



JUSTICE REFORM BILL 2020

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mrs Clare Barber, MHK.

INTRODUCTION

- 1.** These explanatory notes relate to the Justice Reform Bill 2020. They have been prepared by the Department of Home Affairs in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 2.** The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

- 3.** The Criminal Justice Strategy was received by Tynwald in December 2012¹. The priorities of the Strategy are – prevention; appropriate response; rehabilitation; and new ways of working. The Strategy is being taken forward in a number of ways by the body appointed administratively for the purpose - the Criminal Justice Board.

Within our day-to-day lives there is a fundamental balance between our right to live our lives safe from harm and danger and our expectation that when a crime is alleged to have been committed, justice will be served fairly. In any civilised jurisdiction there is much between those two points that is governed and upheld by legislation.

Accordingly, the Bill addresses a number of diverse matters that are, when taken together, integral to law enforcement, public protection and underpin our system of justice.

- 4.** In accordance with the Strategy, the overarching objective of the Bill is to begin to address the way in which justice is done on our Island. It seeks to empower the Constabulary and other appropriate authorities to intervene and to prevent (where possible) individuals from becoming embroiled in a life of crime. This is done by enabling these authorities to respond in appropriate ways and the Bill makes some changes that will place greater emphasis on rehabilitation, together with other changes that either constitute or encourage new ways of working.
- 5.** Within the overarching objectives set out, the Bill achieves a wide range of objectives through its eleven Parts.
- 6.** Part 2 places the Criminal Justice Board on a statutory basis and sets out its responsibilities to ensure that the Strategy is further progressed. It is noted within the functions of the Board that it is not empowered to do anything which affects, or might be seen to affect, the independence of the judiciary. It also makes further legal provision for the sharing of such information as is necessary or expedient for the purposes of public safety, prevention or reduction of crime, to safeguard the welfare of a particular person or that is otherwise in the public interest. This is intended among

¹GD 0061/12.

other things to facilitate work to protect children who are in households where domestic abuse is taking place.

- 7.** Part 3 makes a number of changes to the practice and procedures of the summary courts.
- 8.** Subdivision 1 of Division 2 of Part 3 deals with the juvenile court's jurisdiction. The juvenile court is renamed the youth court and it is empowered to deal with 17 year-olds.
- 9.** Subdivision 2 of Division 2 of Part 3 extends the sentencing and trial powers of the High Bailiff and the Deputy High Bailiff, so that they can impose a term of up to two years' custody for any offence for which the maximum which may be imposed in a trial on information is at least two years. The only cases with which they can never deal in this way are those offences for which the sentence is fixed by law, namely murder and treason, both of which carry mandatory life terms. This is one of the key changes made by the Bill and two supporting Schedules implement the change.
- 10.** Subdivision 3 of Division 2 of Part 3 makes a series of miscellaneous changes to summary court procedure relating to early indications of a guilty plea and procedures affecting the more serious cases that must be heard in the Court of General Gaol Delivery (CGGD). Committal proceedings are abolished, but a case which is sent to the CGGD under the new procedure will still be able to be tested before a Deemster on a preliminary application to determine whether the defendant has a case to answer. The Subdivision also provides for the discontinuance of cases before summary courts and the effect of preliminary hearings. The provisions on the mode of trial are simplified and rationalised.
- 11.** Subdivision 4 of Division 2 of Part 3 makes minor corrections and improvements in connection with the procedure of courts of summary jurisdiction.
- 12.** The Bill clarifies and streamlines the legislation affecting costs in the summary courts, the CGGD and the Staff of Government Division of the High Court (referred to below as "the Appeal Division"). The principle effect of the changes is to prevent a legally aided defendant from recovering a greater sum in costs on an acquittal than the amount payable under the legal aid certificate
- 13.** Unconditional cautions are placed on a statutory basis. It will be possible for cautions to be administered with conditions attached so as to potentially enable preventative and rehabilitative work to be undertaken at an early stage. Other provisions enable fixed penalty notices to be issued for a number of minor anti-social type offences.
- 14.** Various changes are made in relation to bail and extensive amendments are made by the Schedules to remove outdated references to "felony" and "misdemeanor" from existing legislation and to harmonise with modern language in use in relation to conviction and penalties.
- 15.** Other changes mean that Proceeds of Crime Act 2008 applications that would have had to have been heard in the CGGD even following conviction before the High Bailiff may now be heard in the relevant court having charge of the case.
- 16.** The Bill also contains changes in response to the Recommendations of the Select Committee of Tynwald on the Operation of the Jury system, 2015-2016 (PP 2016/0100). These are included as these represent broad criminal justice reform.
- 17.** Two particular changes are made that build upon the principles embodied in the Domestic Abuse Bill². First, provisions are inserted into the Protection from Harassment Act 2000 to strengthen that Act and introduce the offence of stalking. Second, the provision relating to strangulation in the Criminal Code 1872 is replaced

²The Bill is currently in the Legislative Council, having received its Third Reading in the House of Keys on 17th December 2019.

with modern law to acknowledge the fact strangulation can be more than a one-off action and may form part of a pattern of abusive behaviour which must be addressed effectively.

- 18.** The Department acknowledges this is a large and significant piece of legislation. It is, however, only part of an ongoing process to ensure the efficient operation of the Manx criminal justice system. A number of other matters have been identified that could not be addressed in this Bill without making it even longer.

19. EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Justice Reform Bill 2020 are compatible with the Convention rights.

20. FINANCIAL EFFECTS OF THE BILL

In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any financial or personnel implications.

NOTES ON CLAUSES

PART 1 – INTRODUCTORY

1. **Clauses 1 and 2** provide that the short title of the Act will be the Justice Reform Act 2020 and that the Act will come into operation at such time and in such manner as the Department, by order, may determine. Clause 2 further provides that the Council of Ministers may, after consultation with the Deemsters, make further provision deemed necessary to support the enactment of the Act, by Order.
2. **Clause 3** provides interpretation of the Acts referenced in abbreviated form in the Bill, and of the meanings of “the Appeal Division” and “the Department”.

