proceedings”.

(2) Schedule 2 to the Act is amended as follows —

(a) after paragraph 8(4A) insert —

“(4B) If, after a licence has been granted on the recommendation or direction of the Committee but before the detainee has been released, it appears to the Department that the circumstances which justified his or her release no longer obtain, the Department may revoke the licence.

(4C) On the revocation of a licence under sub-paragraph (4B) —

(a) the detainee is liable to be detained in pursuance of his or her sentence and, if at large, is deemed to be unlawfully at large; and

(b) the Department must forthwith refer the case to the Committee who must, within one month of the reference, review the case; and paragraph 3, 4 or 6, as the case may be, applies as if it had been referred to the Committee under the paragraph in question.”;

(b) omit paragraph 13A(7);

(c) in paragraph 13B, at the end insert —

“(6) Without prejudice to sub-paragraphs (2) to (5), it is the duty of the Department to cause the release of the detainee on licence if it is of

1 | the opinion that the circumstances which justified his or her recall
2 | under paragraph 10(1) or (2) no longer obtain.”.

3 | **12 Release in case of overcrowding**

4 | After section 23 of the Act insert —

5 | **“23A Release in case of overcrowding**

- 6 | (1) If the Department is satisfied that so many detainees are or will be
7 | detained in an institution that the health of those persons or the
8 | security or operation of the institution is or will be prejudiced, it
9 | may authorise the temporary release from the institution of one or
10 | more detainees for such period and subject to such conditions as it
11 | may direct.
- 12 | (2) The following detainees may not be released under this section —
- 13 | (a) a person serving a sentence of custody for life;
14 | (b) a person serving a sentence of custody for a term of 4 years
15 | or more;
16 | (c) a person serving a sentence in respect of a sexual offence or
17 | a violent offence (as defined in section 38 of the *Criminal*
18 | *Justice Act 2001*);
19 | (d) a transferred life detainee (as defined in paragraph 5 of
20 | Schedule 2).
- 21 | (3) Subsections (2) and (3) of section 22 apply to a release under this
22 | section as they apply to a release under that section.”.

23 | *Extended sentences*

24 | **13 Restriction on extended sentences**

- 25 | (1) In section 38 of the *Criminal Justice Act 2001*, after subsection (4) insert —
26 | “(4A) An extended sentence may not be passed unless the custodial
27 | term is at least 4 years.”.
- 28 | (2) Subsection (1) does not affect a sentence passed before the coming into
29 | operation of this section.

30 | *Court security officers*

31 | **14 Court security officers**

32 | After Part 8 of the *Criminal Justice, Police and Courts Act 2007* insert —

“PART 8A-COURT SECURITY OFFICERS

28A Court security officers

- (1) The Chief Registrar may make arrangements for the appointment of persons to exercise the functions of court security officers under this Part.
- (2) Arrangements under subsection (1) may include entering into contracts with other persons for the provision by them of persons to exercise those functions.
- (3) Before making any arrangements under subsection (1) the Chief Registrar must consult the Department of Home Affairs and the Chief Constable, and may consult such other persons as he or she considers appropriate.
- (4) The Chief Registrar may designate a person appointed or provided under subsection (1) or (2) as a court security officer.
- (5) A person designated under this section, when exercising any function of a court security officer, must act under the direction and control of the Chief Registrar.
- (6) The Chief Registrar must not designate a person under this section unless he or she is satisfied that that person —
 - (a) is a suitable person to carry out the functions of a court security officer;
 - (b) is capable of effectively carrying out those functions; and
 - (c) has received adequate training in the carrying out of those functions.
- (7) For the purposes of sections 28B to 28E, a court security officer who is not readily identifiable as such (whether by means of uniform or badge or otherwise) is not to be regarded as acting in the execution of the officer’s duty.
- (8) In those sections —

“**court building**” means any building to which the public has access and where the business of any of the following courts is carried on —

 - (a) the High Court;
 - (b) a Court of General Gaol Delivery;
 - (c) a court of summary jurisdiction;

“**court security officer**” means a person designated as such under this section.

