



SUMMARY JURISDICTION AND MISCELLANEOUS AMENDMENTS BILL 2013

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon. W.E. Teare, MHK

INTRODUCTION

These explanatory notes relate to the Summary Jurisdiction and Miscellaneous Amendments Bill 2013. They have been prepared by the General Registry in order to assist readers of the Bill. They do not form part of the Bill.

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

The majority of the clauses in this Bill address recommendations made to streamline the process for collecting criminal financial penalties. This enforcement action needs to be efficient and flexible in order to maximise the collection rates and minimise the need for repeated court appearances to enforce payment.

Several studies have been undertaken, most recently by the Fines Working Group and the Public Accounts Committee and this Bill is intended to enact their recommendations for enhancing and streamlining the system.

The Bill will provide clear powers for a court of summary jurisdiction to make attachment of earnings orders and/or applications for deduction of benefit orders upon imposing a penalty or at any time when a criminal financial penalty remains unpaid and without requiring the Chief Registrar first to obtain execution. It will also enable the court to postpone the operation of such an order or application for as long as the paying party complies with the payment obligation but will enable the order to be activated by the Chief Registrar in the event of default in payment of an instalment, without having to return to the court for activation of the relevant order by the court. These amendments are intended to streamline the collection and enforcement process.

The Bill will also include new powers for the Chief Registrar to obtain information from the Treasury, Department of Social Care or by court order from the police for the purposes of assisting the court to determine whether to make an attachment of earnings order or application for deduction from benefits.

The Bill also enables the Chief Registrar to maintain a register of fines defaulters and to make information from the register available to interested persons, which might include

credit reference agencies, the details of the registration scheme are to be set out in rules of court.

Minor amendments are also made to address issues identified in other legislation affecting the work of the Courts and judicial processes, notably the power to impose orders banning persons convicted of drink-related offences from licensed premises, streamlining the process where an accused person admits an offence in a lower court which is to be transferred to a higher court, and clarifying or amending certain definitions relating to judges of the High Court.

The Bill also repeals the provisions in the Criminal Law Act 1981 relating to the remission of fines as by virtue of Clause 10 of this Bill these will now be included in the Criminal Jurisdiction Act 1993 where it is more appropriate for these to reside, and makes a consequential repeal to paragraph 22 of the Summary Jurisdiction Act 1989.

The Bill repeals the requirement in the Road Traffic Act 1985 for a court to order the forfeiture of a mobile telephone upon conviction for using a mobile phone when driving since in practice there is no way of enforcing this several months after the offence was committed given there is no power for the person reporting the offence to seize the actual phone in use at the time.

The Bill is short, consisting of 13 clauses. The original proposal was circulated for public consultation on September 2012 and as a result of comments received during that consultation process, certain amendments have been incorporated.

Introduction

The Bill consists of 3 Parts.

Part 1 is introductory.

Part 2 sets out the amendments to the Summary Jurisdiction Amendment Act 1989 to provide for

- plea before venue and committals for sentence upon plea;
- attachment of earnings orders; and
- applications for deductions from benefits;
- disclosure of information
- fines register

Plea before venue:

Criminal cases are dealt with by the Courts on the basis of the seriousness of the alleged offence, the most serious offences can only be tried on Information at the Court of General Gaol Delivery (Information only offences), others can be tried in a Court of Summary Jurisdiction (the Summary Court) or in the Court of General Gaol Delivery these are offences which are made triable in either court by statute or are offences listed in Schedule 2 of the Summary Jurisdiction Act 1989, (Either Way or Schedule 2 offences), many of the less serious offences can only be tried in a Court of Summary Jurisdiction (summary only offences).