PART 2 – CO-OPERATION BETWEEN AGENCIES

3. **Clause 4** places the Criminal Justice Board on a statutory footing. Subsections (2), (3) and (4) relate to membership of, and appointments to, the Board. Subsections (5) to (9) deal with the functions of the Board, its proceedings and clarify that the Board is not empowered to do anything which affects, or may be seen to affect, the independence of the judiciary.
4. **Clause 5** empowers the Department to make regulations authorising the disclosure of information by a person described in those regulations if it appears that the disclosure is necessary for the purposes of public safety, crime and disorder prevention or reduction, to safeguard the welfare of a particular person or otherwise in the public interest. Any regulations to be made under subsection (1) are, as specified by subsection (2), to first be subject to consultation with the Deemsters, the Criminal Justice Board and other persons/bodies as the Department thinks appropriate. Subsection (3) provides that the person disclosing the information must have regard for the principle that helping to ensure that a victim is protected from violence takes precedence over any duty to keep information confidential.

PART 3 – CHANGES TO THE JURISDICTION AND PROCEDURE OF THE SUMMARY COURTS

5. **Clause 6** explains that this Part amends the Summary Jurisdiction Act 1989 (SJA 1989) to extend the jurisdiction of the juvenile courts, to increase the sentencing powers of the High Bailiff, to abolish committal proceedings and provide an alternative means of transferring cases to a Court of General Gaol Delivery and amends other enactments as a result of, or in connection with, the changes mentioned. The amendments in this Part are made to the SJA 1989.
6. **Clause 7** renames the juvenile court and calls it the youth court and states that it may deal with offenders aged under 18 years (rather than under 17 years) and introduces the amendments found in section 8 that will implement these changes.
7. **Clause 8** makes amendments to the various sections of the SJA 1989 along with other stated pieces of legislation in order to give effect to Clause 7.
8. **Clause 9** extends the jurisdiction of the High Bailiff (and by virtue of the broader meaning given to that term in the Interpretation Act 2015, the Deputy High Bailiff) so any offence may be dealt with other than one where the sentence is fixed by law. Subsection (1) further provides that the High Bailiff may impose 2 years custody and an unlimited fine on conviction, subject to the maximum penalty that may be imposed in the case of an offence triable only summarily and on information in respect of any case triable either way or which, but for new section 1A of the SJA 1989 (inserted by subsection (4)), would be triable on information. This is noted to include youth courts falling within those set parameters.
9. **Clause 10** deals with consequential and incidental amendments relating to the extension of the jurisdiction of the High Bailiff introduced by section 9. Subsection

(2) introduces **Schedule 1** which makes changes as a result of the extension of the powers of the High Bailiff made by Clause 9. Schedule 1 also contains a number of other minor amendments to enactments and abolishes the obsolete concepts of felony (which could, historically, have resulted in the convicted person's land and goods being forfeited or indeed them suffering capital punishment) and penal servitude (imprisonment with hard labour). Subsection (3) introduces **Schedule 2** which amends the Proceeds of Crime Act 2008 in consequence of the extension of the powers of the High Bailiff. Subsection (4) empowers the Department, by order, to make such further provision as may be necessary or expedient to give a fuller and better effect to the extension of the jurisdiction of the High Bailiff. Subsection (5) clarifies that the power to make an order provided by subsection (4) includes amending or repealing Manx legislation, and also includes modifying Parliamentary enactments in their application to the Island, so there is a consistency of treatment in relation to offences that would be punishable on information with 2 years' custody or less.

- 10. Clause 11** makes provision for pre-trial hearings and the associated processes in place to make rulings at these by amending the SJA 1989 with insertion of new sections 7A to 7B. Clause 11 further provides within new sections 7C and 7D for restrictions on reporting of matters under the new sections 7A and 7B, and sets out the offences committed by contravening these restrictions.
- 11. Clause 12** abolishes committal proceedings and makes repeals in the SJA 1989 to effect this change. Cases may be sent to the Court of General Gaol Delivery to be tried by the Deemsters instead – see Clause 17. This mirrors streamlining provisions in England and Wales.
- 12. Clause 13** empowers the prosecution by insertion into the SJA 1989 to discontinue proceedings in a court of summary jurisdiction provided the proceedings are at a preliminary stage as defined in subsection (2) of the inserted section A8. Subsection (6) of section A8 requires the Attorney General to inform the accused of the notice of discontinuance and of the right of the accused to require proceedings to be continued. Subsection (9) of section A8 provides that the discontinuance of proceedings does not preclude the institution of fresh proceedings for the same offence.
- 13. Clause 14** amends section 11 of the SJA 1989 by the insertion of subsection (9) to provide that where a person pleads guilty in accordance with that section, but does not attend court, the powers of the court may be exercised by a single justice.
- 14. Clause 15** makes some adjustments to existing sections 15A and 15B of the SJA 1989 in respect of the early indication of pleas in consequence of other amendments made by this Bill.
- 15. Clause 16** repeals section 16 of the SJA 1989 and Schedule 2 to that Act (offences triable on information which can be dealt with summarily). This repeal reflects the fact other provisions to be inserted in that Act will provide for summary trial by the High Bailiff where the maximum penalty does not exceed a term of two years' custody, in consequence of the changes made by Clauses 9 and 10.
- 16. Clause 17** is consequential on the abolition of committals to the Court of General Gaol Delivery within Clause 12 within the new section 7B. In relation to committals for sentence, instead of referring to a previous section that dealt with committal for trial (a concept which is abolished), it specifies by amendment to section 17 of the SJA 1989 that such documents relating to a committal for sentence as are prescribed must be transmitted to the Chief Registrar.
- 17. Clause 18** deals with decisions as to the venue where a case could be tried, either summarily by the High Bailiff or Magistrates, or on information, in the Court of

General Gaol Delivery by a Deemster. The existing section 18 of the SJA 1989 is replaced by new sections 18 to 18D dealing with procedures determining where either a summary trial, or a trial on information instead, are more suitable. These provisions set out the sending procedure applying to adults and to children respectively that governs the decision around the Court in which they will be tried. A new section 18E is also inserted that provides for notices to be given, this effectively sets out that in serious or complex fraud cases when they are determined to be of sufficient complexity by either the Attorney General or the Attorney General's authorised representative, the case will be dealt with by the Court of General Gaol Delivery. The procedural changes made by some of the preceding provisions of the Bill require changes to be made to the procedure for determining the venue of a trial.