28B Powers of search, exclusion, removal and restraint

- 1
- 2 (1) A court security officer acting in the execution of the officer's duty
- 3 may search —
- 4 (a) any person who is in, or seeking to enter, a court building;
- 5 and
- 6 (b) any article in the possession of such a person.
- 7 (2) Subsection (1) does not authorise a court security officer to require
- 8 a person to remove any of the person's clothing other than a coat,
- 9 jacket, headgear, gloves or footwear.
- 10 (3) A court security officer acting in the execution of the officer's duty
- 11 may exclude or remove from a court building, or a part of a court
- 12 building, any person who refuses —
- 13 (a) to permit a search under subsection (1); or
- 14 (b) to surrender an article in the person's possession when
- 15 asked to do so under section 28C(1).
- 16 (4) A court security officer acting in the execution of the officer's duty
- 17 may —
- 18 (a) restrain any person who is in a court building; or
- 19 (b) exclude or remove any person from a court building, or a
- 20 part of a court building,
- 21 if it is reasonably necessary to do so for one of the purposes given
- 22 in subsection (5).
- 23 (5) The purposes are —
- 24 (a) enabling court business to be carried on without
- 25 interference or delay;
- 26 (b) maintaining order;
- 27 (c) securing the safety of any person in the court building.
- 28 (6) A court security officer acting in the execution of the officer's duty
- 29 may remove any person from a courtroom at the request of a
- 30 judge of the court in question.
- 31 (7) The powers given by subsections (3), (4) and (6) include power to
- 32 use reasonable force, where necessary.

28C Surrender, seizure and retention of knives and other articles

- 33
- 34 (1) If a court security officer acting in the execution of the officer's
- 35 duty reasonably believes that an article in the possession of a
- 36 person who is in, or seeking to enter, a court building ought to be
- 37 surrendered on any of the grounds given in subsection (2), the
- 38 officer must ask the person to surrender the article; and, if the
- 39 person refuses to surrender the article, the officer may seize it.

- 1 (2) The grounds are that the article —
- 2 (a) may jeopardise the maintenance of order in the court
- 3 building (or a part of it);
- 4 (b) may put the safety of any person in the court building at
- 5 risk; or
- 6 (c) may be evidence of, or in relation to, an offence.
- 7 (3) Subject to subsection (4), a court security officer may retain an
- 8 article which was —
- 9 (a) surrendered in response to a request under subsection (1);
- 10 or
- 11 (b) seized under that subsection,
- 12 until the time when the person who surrendered it, or from whom
- 13 it was seized, is leaving the court building.
- 14 (4) If a court security officer reasonably believes that the article may
- 15 be evidence of, or in relation to, an offence, the officer may retain
- 16 it until —
- 17 (a) the time when the person who surrendered it, or from
- 18 whom it was seized, is leaving the court building; or
- 19 (b) the end of the permitted period,
- 20 whichever is the later.
- 21 (5) In subsection (4) “**the permitted period**” means such period, not
- 22 exceeding 24 hours from the time the article was surrendered or
- 23 seized, as will enable the court security officer to draw the article
- 24 to the attention of a constable.
- 25 (6) Subsections (3) to (5) do not apply where a knife is —
- 26 (a) surrendered to a court security officer in response to a
- 27 request under subsection (1); or
- 28 (b) seized by a court security officer under that subsection,
- 29 but, instead, the knife must be retained in accordance with rules
- 30 under section 28D(3) unless returned or disposed of in accordance
- 31 with those rules or rules under section 28D(1).
- 32 (7) If a court security officer reasonably believes that a retained knife
- 33 may be evidence of, or in relation to, an offence, nothing in
- 34 subsection (6) prevents the officer retaining the knife for so long
- 35 as necessary to enable the officer to draw it to the attention of a
- 36 constable.
- 37 (8) In this section “**knife**” includes —
- 38 (a) a knife-blade; and
- 39 (b) any other article which —

- 1 (i) has a blade or is sharply pointed; and
 2 (ii) is made or adapted for use for causing injury to the
 3 person.