Currently when an offender is brought before a summary court charged with an Either Way or Schedule 2 offence the Summary Court decides whether the offence should be tried in the Summary Court or at the Court of General Gaol Delivery, the decision is based on the nature of the offence and whether or not the sentencing powers of the Summary Court are sufficient to reflect the seriousness of the offence should the offender be convicted after trial. (Mode of Trial proceedings). The Summary Court currently has no power to ask the offender to enter or indicate a plea to the offence before Mode of Trial proceedings take place, nor does the Summary Court have power to commit an offender for sentence to the Court of General Gaol Delivery after he has pleaded guilty to or been convicted after trial of an eitherway offence if information making the offence more serious than first thought comes to light, such as the offenders previous convictions, after the court has accepted jurisdiction.

If an offender is brought before a Summary Court charged with an eitherway offence and the offence is so serious that the summary court concludes that its sentencing powers are insufficient the court must commit him to stand trial at the Court of General Gaol Delivery, this means the prosecution has to prepare the case for trial even if the offence is admitted and it is likely that the offender will plead guilty. This incurs enormous time and expense to the Police and Attorney General's Chambers, court time and legal aid costs.

The proposed new provisions will allow offenders charged with eitherway or Schedule 2 offences to indicate whether or not they intend to plead guilty or not guilty (Plea Before Venue procedure) before Mode of Trial proceedings take place in the Summary Court, and, if the offender indicates a guilty plea, will allow the Summary Court to commit the offender for sentence at the Court of General Gaol Delivery for that offence and any linked offences if it concludes that in all of the circumstances of the offence and the offender, including his previous convictions, the sentencing powers of the Summary Court are insufficient. This will save the time and expense incurred in preparing matters for trial where a guilty plea is likely and will allow the offender to be sentenced within a very short time, possibly days, of the

offence being committed. Where a not guilty plea or no plea is indicated the offence will still have to be prepared and committed for trial

The proposed new procedure will not apply to the most serious "Information only" offences such as murder or manslaughter, these will still have to be committed for trial to the Court of General Gaol Delivery.

Attachment of Earnings Orders

The Bill will enable a court of summary jurisdiction to make an attachment of earnings order or application for deduction of benefit at the time it imposes on conviction or at any later time when payment of a criminal financial penalty is outstanding. The exercise of this power will not be dependent on there first being in place an execution against the defaulter. The making of one type of such an order will not prevent the making of an order of the other type against the same person on another occasion if circumstances so admit or require.

The court will have power to postpone the operation of an attachment of earnings order, to take effect if so directed by the Chief Registrar in the event of default in payment of an instalment.

It is envisaged that these new procedures will reduce the number of occasions upon which the matter must be referred back to a court and will assist the Chief registrar in the collection of fines etc.

Deduction from Benefits

The Bill will give the Department of Social Care power to make regulations on how such deductions are to be applied; these regulations will not take effect until approved by Tynwald. It is accepted that there will be "core benefits" which provide a basic level of support necessary for the well being of an individual or their dependants and the regulations will need to specify how this is to operate equitably, given that many benefits are only paid to those in need there will need to be consideration as to which can be withheld from a claimant.

Part 3 deals with miscellaneous amendments to existing legislation relating to court jurisdiction and procedures:

- the Administration of Justice Act 1981 is amended to clarify the definition of "execution".
- the High Court Act 1991 is amended to provide for the First Deemster to act alone if the Second Deemster is not available and to make further provision about the Judge of Appeal .
- the Criminal Jurisdiction Act 1993 is amended by the re – enactment of provisions currently in the Criminal law Act 1981 in relation to remission of fines.
- extending court powers under the Licensing Act 1995 in relation to the making of banning orders for alcohol related offences in respect of both on-licensed premises and in relation to public drunkenness.

- The provisions of the Road Traffic Act 1985 requiring a court to order forfeiture of a mobile phone are repealed, as there are a number of legal and practical reasons why these provisions cannot operate.

Explanation of the clauses of the Bill

Part 1 is introductory.

Clauses 1, 2 and 3 contain the title of the Bill, provide that the Bill will be brought into operation by Appointed Day Order and set out the interpretation of certain general terms used in the Bill.