- 18. Clause 19** amends section 19 of the SJA 1989 in respect of the summary trial of a child or a young person to reflect changes relating to the sending procedure made in Clause 17 concerning children and also the abolition of committals.
- 19. Clause 20** abolishes the right to claim jury trial for certain summary offences by repealing section 21 of the SJA 1989 as this was inconsistent with those changes related to the extended jurisdiction of the High Bailiff introduced within clause 9.
- 20. Clause 21** replaces the existing section 32 of the SJA 1989 with a provision dealing with trial of a corporate body with an alternative using modern language and reflecting the process by which method of trial and whether to try summarily or send to the Court of General Gaol Delivery. The term "representative" in connection with a corporation is defined.
- 21. Clause 22** deals with those cases where a person on bail in relation to proceedings in a Court of General Gaol Delivery is arrested on the grounds he or she is likely to breach bail, or concerns on the part of the surety (the guarantee made that the accused person will appear in court), and provides that a court of summary jurisdiction may remand the person in custody, or once again on bail, or may vary bail conditions.
- 22. Clause 23** amends section 75 (limitation of time) of the SJA 1989 with a reference to the High Bailiff, and also inserts a new subsection (2A) that provides that the limitation of time on the institution of proceedings does **not** apply in the case of proceedings where the High Bailiff (or Deputy High Bailiff) sitting alone may try the case and impose a higher penalty than that available to justice. This is significant as by virtue of the extension of the High Bailiff's jurisdiction, then that case might be subject to greater punishment before the High Bailiff than before justices.
- 23. Clause 24** is about the authentication of court records along with other documents, this clarifies that despite any other requirement of law, a record may be authenticated not just by the signature of a justice or the High Bailiff, but in any other way specified in rules (of court) by insertion of a new section 75A in the SJA 1989.
- 24. Clause 25** amends section 91, replacing the reference to the Clerk to the Rolls with one to the Deemsters. This means that the Deemsters will be able to make rules in respect of all of the Island's criminal courts (and accordingly may do so in a single set of rules, if they were so minded).
- 25. Clause 26** amends Part VIII (Clauses 94 and following) of the SJA 1989 to further develop the powers of the court to provide for the enforcement of the payment of fines, including fixed penalty fines, or otherwise ensure the sentence of the court is carried out effectively. It also closes down some perceived loopholes in the enforcement of fixed penalties.

26. **Clause 27** deals with the powers of a Deemster when sitting as a summary court in consequence of the extension of the powers of the High Bailiff. It inserts a new subsection (3) to section 111 of the SJA 1989, to make it clear that in this situation the Deemster may exercise any power otherwise conferred on a High Bailiff.

PART 4 – CHANGES TO PROCEDURE OF COURTS OF GENERAL GAOL DELIVERY

27. **Clause 28** states that the Criminal Jurisdiction Act 1993 (the CJA 1993) is amended as follows in subsequent clauses. These amendments reflect current practice or make changes to align with changes made in relation to the SJA 1989 by Parts 2 or 3 of this Bill.
28. **Clause 29** amends section 1 of the CJA 1993 by substituting subsections (4) and (5) and inserting an additional subsection (3A) to articulate in plainer language than previously that a person against whom an information has been properly served will be arraigned and tried at a sitting of the Court of General Gaol Delivery that is convenient, that a trial may be adjourned for a good reason, and that any order made by the Court may be signed by a Deemster.
29. **Clause 30** inserts a new section 2A and a new Schedule A1 (before Schedule 1) in the CJA 1993 to provide further detail about the procedure in connection with offences that are sent to the Court of General Gaol Delivery under Clause 17.
30. **Clause 31** inserts new section 2B in the CJA 1993 to provide power for the prosecution to discontinue proceedings where a case has been sent for trial.
31. **Clause 32** inserts a new section 5A in the CJA 1993 to provide power to join a summary charge to an information where the charge is founded on the same facts or evidence to the offence triable on information; in other words the person accused is tried concurrently in certain circumstances. The summary charge may be tried in the same manner as the information offence but the sentence the Court of General Gaol Delivery may impose must not exceed that which a court of summary jurisdiction could have imposed.
32. **Clause 33** amends section 8 of the CJA 1989 to refer to sections 8A to 8E which are inserted by Clause 34.
33. **Clause 34** inserts new sections 8A to 8E in the CJA 1993. The new section 8A makes provision by which a defendant may apply to a Deemster for trial to be conducted without a jury. The new section 8B empowers the prosecution to apply for certain fraud cases to be conducted without a jury. The new section 8C empowers the prosecution to apply for a trial to be conducted without a jury where there is a danger of jury tampering (“jury-nobbling”). The new section 8D sets out the procedure for applications being made under section 8C. The new section 8E empowers a Deemster to hold a pre-trial hearing in serious, complex or lengthy cases for the purposes of identifying key issues and in various ways ensuring the effective management of a trial. Subsection (4) of this new section 8E says a pre-trial hearing may be held on the application of the prosecution, the accused, or, any one of the accused, or, on the Deemster’s own motion.
34. **Clause 35** substitutes the reference to “a justice of the peace or other person” in section 37 of the CJA 1993 so it is widened to “a justice or any other person” and, therefore, includes a wider range of judicial persons who may be appointed by the Appeal Division to examine a witness and take depositions as evidence before the Appeal Division.
35. **Clause 36** makes a few amendments to section 42A in the CJA 1993 to reflect current usage or to clarify matters. For example, subsection (2) changes the term “a judge of the High Court” back to the traditional “a Deemster” and subsection (3) amends from “the jury” to “a jury” reflecting the fact that, as a result of other

changes, there may not be a jury even where guilt is in issue because the defendant has elected to be tried by a Deemster alone. Subsection (4) substitutes subsection (7) so it is clear as to when a trial on information commences and also to reflect the insertion of new sections 8A to 8E made by Clause 32.