4 **28D Rules about retention of knives and other articles**

- 5 (1) The Deemsters may by rules make provision as to —
 6 (a) the provision to persons —
 7 (i) by whom articles have been surrendered in
 8 response to a request under subsection (1) of section
 9 28C; or
 10 (ii) from whom articles have been seized under that
 11 subsection,
 12 of written information about the powers of retention of court
 13 security officers;
 14 (b) the keeping of records about articles which have been so
 15 surrendered or seized;
 16 (c) the period for which unclaimed articles have to be kept;
 17 and
 18 (d) the disposal of unclaimed articles at the end of that period.
- 19 (2) In subsection (1) “**unclaimed article**” means an article —
 20 (a) which has been retained under section 28C;
 21 (b) which a person is entitled to have returned;
 22 (c) which has not been returned; and
 23 (d) whose return has not been requested by a person entitled
 24 to it.
- 25 (3) Without prejudice to the generality of subsection (1), the
 26 Deemsters must by rules make provision as to —
 27 (a) the procedure to be followed when a knife is retained
 28 under section 28C;
 29 (b) the making of requests by eligible persons for the return of
 30 knives so retained;
 31 (c) the procedure to be followed when returning a knife
 32 pursuant to a request made in accordance with the rules.
- 33 (4) In subsection (3) —
 34 “**eligible person**”, in relation to a knife retained under section 28C,
 35 means —
 36 (a) the person who surrendered the knife under subsection (1)
 37 of section 28C or from whom the knife was seized under
 38 that subsection; or

- (b) any other person specified in rules under subsection (3);
 “knife” has the same meaning as in section 28C.

28E Protection of court security officers

- (1) Any person who assaults a court security officer acting in the execution of the officer’s duty commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to custody for a term not exceeding 12 months, or to a fine not exceeding £5,000, or to both.
- (3) A person who resists or wilfully obstructs a court security officer acting in the execution of the officer’s duty commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £1,000.”.

Prisoner escorts

15 Prisoner escorts

- (1) Section 1 of the *Prisoner Escorts Act 2008* is amended as follows —
- (a) after subsection (1) insert —
- “(1A) Before making any arrangements under subsection (1) the Department must consult the Chief Registrar and the Chief Constable, and may consult such other persons as it considers appropriate.”;
- (b) for subsection (3) substitute —
- “(3) In subsection (1) “**relevant premises**” means —
- (a) an institution (within the meaning of the *Custody Act 1995*);
- (b) a hospital;
- (c) a police station;
- (d) a building where the business of a court is carried on;
- (e) premises situated in any part of the British Islands outside the Island which are of a similar description to premises within paragraph (a), (b), (c) or (d).”.
- (2) Section 2 of that Act is amended as follows —
- (a) in subsection (1), for “The Independent Monitoring Board” substitute “A monitoring board”;
- (b) in subsection (1)(b), for “inspect” substitute “monitor”;
- (c) in subsections (2) and (3), for “Independent Monitoring Board” substitute “monitoring board”;
- (d) for subsection (4) substitute —

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“(4) In this section “**monitoring board**” means a body established under section 18 of the *Custody Act 1995* and designated for the purpose of this section by the Department.”.

SCHEDULE

SCHEDULE 1A TO THE CUSTODY ACT 1995

“SCHEDULE 1A

SECURITY OF INSTITUTIONS

Prohibited articles

1. (1) This paragraph defines the categories of articles which are referred to in paragraphs 2 and 3.

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

- (a) a controlled drug (within the meaning of the *Misuse of Drugs Act 1976*);
- (b) an explosive substance (within the meaning of the *Explosive Substances Act 1883*);
- (c) any firearm or ammunition (within the meaning of *Firearms Act 1947*);
- (d) any regulated weapon or ammunition (within the meaning of the *Shot Guns, Air Weapons and Cross-Bows Act 1994*);
- (e) any other offensive weapon (within the meaning of Part I of the *Police Powers and Procedures Act 1998*).

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

- (a) liquor (within the meaning of the *Licensing Act 1995*);
- (b) a mobile telephone;
- (c) a camera;
- (d) a sound-recording device;
- (e) any article or substance prescribed for the purposes of this sub-paragraph by custody rules.