Part 2 consists of clauses 4 to 9 and makes amendments to the Summary Jurisdiction Act 1989.

Clause 4 introduces the amendments which are to be made by clauses 5 to 9 of the Bill to the Summary Jurisdiction Act 1989 ("the Act").

Clause 5 inserts into the Act new sections 15A to 15C to allow a plea made in the summary court to be accepted in the Court of General Gaol without need for a separate hearing

- 15A applies in relation to adult defendants who appear in person
- 15B applies in relation to an adult who does not appear because of disorderly conduct before the court but who is represented by an Advocate
- 15C allows the summary court to adjourn proceedings commenced under 15A or 15B and remand the accused if they are present until the proceedings are resumed.

Clause 6 amends section 17 of the Act to allow the court of summary jurisdiction to accept an indication that a person would plead guilty at the Court of General Gaol Delivery and for the Court of General Gaol to proceed direct to sentencing on that basis. The clause also provides that a case heard in the summary court, or where the summary court has accepted jurisdiction, may be committed to the Court of General Gaol for sentence.

Clause 7 substitutes two clauses for existing sections 93 and 94, and inserts a further 7 sections 94A to 94G

- 93 restates the powers of the Chief Registrar, where a periodical payments order has been made by any court and payment is required to be made to the Chief Registrar, to proceed with a claim for recovery of arrears on behalf of a person to whom a payment is due, where that person so requests, and provides that any costs incurred will fall on that person.
- 94 restates the power of a court of summary jurisdiction to grant execution orders and clarifies under which legislative frameworks such execution orders may be enforced.
- 94A allows a court of summary jurisdiction to make an attachment of earnings order or an application for benefit deductions whether or not an execution order has been granted. This would occur when the person liable to pay a fine or similar sum consents to this being made, or where the person does not consent but the court thinks that it is in the interests of justice to make such an order. This provision will also allow the court to include in any such order or application any amount

outstanding in respect of any sum previously adjudged to be paid by conviction or order of any court in the Island on or after commencement of section 94A. The court will also have power to postpone the taking effect of such an order or application and in such case the Chief Registrar will be empowered to direct that it will take effect in the event that the paying party misses a payment.

If the court makes an attachment of earnings order it is not prevented from making an application for benefits deduction on another occasion against the same person and in respect of the same sum, if the circumstances so permit. The court also, under 94A(9), has power to vary, suspend or revoke an order or application or substitute an alternative sentence or method of enforcement. These powers may be exercised by a single justice [magistrate] unless there other methods of enforcement is to issue a warrant committing the person to custody – by 94A(10) that power is not exercisable by a single justice.

- 94B sets out the duties of an employer under an attachment of earnings order. It requires an employer to make the deduction and to account for it to the Chief Registrar. The employer can keep a sum, to be specified in rules of court, towards the cost of clerical and administrative expenses. The employer must also immediately inform the Chief Registrar if the employee to whom the order relates ceases to be employed by the employer.
- 94C provides the power for the court of summary jurisdiction to require the person liable to pay the sum in question, or their employer, to provide details of the employer and the earnings of that person. The powers of the court under this section may be exercised by the Chief Registrar.
- 94D creates offences in connection with 94B and/or 94C. Such offences are triable summarily and the maximum penalty is £5,000.
- 94E details the procedure to be followed in making an application for deductions from benefit and providing the Department of Social Care with power to make regulations concerning the benefits from which sums can be deducted, the circumstances and manner and time at which such deductions may be made and as to the prioritisation of deductions where these are being made at source.

It creates offences around the provision of the prescribed information and the offences are triable summarily with maximum penalty of £5,000.

Regulations made by the DSC will require Tynwald approval before they come into effect. (94E(10)).