- 36. Clause 37** changes references to “a single judge of the High Court” and “a single judge” to “a Deemster” or “Deemster” in section 43 of the CJA 1993. This is because only Deemsters may exercise the relevant powers: judicial officers (who form the other class of judge in the High Court) cannot sit on criminal matters.
- 37. Clause 38** amends the interpretation provisions in section 59 of the CJA 1993. The amendment made by subsection (3) reflects the changes proposed to juries set out in Clause 103, which will provide for juries consisting either of 7 or 12 members.

PART 5 – COSTS IN CRIMINAL PROCEEDINGS

- 38. Clause 39** makes provision about defence costs, the circumstances in which defendant’s cost orders might be made and the source of the funds from which the costs order might be drawn including monies set aside by Tynwald.
- 39. Clause 40** makes further specific provision about defendant’s costs orders.
- 40. Clause 41** makes further specific provision about the award of costs against the accused.
- 41. Clause 42** makes provision for orders as to costs in other circumstances. In particular, subsection (1) provides that this provision applies where the court is satisfied one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings.
- 42. Clause 43** empowers the Appeal Division, a Court of General Gaol Delivery or a court of summary jurisdiction to disallow, or (as the case may be) order the legal representative concerned to meet in whole or in part any wasted costs.
- 43. Clause 44** empowers the Treasury to make regulations which would themselves empower the courts of summary jurisdiction, General Gaol Delivery and the Appeal Division to make a third party costs order.

Subsection (2) says that a third party costs order relates to the payment of costs incurred by a party to criminal proceedings (whether prosecution or defence) by a person who is not a party to those proceedings (e.g. a witness).

Subsection (3) sets out the condition that there must have been serious misconduct by the third party and the court must consider it appropriate, having regard to the misconduct, to make a third party costs order against the third party.

Subsection (4) details the kind of matters that may be covered by regulations made by the Treasury, such as the types of misconduct in respect of which a third party costs order may not be made. Subsection (5) requires regulations to include provision for appeals against third party costs orders.

- 44. Clause 45** empowers the Treasury to make regulations for carrying this Part into effect. Subsection (2) lists a number of matters that may be covered by regulations including, among other things, the amounts that may be ordered to be paid out of money provided by Tynwald in pursuance of a costs order and the circumstances conditions under which such amounts may be paid, or ordered to be paid.

Subsection (4) empowers the Treasury to make regulations providing for the recovery sums paid under the Legal Aid Act 1986, in cases where a costs order has been made against a party to proceedings, and the person in whose favour the order was made is a legally aided person. Subsection (5) provides that regulations under subsection

(4) may require the party to proceedings against whom a costs order has been made to pay sums due under the costs order in such manner as directed by the Treasury and enable the Treasury to enforce those repayment requirements.

- 45. **Clause 46** defines “defendants costs order”, “legally aided person”, “proceedings” and “witness” in this Part. Other matters relating to costs are explained or clarified in subsections (2) to (6).
- 46. **Clause 47** adds a new subsection (4) within section 47 of the SJA 93 and in consequence of the changes made within Part 5 then repeals sections 28, 29 and 107 of SJA 1989; and sections 48 to 53 of CJA 1993.

PART 6 – CAUTIONING OF OFFENDERS

- 47. **Clause 48** introduces the provisions dealing with unconditional and conditional cautions and consequential amendments.
- 48. **Clause 49** provides interpretation for terms used in this Part.
- 49. **Clause 50** states that a caution (whether unconditional or one with conditions attached) may not be given in respect of a penalty that is fixed by law (i.e. for the offences of murder and treason, for which the only possible penalty is detention for life).
- 50. **Clause 51** imposes a duty to consult victims. Before deciding whether to give a caution to an offender the person proposing to give the caution must first take reasonable steps to consult the victim (if any) and any further steps that may be specified in a code of practice made under Clause 60. Subsection (2) provides that where a caution has been given, reasonable steps must be taken to inform the victim of that fact, and of any conditions imposed, and take any other steps required by a code of practice made under Clause 60.
- 51. **Clause 52** places cautions, called unconditional cautions, on a statutory basis for the first time. Subsection (4) makes it clear that this does not cast doubt on the validity of any caution given before this section comes into operation. In other words, those cautions given prior to this legislation comes into operation are, and will remain, legally valid.
- 52. **Clause 53** details the 5 requirements that must apply before an unconditional caution may be considered, or given, these are set out in 5 subsections. These requirements are—
 - 1) that the authorised person has evidence the offender committed the offence;
 - 2) that there is sufficient evidence to charge the offender, but that a caution would be an appropriate disposal;
 - 3) that the offender admits the offence;
 - 4) that the effect of the caution is explained to the offender; and
 - 5) that the offender signs a document that contains details of the offence, the fact that the offender admits the offence and the effect of the caution in the event that the offender is subsequently convicted of a further offence (any offence).
- 53. **Clause 54** makes provisions for cautions to be administered with conditions attached that must be complied with by the offender. Subsection (1) provides that such a caution may be given to a child or a young person over the age of criminal responsibility, or to an adult if all the 5 requirements set out in Clause 55 are satisfied and (2) that if the person being cautioned is a child or young person then an appropriate adult is present. Subsection (3) provides a definition of “conditional caution” and (4) that the conditions attached to this kind of caution have one or more of the following objects – to facilitate the rehabilitation (recovery) of the offender, to

ensure the offender makes reparation (amends) for the offence, and/or to punish the offender being cautioned. Subsection (5) provides that an offender may be required to attend a centre for the purpose of facilitating the offender's rehabilitation and subsection (6) limits the number of hours attendance to a maximum of 100. Subsection (7) allows that the Department may make an Order to vary to the number of hours specified in subsection (6). Subsection (8) relates to the making of conditions in relation to (9) relating to that person either being excluded from or caused to depart from the Island. For clarity (10) sets out that any expiration of the period of exclusion does not automatically allow that person right to return to the Island. Subsection (11) provides definition for the term "relevant offender" and sets out connected UK legislation.