(4) In List B —

“camera” includes any device by means of which a photograph can be produced;

“sound-recording device” includes any device by means of which a sound-recording can be made;

and for this purpose —

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

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

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

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

13 (6) The Department may by order amend this paragraph for the
14 purpose of —

- 15 (a) adding an entry to List A;
16 (b) repealing or modifying any entry for the time being
17 included in List A or List B;
18 (c) adding, repealing or modifying any provision for the
19 interpretation of any such entry.

20 (7) An order under sub-paragraph (6) does not have effect unless it is
21 approved by Tynwald.

22 *Conveyance etc. of List A articles into or out of institution*

- 23 2. (1) A person who, without authorisation —
24 (a) brings, throws or otherwise conveys a List A article into or
25 out of an institution;
26 (b) causes another person to bring, throw or otherwise convey
27 a List A article into or out of an institution;
28 (c) leaves a List A article in any place (whether inside or
29 outside an institution) intending it to come into the
30 possession of a detainee; or
31 (d) knowing a person to be a detainee, gives a List A article to
32 him or her,

33 is guilty of an offence.

34 (2) In this paragraph “**authorisation**” means authorisation
35 given for the purposes of this paragraph by the
36 Department or by the officer in charge of the institution;

37 and in sub-paragraph (3) “**specified**” means specified in the
38 authorisation.

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

- 1 (a) in relation to specified articles or articles of a specified
2 description;
- 3 (b) in relation to specified acts or acts of a specified
4 description; or
- 5 (c) on such other terms as may be specified.
- 6 (4) Authorisation given by the Department otherwise than in writing
7 must be recorded in writing as soon as is reasonably practicable
8 after being given.
- 9 (5) Authorisation given by the officer in charge of an institution
10 must —
- 11 (a) be given in writing; and
12 (b) specify the purpose for which it is given.
- 13 (6) A person guilty of an offence under this paragraph is liable on
14 conviction on information to custody for a term not exceeding 10
15 years or to a fine, or to both.
- 16 *Conveyance etc. of List B articles into or out of institution*
- 17 3. (1) A person who, without authorisation —
- 18 (a) brings, throws or otherwise conveys a List B article into or
19 out of an institution;
- 20 (b) causes another person to bring, throw or otherwise convey
21 a List B article into or out of an institution;
- 22 (c) leaves a List B article in any place (whether inside or
23 outside an institution) intending it to come into the
24 possession of a detainee; or
- 25 (d) knowing a person to be a detainee, gives a List B article to
26 him or her,
- 27 is guilty of an offence.
- 28 (2) In proceedings for an offence under this paragraph it is a defence
29 for the accused to show that —
- 30 (a) he or she reasonably believed that he or she had
31 authorisation to do the act in respect of which the
32 proceedings are brought; or
- 33 (b) in all the circumstances there was an overriding public
34 interest which justified the doing of that act.
- 35 (3) A person guilty of an offence under this paragraph is liable —
- 36 (a) on conviction on information, to custody for a term not
37 exceeding 2 years or to a fine, or to both;

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

(4) In this paragraph “**authorisation**” means authorisation given for the purposes of this paragraph; and sub-paragraphs (2) to (5) of paragraph 2 apply in relation to authorisations so given as they apply to authorisations given for the purposes of paragraph 2.

Disposal of articles

4. (1) The officer in charge of an institution may destroy or otherwise dispose of, or arrange for the destruction or other disposal of —

(a) an article found in the possession of a detainee who is not authorised to have it in his or her possession; or

(b) an article found inside the institution or in an escort vehicle, otherwise than in the possession of a detainee, where —

(i) the owner of the article is a detainee who is not authorised to have it in his or her possession; or

(ii) the owner of the article cannot be ascertained.

(2) An article which a detainee is authorised to have in his or her possession is to be treated for the purposes of sub-paragraph (1) as not so authorised where the officer in charge of the institution reasonably believes that the article is being, has been or may be used for any of the following purposes —

(a) concealing an article which a detainee is not authorised to have in his or her possession;

(b) causing harm to the detainee or others;

(c) prejudicing the security or operation of the institution.