- 94F allows the Chief Registrar to apply for specified information from the Treasury or the Department of Social Care in order to permit consideration of whether it is practical or appropriate for the court to make an attachment of earnings order or an application for deduction from benefits under 94A. The Chief Registrar may also apply for a court order directing the police or other bodies to provide details as to a person's whereabouts or address. It creates offences in relation to the unauthorised disclosure of information so obtained (and certain statutory defences). The offences are triable summarily and the maximum penalty is £5,000.
- 94F(9) also expressly provides that nothing in section 94F authorises the making of a disclosure that contravenes the Data Protection Act 2002.
- 94G gives the power to make Rules of Court in relation to attachment of earnings orders and applications for benefit deductions and the variation of attachment of

earnings orders and applications for benefit deductions orders. Such rules may also make provision as regards the prioritisation of deductions in the case of attachment of earnings orders, where other deductions are being made at source, and specifying the administrative costs that an employer may deduct.

Clause 8 inserts new section 101A into the Act and provides for the Chief Registrar to set up and maintain a Fines etc Register. It is intended that this will comprise those who have defaulted on payment. The content of the register will be governed by Rules of Court. Charges for accessing the register may be fixed by the Treasury and the proceeds of such charges are to be applied in paying the expenses incurred in maintaining the register.

Clause 9 amends section 114 of the Act (definitions) by inserting new definitions required in relation to other new provisions inserted into the Act by this Bill.

Part 3 makes miscellaneous amendments

Clause 10 amends the High Court Act 1991 by deleting the requirement contained in section 3A(5) for the Judge of Appeal to be an English barrister and Queen's Counsel. It also inserts a new provision in section 58 (definitions and interpretation) so as to provide (in new subsection (1A)) that where the High Court Act 1991 refers to "the Deemsters" (a particular statutory expression which means the First Deemster and the Second Deemster acting jointly – see section 3 Interpretation Act 1976) – this expression means the First Deemster only, wherever the Second Deemster is unavailable or the office of Second Deemster is vacant.

Clause 11 is a tidying up exercise to move the remission of fines provisions of section 27(1) of the Criminal Law Act 1981 into the Criminal Jurisdiction Act 1993 where it sits more readily. Accordingly these provisions will now be contained in a new section 28A of the 1993 Act.

Clause 12 amends the Licensing Act 1995:

It extends the list of offences under the Criminal Code 1872 in respect of which the Court may ban offenders from licensed premises or from purchasing alcohol for a period of up to 5 years. As so amended, the relevant provisions of section 33 of the Licensing Act 1995 will extend to all or any of the offences against the person which are contained in sections 18 to 60 of the Criminal Code 1872.

It amends section 75 of the Licensing Act 1995, which confers power on a court to make a banning order for up to 5 years (i.e. banning a person from purchasing alcohol or entering on - licensed premises) upon conviction for certain offences of public drunkenness, so as to enable a further ban to be made upon a conviction under subsection (6) for breach of a banning order made under this section.

It provides for a banning order to be made by a court for any other offence in which the consumption of alcohol was a significant factor leading to the offence, a constituent part of the behaviour constituting the offence to an aggravating feature of the offence.

It also enables the Department of Home Affairs to prescribe by order other offences for which a court can make a banning order.

Clause 13 repeals three other provisions:

- Section 27 of the Criminal Law Act 1981 relating to the remission of fines as by virtue of Clause 11 of this Bill these provisions will now be included in the Criminal Jurisdiction Act 1993 where it is more appropriate for these to reside;
- Schedule 5, paragraph 22(3) of the Summary Jurisdiction Act 1989 which was a consequential amendment to section 27 of the 1981 Act.
- Road Traffic Act 1985 Schedule 6, Part 1 in the entry in the table relating to Schedule 2, paragraph 1(5), in column 8 the words "Court must order forfeiture of the mobile telephone unless it finds special reasons not to do so" since in practice there is no way of enforcing this several months after the offence was committed given there is no power for the person reporting the offence to seize the actual phone in use at the time. For a number of legal and practical reasons therefore it is not possible in law for the court to make such an order.