- 54. Clause 55** specifies the 5 requirements for conditional cautions which for the most part mirror those set out in Clause 53; however in connection with conditional cautions these include the addition that the fourth requirement includes a warning to the offender that failure to comply with any of the conditions of that caution being given may result in the offender being prosecuted for the offence and in the last requirement that the document the offender signs also includes details of the conditions attached to the caution and the warning mentioned earlier.
- 55. Clause 56** provides for the variation of conditions, either that they may be added to, modified or a condition omitted.
- 56. Clause 57** provides that if the offender fails to comply with the conditions attached to their caution, and does so without reasonable cause, then criminal proceedings may be instituted against the offender for the original offence for which the conditional caution was given.
- 57. Clause 58** provides the power to arrest a person for failing to comply, without reasonable excuse, with any of the conditions attached to the conditional caution and sets out this process.
- 58. Clause 59** applies the existing power found in the Police Powers and Procedures Act 1998 as it relates to the power of arrest, with such modifications as these require in order that they apply to the arrest of a person for failure to comply with a conditional caution.
- 59. Clause 60** empowers the Department to provide a code of practice in relation to cautions (whether unconditional or conditional) and establishes a firm link to those codes of practice issued under section 75 of the Police Powers and Procedures Act 1998 (and Section 76 of the PPPA98 which is supplementary to section 75).
- 60. Clause 61** provides that probation officers may give assistance to those authorised to administer cautions in determining whether a conditional caution should be given, and which conditions should be attached to the conditional caution, and to the supervision and rehabilitation of person subject to a conditional caution.
- 61. Clause 62** makes provision where a caution is given to a child or a young person to the effect the caution is to be known as a "youth caution" or a "youth conditional caution" as the case may be.
- 62. Clause 63** requires the Department to prepare a statement of available remedies and empowers the Department to revise this statement from time to time Subsection (2) states that the statement is a list of actions, any one of which might potentially be carried out by a person who has engaged in anti-social behaviour or has committed an offence and is to be dealt with for that behaviour or offence without court proceedings. Subsection (3) repeats the purposes specified in Clause 54(4). In other words that the actions themselves are either to rehabilitate (recover from), reparate (make amends for) or be a punishment for the behaviour which

caused the individual to receive a caution. Other subsections require the Department to have regard for the need to promote public confidence in the out-of-court disposal process and note that it must consult with various persons including the Attorney General, the Chief Constable, the Department of Education, Sport and Culture, and the Department of Health and Social Care and such other persons as the Department thinks appropriate. The Department is also required to lay before Tynwald the statement or available remedies and any revision of same.

- 63. Clause 64** applies where an authorised person has evidence that an individual has engaged in anti-social behaviour, or committed an offence, that is sufficient for taking proceedings for an injunction or taking other court proceedings and where the individual has admitted the behaviour or offence. Where the evidence relates to an offence, the authorised person may consider it more appropriate for the individual to carry out action of some sort, instead of giving a caution, or a fixed penalty notice. The "action" may be one or more of the action types referred to in the statement of available remedies mentioned in Clause 63. Subsection (2) requires the authorised person to take reasonable steps to consult the victim and subsection (4) clarifies that "action" includes the making of a payment to compensate the victim but does not include the payment of a fixed penalty.
- 64. Clause 65** introduces a number of small or minor consequential amendments to the Police Powers and Procedures Act 1998 (PPPA98).
- 65. Clause 66** substitutes subsection (6) of section 64 (fingerprinting) of the PPPA98 and inserts an additional subsection (6A). The substitutions have similar effect to the existing provisions but make them clearer. Essentially, as before, the fingerprints of a person detained at a police station may be taken without appropriate consent if the person has been convicted of a recordable offence. This also applies if the person has been given a caution in respect of a recordable offence. The change from the existing provision reflects the fact a caution can, in any event, only be given if the person has admitted the offence.
- 66. Clause 67** substitutes subsection (5) of section 66 (other samples) of PPPA98 to the effect that a non-intimate sample may be taken from a person without the appropriate consent if the person has been convicted of a recordable offence or has been given a caution for a recordable offence.
- 67. Clause 68** amends section 67 (fingerprints and samples: supplementary provisions) to the PPPA98 in a number of ways.

Subsection (2) inserts a new subsection (A1) to put the circumstances in which fingerprints and other samples relating to a person may be checked against other records in clear form and include the giving of a caution (in the same manner as with previous Clauses).

Subsection (3) makes a consequential change to subsection (1).

Subsection (4) substitutes "the National Crime Agency formed under section 1 of the Crime and Courts Act 2013 (of Parliament)" in subsection (1A)(b) for the reference to "the body corporate established under the Serious and Organised Crime and Police Act 2005 (of Parliament)". This reflects the changes in the UK agencies.

Subsection (5) amends the existing subsection (1E)(a) with a reference to the new (A1) introduced by subsection (2).

Subsection (6) amends the existing subsection (1G) with a reference to the new (6A) introduced by Clause 66.

Subsection (7) simply adds provision to subsection (4) of section 67 of the PPPA98 about a person who has been given a caution for a recordable offence, in addition to

those persons charged or convicted of such an offence, whom a constable may require to attend a police station to have a sample taken where he or she either has not already had a sample taken, or the previous sample given was not suitable for analysis or, although suitable, was insufficient.

Subsection (8) adds to subsection (5) of section 67 of the PPPA98 provision that the limited period of one month applies to a person who has been given a caution as it applies to those charged or those convicted (as the case may be) of an offence within which the further sample mentioned in subsection (4) of section 67 of the PPPA98 may be taken.