(3) Where a detainee is authorised to have an article in his or her possession in a particular part of the institution, sub-paragraph (1)(a) or (b)(i) applies only where the article is found elsewhere than in that part.

(4) In this paragraph —

“**article**” does not include cash;

“**authorised**” means authorised in accordance with custody rules or by the officer in charge of the institution;

“**escort vehicle**” means a vehicle used for taking a detainee to or from an institution or other place while in custody;

references to disposing of an article include selling it.

Seizure of cash

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- 2 | 5. (1) An officer of an institution may seize and detain —
- 3 | (a) cash found in the possession of a detainee who is not
- 4 | authorised to have it in his or her possession;
- 5 | (b) cash found inside the institution or in an escort vehicle,
- 6 | otherwise than in the possession of a detainee, where —
- 7 | (i) the owner of the cash is a detainee who is not
- 8 | authorised to have it in his or her possession; or
- 9 | (ii) the owner of the cash cannot be ascertained; or
- 10 | (c) cash found inside the institution in the possession of a
- 11 | person other than a detainee, if it appears to the officer
- 12 | that —
- 13 | (i) the person intends to convey it to a detainee who is
- 14 | not authorised to have it in his or her possession; or
- 15 | (ii) it is intended to be used in the commission of an
- 16 | offence (including an offence under custody rules).
- 17 | (2) Custody rules must make provision (subject to any order made by
- 18 | a court of competent jurisdiction) for —
- 19 | (a) the safekeeping of cash detained under sub-paragraph (1);
- 20 | (b) the making, hearing and determination of an appeal by a
- 21 | detainee against the detention of cash seized under sub-
- 22 | paragraph (1)(a) or (b);
- 23 | (c) subject to any order made on appeal, the application of any
- 24 | cash seized under sub-paragraph (1)(a) or (b), either by its
- 25 | return to a detainee not later than his or her release, or
- 26 | otherwise as provided by the rules.
- 27 | (3) Where cash is seized under sub-paragraph (1)(c) and is not
- 28 | returned to the person concerned before or when he or she leaves
- 29 | the institution, the officer in charge of the institution must
- 30 | either —
- 31 | (a) as soon as practicable arrange for it to be —
- 32 | (i) returned to that person; or
- 33 | (ii) delivered to a constable; or
- 34 | (b) apply to a court of summary jurisdiction for an order for its
- 35 | disposal.
- 36 | (4) On an application under sub-paragraph (3)(b) the court may make
- 37 | such order as appears to it to be just and expedient, including an
- 38 | order that the cash be forfeited.
- 39 | (5) In this paragraph “**authorised**” and “**escort vehicle**” have the
- 40 | same meanings as in paragraph 4.

Other offences relating to security in institutions

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6. (1) A person who, without authorisation —
- (a) takes a photograph, or makes a sound-recording, inside an institution; or
- (b) transmits, or causes to be transmitted, any image or any sound from inside an institution by electronic communication for simultaneous reception outside the institution,
- is guilty of an offence.
- (2) It is immaterial for the purposes of sub-paragraph (1)(a) where the recording medium is located.
- (3) A person who, without authorisation —
- (a) brings or otherwise conveys a restricted document out of an institution or causes such a document to be brought or conveyed out of an institution; or
- (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside an institution by means of electronic communication,
- is guilty of an offence.
- (4) In proceedings for an offence under this paragraph it is a defence for the accused to show that —
- (a) he or she reasonably believed that he or she had authorisation to do the act in respect of which the proceedings are brought; or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (5) A person guilty of an offence under this paragraph is liable —
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both; or
- (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.