Subsection (9) adds a new sub-paragraph (c) to subsection (8) to provide that in the case of a person given a caution, the "appropriate officer" is the officer in charge of the police station from which the investigation of the offence for which the person was given a caution was conducted.

- 68. Clause 69** substitutes section 68(2) (b) of the PPPA98 (destruction of fingerprints and samples). The language of this provision was felt not to be completely clear, and that perhaps it could be taken to imply that, even though a person had not admitted an offence, they could nevertheless be cautioned for the offence. The effect of the substitution is to clarify that if fingerprints or samples are taken from a person in connection with an investigation and it is subsequently decided not to prosecute the person for the offence or to caution the person, the fingerprints or samples must be destroyed as soon as possible after the decision.
- 69. Clause 70** adds a definition of a caution and cautioned (so it complies with Part 6 of this Bill) to section 69 (Part V – supplementary) of the PPPA98.
- 70. Clause 71** amends section A77 (footwear impressions, etc.) of the PPPA98 to clarify the wording contained in that section in a like manner, and for the same reasons, as the amendment made by Clause 68.
- 71. Clause 72** amends Schedule 1 to the Criminal Justice Act 2001 (registration of sex offenders) to remove the reference to receiving a caution for an offence the person has admitted. In the light of clarification through Part 5 of this Bill a caution can only be given where there is sufficient evidence and the person admits the offence.
- 72. Clause 73** inserts new sections 7A and 8A and inserts new Schedule 1A (see Schedule 3 to this Bill) into the Rehabilitation of Offenders Act 2001. These inserted provisions will, for the first time in the Island, provide for the rehabilitation of any person who has received a caution and that these may now become "spent".
- 73. Clause 74** contains a small insertion after "constable" in the definition of "cautioned" in section 13 (interpretation) of the Sex Offenders Act 2006 to include "or other authorised person" (within the meaning of section 49 of the Justice Reform Act 2020)".

PART 7 – IMMEDIATE FINANCIAL PENALTIES

- 74. Clause 75** sets out in a table the "penalty offences", the liability for which may be discharged by paying a financial penalty. Subsection (2) empowers the Department to add, amend or remove entries in the table by order approved by Tynwald.
- 75. Clause 76** provides interpretation of the terms in Part 7 namely "defaulter", "penalty notice", "penalty offence" and "registrable sum".
- 76. Clause 77** empowers a police officer to give a person, whom the officer has reason to believe has committed a penalty offence, a penalty notice. Where the person is under the age of 16, subsection (4) provides that the person giving the notice must notify a responsible person, and, if the notice is being given at a police station,

secure the attendance of a responsible person at the police station. Subsection (5) provides further interpretation of the terms used in this section.

- 77. Clause 78** provides that the amount of a penalty is £120. Subsection (2) empowers the Department to change the amount by order, subject to Tynwald approval, this amount (according to (3)) may not be more than one quarter of the maximum fine liable on summary conviction for the offence. Subsection (4) specifies that the notice must be in a form approved by the Department and sets out the details that must be included on or within the notice.
- 78. Clause 79** sets out the effect of a penalty notice given under section 77. Subsections (2) to (4) detail how the person who has been given the notice may, instead of paying the penalty, request to be tried instead (i.e. ask to be taken to Court rather than pay the fixed penalty). Subsection (5) sets out the consequences if the person fails to pay the penalty within the period required and fails to ask to be tried instead.
- 79. Clause 80** provides that proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 21 days from the date on which the penalty notice was given. Subsection (2) states that if the penalty is paid within 21 days of the notice (in effect discharging the penalty) then no proceedings may be brought. Subsection (3) points out that, if a person has requested to be tried, proceedings can then be brought within that 21 day period.
- 80. Clause 81** empowers the Department to issue a code of practice about the giving of a penalty notice.
- 81. Clause 82** contains procedural details about the payment of the penalty, which must be by one of the methods specified in the penalty notice, and also must include a method of payment by telephone or electronic banking. Subsection (2) states that the payment of the penalty is, for the purposes of the Collection of Fines etc. Act 1985, to be treated as a fine adjudged to be paid on conviction by a criminal court. The remaining subsections set out the method by which the fine might be paid using the post and the correct manner this is to be done along with other matters related to proof of postage.
- 82. Clause 83** provides that the Chief Registrar may issue a registration certificate providing for enforcement of the penalty against a defaulter as if it were a fine adjudged to be paid on conviction by a court. Where the Chief Registrar does so, subsection (2) requires that a copy is sent to the defaulter.
- 83. Clause 84** relates to enforcement proceedings. The defaulter may claim he or she was not the person to whom the penalty notice was issued. Subsection (3) allows the court to adjourn proceedings for up to 28 days for the claim to be investigated. Unless it was shown on the balance of probabilities that he or she was the recipient of the penalty notice the court must accept the defaulter's claim. Subsection (5) empowers the court to set aside a fine in the interests of justice. If the court does so, then subsection (6) provides that the court must either give directions for further consideration of the case, or direct that no further action be taken in the case that gave rise to the penalty notice.

PART 8 – HARASSMENT AND STALKING

- 84. Clause 85** introduces a series of Clauses amending the Protection from Harassment Act 2000 ("the 2000 Act").
- 85. Clause 86** amends section 1 of the 2000 Act (prohibition of harassment) by introducing a new subsection (1A) that prohibits a course of conduct namely that the person is deliberately harassing 2 or more people, in a manner which the person doing the harassing would know (or ought to know) is harassment and is being done

specifically to persuade someone to do, or not do, something as a result of that harassment. The person being coerced to do, or not do, something may not necessarily be one of the people being harassed. Other amendments are consequential.

- 86. Clause 87** substitutes existing section 2 (offence of harassment) of the 2000 Act to ensure offences under section 1(1) and (1A) are liable to the maximum penalty of 6 months custody or a level 5 fine.
- 87. Clause 88** introduces the offence of stalking by inserting new sections 2A and 2B. Further to subsection (2) of new section 2A, subsection (3) provides more examples of acts or omissions which, in the particular circumstances, are ones associated with stalking. New section 2B provides the police with powers of entry and seizure where they have reasonable grounds for believing an offence under 2A has been, or is being, committed, and there is material on the premises that is or is likely to be of substantial value to the investigation of the offence.
- 88. Clause 89** amends section 3 (civil remedy) of the 2000 Act in subsection 1 to refer to section 1(1) rather than section 1, in other places in the section to refer to the defendant rather than "he" and in subsection (9)(b) to refer to level 5 on the standard scale rather than £5,000.
- 89. Clause 90** inserts a new section 3A (injunctions to protect persons from harassment within section 1(1A)) in the 2000 Act to empower any person amongst those who may have been the victim of the course of conduct outlined within section 1(1A), to apply to the High Court for an injunction restraining the relevant person.
- 90. Clause 91** substitutes section 4 (putting people in fear of violence) of the 2000 Act. The purpose of the substitution is to clarify who is the person committing the offence, "A", and against whom the offence is committed, namely person "B". This uses plainer language within the provision and includes conviction for stalking as an alternative offence in subsection (4). The maximum penalty on information for the offence of putting people in fear of violence has been raised from 5 years custody to 10 years custody.
- 91. Clause 92** inserts new section 4A (stalking involving fear of violence or serious alarm or distress) into the 2000 Act. Subsection (1) continues with the practice of referring to the offender as "A" and the victim of the behaviour as "B". The offence has two components 1) that A's course of conduct must amount to stalking and 2) that A's conduct must either cause B to fear on at least 2 occasions that violence will be used against B, or, that A's conduct must cause B serious alarm or distress which has a substantial adverse effect on B's usual day to day activities. The maximum penalty on conviction on information is 10 years custody or a fine.

Subsections (2) and (3) further explain the meaning of the words "ought to know" in subsection (1). The test is whether "a reasonable person in possession of the same information" would think the course of conduct would cause B to fear on each of at least 2 occasions or, as the case may be, will cause such alarm or distress.

Subsection (4) sets out possible allowable defences for A's behaviour in three sets of particular circumstances namely crime protection/defence, lawful basis or protection of A/another (or A's property/another's property).

Subsection (5) provides that if A is found not guilty under this section A may nevertheless be found guilty of an offence under sections 2 or 2A.

Subsection (6) provides that where a person is found not guilty of the main offence, but instead found guilty of an offence under section 2, or section 2A, then the sentencing powers of the Court of General Gaol Delivery will be the same as for a court of summary jurisdiction.

Subsection (7) provides that this section does not limit section 4.

92. Clause 93 makes a number of consequential amendments to section 5 (restraining orders) of the 2000 Act and adds the words “on conviction” to the title of the section.

93. Clause 94 inserts a new Clause 5A (restraining orders on acquittal) that makes provision, as the title indicates, empowering the court to make a restraining order despite the fact the defendant was acquitted of an offence. As subsection (1) states, a court may make an order prohibiting the defendant from doing anything described in the order, if it considers it necessary to protect a person from harassment by the defendant.

94. Clause 95 substitutes section 7 (interpretation) to further define the meaning of a “course of conduct” so it is clear that where it is in relation to a single person it involves conduct on at least 2 occasions, and where conduct involves 2 or more people, it means conduct on at least one occasion in relation to each person.

Subsection (4) refers to a person’s conduct where that conduct is aided, abetted, counselled or procured by another (in other words if the person is in any way helped, advised or their actions obtained/caused in some way by another person).

Subsection (5) defines conduct and Subsection (6) clarifies that references to a person in the context of harassment of a person are references to a person who is an individual.

PART 11 – CLOSING PROVISIONS

95. Clause 96 amends the Evidence Act 1871 by substituting section 17 with a table and other information setting out in detailed and clear form the documents that may be admitted in evidence in any court in the Island.

96. Clause 97 amends section 3 and substitutes section 14 of the Legal Aid Act 1986 (the 1986 Act).

Subsection (2) inserts a new subsection (1B) into section 3 of the 1986 Act to clarify that for the purposes of proceedings under Part 4 (care and supervision) and 5 (protection of children) the child or young person who is the subject of the proceedings will be treated as having no resources and that the resources of any parent or guardian who is a party to the proceedings will also be disregarded.

Subsection (3) substitutes section 14 (confidentiality of information) of the 1986 Act. The substitution retains the principle of the confidentiality of information supplied in support of a person seeking or receiving legal advice and assistance. However, subsection (2) provides an allowance for the disclosure of information in connection with the proper performance or to facilitate the proper performance by the Treasury, the Legal Aid Committee, any court or tribunal or by any other person, their duties or functions under the 1986 Act. Information may also be disclosed for 3 other purposes indicated by the subsection in relation to investigating, prosecuting or determining the basis of a complaint under Part IV of the Advocates Act 1976.

97. Clause 98 amends the Jury Act 1980 (the Jury Act) in a number of ways, most of which serve to implement changes identified by the Report of the Select Committee of Tynwald on the Operation of the Jury System.³

Subsection (2) amends section 1(1) of the Jury Act to change the upper age limit for jury service from 65 to 75 years of age and standardise references used to age (e.g. “thirteen” is changed to “13” and “eighteen” to “18”).

Subsection (3) for the most part substitutes section 12(4) (excusal of persons summoned for jury service) and does two things. Paragraph (a) provides for excusal

³ <https://www.tynwald.org.im/business/pp/Reports/2016-PP-0100.pdf>

on grounds of caring for a child under the age of 16 in gender neutral terms and paragraph (b) provides that a person has grounds for excusal once they attain the age of 71 years.

Subsection (4) substitutes section 24 of the Jury Act (number of jurors empanelled in criminal cases) to expand provision for 12 member juries to include offences for which the sentence is fixed by law and also those attracting a sentence punishable by more than 10 years custody. Other cases will be triable by a 7 member jury unless a Deemster is satisfied the gravity of the matters in issue means a jury consisting of 12 members should be empanelled.