Interpretation of paragraph 6

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7. (1) In paragraph 6 (and the following provisions of this paragraph) “**authorisation**” means authorisation given for the purposes of that paragraph —
- (a) by the Department;
- (b) by the officer in charge of the institution;

- 1 | (c) by a person working at the institution who is authorised by
2 | the officer in charge to grant authorisation on his or her
3 | behalf.
- 4 | (2) Authorisation may be given —
- 5 | (a) to persons generally or to specified persons or persons of a
6 | specified description; and
7 | (b) on such terms as may be specified.
- 8 | In this sub-paragraph “**specified**” means specified in the
9 | authorisation.
- 10 | (3) Authorisation given by or on behalf of the officer in charge of an
11 | institution must be in writing.
- 12 | (4) In paragraph 6 “**restricted document**” means the whole or any
13 | part of —
- 14 | (a) a photograph taken inside the institution;
15 | (b) a sound-recording made inside the institution;
16 | (c) a personal record or a document containing information
17 | derived from a personal record;
18 | (d) any other document which contains —
- 19 | (i) information relating to an identified or identifiable
20 | relevant individual, if the disclosure of that
21 | information would or might prejudicially affect the
22 | interests of that individual; or
23 | (ii) information relating to any matter connected with
24 | the institution or its operation, if the disclosure of
25 | that information would or might prejudicially affect
26 | the security or operation of the institution.
- 27 | (5) In sub-paragraph (4) —
- 28 | “**personal record**” means any record which is required by custody rules
29 | to be prepared and maintained in relation to any detainee (and it
30 | is immaterial whether or not the individual concerned is still a
31 | detainee at the time of any alleged offence);
- 32 | “**relevant individual**” means an individual who is or has at any time
33 | been —
- 34 | (a) a detainee or a person working at the institution; or
35 | (b) a member of such a person’s family or household.
- 36 | (6) In paragraph 6 and this paragraph —
- 37 | “**document**” means anything in which information is recorded (by
38 | whatever means);

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

4 “**sound-recording**” means a recording of sounds in any medium from
5 which the sounds may by any means be reproduced.

6 *Use of CCTV and similar devices*

7 8. The Department may install and use, in or in the vicinity of any
8 institution, apparatus for —

- 9 (a) monitoring and observing the interior or exterior of the
10 institution or any part of it, including its curtilage;
11 (b) recording anything so monitored or observed.

12 *Disclosure of CCTV information*

13 9. (1) Information obtained by means of apparatus referred to in
14 paragraph 8 may be disclosed to —

- 15 (a) an officer of the relevant institution;
16 (b) an employee authorised for the purpose of this paragraph
17 by the officer in charge of the institution;
18 (c) the Department.

19 (2) Information obtained by means of apparatus referred to in
20 paragraph 8 may not be disclosed to any other person unless the
21 officer in charge of the relevant institution has authorised its
22 disclosure.

23 (3) An authorisation under sub-paragraph (2) must be in writing, and
24 may be given only where the officer in charge is satisfied that —

- 25 (a) the disclosure is necessary on one or more of the following
26 grounds —
27 (i) the interests of national security;
28 (ii) the prevention, detection, investigation or
29 prosecution of crime;
30 (iii) the interests of public safety;
31 (iv) securing or maintaining security or good order and
32 discipline in the relevant institution;
33 (v) the protection of health or morals; and
34 (b) the disclosure is proportionate to what is sought to be
35 achieved by it.

Destruction of CCTV information

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10. (1) Any record of information obtained by means of apparatus referred to in paragraph 8 must be destroyed no later than 3 months after it was obtained unless the officer in charge of the relevant institution has authorised its retention.

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(2) An authorisation under sub-paragraph (1) must be in writing, and may not be given unless the officer in charge is satisfied —

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(a) that the retention of the record is necessary on one or more of the grounds specified in paragraph 9(3)(a); and

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(b) that the retention is proportionate to what is sought to be achieved by it.

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(3) Where a record is retained under sub-paragraph (1) the officer in charge must review, at intervals of not more than 3 months, whether its retention remains in accordance with sub-paragraph (2).

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(4) If, on a review under sub-paragraph (3), the officer in charge is not satisfied that the retention of the record remains in accordance with sub-paragraph (2), he or she must arrange for the information to be destroyed.”.

IN THE KEYS

CUSTODY (AMENDMENT) BILL 2016

A **BILL** to amend the Custody Act 1995; to make provision for court security officers; to restrict the power to pass extended sentences of custody; and for connected purposes.

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

MR WATTERSON

JANUARY 2016