Subsection (5) inserts new section 24A, which provides for majority verdicts, in the case that a set majority of a jury agrees then they can return a verdict. Where a jury consists of 7 members, a majority of 6 of them can agree a verdict and where a jury consists of 11 or 12 members, a majority of at least 10 of them can agree a verdict. For a majority verdict to be accepted by the Deemster, section 24A(2) means the jury must have retired for at least two hours deliberation.

Subsection (6) removes the unnecessary words "or set aside" from section 26 (panels of jurors for criminal trials from mid-way through the first (unnumbered) paragraph of the section. The words are unnecessary because the provision already refers to jurors who have been challenged.

Subsection (7) makes a number of amendments to section 27 (challenges in criminal trials) to address the issue of peremptory challenge and to simplify the grounds for challenge of prospective jurors. Subsection (1) of section 27 is repealed thereby removing the Attorney General's unlimited right challenge any prospective juror without cause. Subsection (2) is substituted with the effect of empowering both the person preferring (submitting) the information, and the person to be tried, to challenge any juror for good and sufficient cause. Subsection (5), which deals with peremptory challenges, is repealed in consequence of the repeal of subsection (1) and the substitution of subsection (2).

- 98. Clause 99** substitutes paragraph (d) of section 2(4) of the Coroners of Inquests Act 1987 to clarify that the duty to notify a coroner arises when the death of a person happens in an institution as defined under the Custody Act 1995, in or during police custody, as a result of an injury caused by a constable in the execution or purported execution of the constable's duty or otherwise in state detention.
- 99. Clause 100** inserts a new paragraph 10A into Schedule 2 to the Custody Act 1995 to address a recommendation of the Karran report that a constable should be able to stop a person he or she suspects has breached, or is breaching, a condition of their release on parole.
- 100.** Sub-paragraph (1) empowers the constable to arrest a person who has breached a condition, or is breaching a condition, of his or her parole licence, or whom the constable suspects has committed a breach. The constable is not required to arrest the person if he or she believes on reasonable grounds that it is not necessary in the public interest in all the circumstances in order to establish the identity of the person or prevent the continuation of the breach or a repetition of the breach. In addition the constable must be satisfied, on reasonable grounds that the person will report to his or her parole supervisor in order to be dealt with if the constable does not arrest the person.
- 101.** Sub-paragraph (2) applies if the person has been arrested. Upon arrest, the constable must ascertain from the Department whether it proposes, in the case of a short-term detainee, to institute proceedings for an offence under paragraph 9(1); or in the case of a long-term or a life detainee to be recalled to custody.

Subsections (3) to (6) deal with consequential matters as to the process to be followed once a person has been arrested.

- 102. Clause 101** amends the Criminal Justice Act 2001 by changing the number of hours spent by an offender making reparation from 24 to 100 (see section 35(6)(a)) and the number of hours an offender may be required to spend at an Attendance centre is increased from 12 to 100 (see paragraph 2(4) of Schedule 7).

Subsection (3) repeals sections 53 and 54 (which concern convictions of persons other than the accused), which are rendered unnecessary by virtue of the enactment of the Criminal Evidence Act 2019.

- 103. Clause 102** makes amendments to the Rehabilitation of Offenders Act 2001 (2001 Act) designed to align where possible with those in equivalent UK law and to link more directly with disclosure and barring matters (criminal record checks). Subsection (2) amends the existing section 2 of the 2001 Act (which becomes subsection (1)) so that the reference in (b) to 30 months is changed to 48 months, and also inserts new subsections (2) and (3) to enable the Department (in future) to amend subsection (1) by order, with the ability to make consequential, supplementary or transitory amendments to other provisions in the 2001 Act as it thinks appropriate.

Subsections (3) and (4) change 5 references currently to the "Department of Home Affairs" to the "Department" and then provide interpretation.

Subsection (5) inserts into the table provision for a sentence of custody exceeding 30 months but not exceeding 48 months to be rehabilitated after 12 years.

- 104. Clause 103** amends the Matrimonial Proceedings Act 2003. The Clause changes a reference in the heading to Part 5 from domestic violence to domestic abuse and inserts a reference to Tynwald Day in section 109(6) (reckoning time within which a person arrested under the section must be brought before a court).

- 105. Clause 104** amends the definition of Deemsters in paragraph 1 of the Schedule to the Interpretation Act 2015. "Deemsters" means the First and Second Deemsters acting jointly.

- 106. Clause 105** inserts a new section 38A within the Criminal Evidence Act 2019 providing that electronic signatures might be accepted if these are in compliance with rules of court regardless of any other contrary statement in existing legislation.

- 107. Clause 106** makes minor amendments to the Dormant Assets Act 2019 to remove the exception from liability for damages in the case of conduct which is unlawful by virtue of section 6 of the Human Rights Act 2001 as it relates to the acts of public authorities.

- 108. Clause 107** repeals provisions that are obsolete or have been replaced by provisions in the Bill namely section 1(b) of the Criminal Evidence Act 1946 and sections 12, 31, 32, 35 and 36 of the Criminal Justice, Police Powers and Other Amendments Act 2014.

- 109. Schedule 1 and Schedule 2** in connection with Clause 10 make a number of consequential and incidental amendments related to the extension of summary jurisdiction (and the sentencing jurisdiction of the High Bailiff as are set out in Clause 9).

Schedule 1 contains repeals of a number of obsolete offences (i.e. the concepts of felony and penal servitude) and along with those other minor adjustments to the procedures of the courts of summary jurisdiction and Courts of General Gaol Delivery.

Schedule 2 deals with amendments to the Proceeds of Crime Act 2008 to permit a High Bailiff when sentencing an offender to exercise a concurrent jurisdiction in confiscation proceedings with that of a Court of General Gaol Delivery, thereby avoiding the need to have separate proceedings in a Court

- 110. Schedule 3** in connection with Clause 12 abolishes committal proceedings.
- 111. Schedule 4** in connection with Clause 73 provides for cautions to be spent by inserting a new Schedule 1A within the Rehabilitation of Offenders Act 2001.