



Isle of Man

Ellan Vannin

SD No.2020/0261

**EMERGENCY POWERS (CORONAVIRUS)
(COURTS ETC) REGULATIONS 2020**



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Statutory Document No. 2020/0261

*Emergency Powers Act 1936*

EMERGENCY POWERS (CORONAVIRUS) (COURTS ETC) REGULATIONS 2020

Laid before Tynwald: 28 April 2020

Approved by Tynwald: 28 April 2020

Coming into operation in accordance with regulation 2

The Governor in Council, with the consent of the Deemsters insofar as is necessary¹, makes the following Regulations under section 4 of the Emergency Powers Act 1936.

PART 1 – INTRODUCTION

1 Title

These Regulations are the Emergency Powers (Coronavirus) (Courts etc) Regulations 2020.

2 Commencement

These Regulations come into operation immediately after they are made.

3 Interpretation

In these Regulations, and in the modifications made by them –

- (a) “**Coronavirus**” means severe acute respiratory syndrome coronavirus 2 (SARS CoV-2) also known as Covid-19; and
- (b) any reference to “**the Coronavirus proclamation period**” is a reference to the periods for which any of the following is in operation –
 - (i) the Proclamation of Emergency dated 16 March 2020; and
 - (ii) all subsequent Proclamations of Emergency that relate to the pandemic of Coronavirus.

¹ By virtue of subsection (3A) of section 4 of the Emergency Powers Act 1936 (inserted by section 4 of the Emergency Powers (Amendment) Act 2020 (AT 3) , regulations under section 4 may include provision about court procedures, but only with the consent of the Deemsters.

PART 2 – USE OF LIVE LINKS IN PROCEEDINGS

4 Criminal Justice, Police and Courts Act 2007 modified

The Criminal Justice, Police and Courts Act 2007 is modified, in its application during the Coronavirus proclamation period, in accordance with this Part.

5 Use of live television links at preliminary hearings: section 29 disappplied

Section 29 does not apply.

6 Live links: section 30 substituted

For section 30 substitute—

“30 Live links in criminal proceedings

P2003/44/51 as modified by P2020/7/Sch. 23/2 and drafting

- (1) A person may, if the court so directs, take part in eligible criminal proceedings through—
 - (a) a live audio link, or
 - (b) a live video link.
- (2) A direction under this section may be given for a Deemster, High Bailiff or Justice of the Peace to take part in eligible criminal proceedings through a live audio link or a live video link.
- (3) But no direction under this section may be given for any member of a jury to take part in eligible criminal proceedings through a live audio link or a live video link.
- (4) In this Part “**eligible criminal proceedings**” means—
 - (a) any criminal proceedings in a court of summary jurisdiction,
 - (b) any proceedings in a Court of General Gaol Delivery,
 - (c) an appeal in a criminal cause or matter to the Staff of Government Division and any proceedings that are preliminary or incidental to such an appeal,
 - (d) a reference to the Staff of Government Division under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993* and any proceedings that are preliminary or incidental to such a reference,
- (5) A direction may be given under this section—
 - (a) on an application by a party to the proceedings, or
 - (b) of the court’s own motion.

- (6) But the court may not give a direction for a person to take part in eligible criminal proceedings through a live audio link or a live video link unless—
- (a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the proceedings in accordance with the direction through the live audio link or through the live video link, and
 - (b) the parties to the proceedings have been given the opportunity to make representations.
- (7) The power conferred by this section includes power to give—
- (a) a direction that is applicable to several, or all, of the persons taking part in particular eligible criminal proceedings;
 - (b) a direction that is applicable to a particular person in respect of only some aspects of particular eligible criminal proceedings (such as giving evidence or attending the proceedings when not giving evidence); and
 - (c) a direction for a person who is outside the Island to take part in eligible criminal proceedings through a live audio link or a live video link.
- (8) The power of the court to give a direction under this section is subject to the provisions of the Schedule (prohibitions and limitations on use of live links).
- (9) The court may vary a live link direction under this section; and the provisions of this Part that apply to the giving of such a direction also apply to the variation of such a direction.
- (10) If a court gives a live link direction under this section for a person to take part in particular proceedings by giving evidence through a live audio link or a live video link, the person may not give evidence except in accordance with the direction.
- (11) The court may rescind a live link direction under this section at any time before or during the eligible criminal proceedings to which it relates (but this does not affect the court's power to give a further live link direction in relation to the proceedings).
- (12) A live link direction under this section may not be rescinded unless—
- (a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,
 - (b) the parties to the proceedings have been given the opportunity to make representations.
- (13) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but

- such an application may not be made unless there has been a material change of circumstances since the direction was given.
- (14) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the court may require or permit a person to take part in that hearing through—
- (a) a live audio link, or
 - (b) a live video link.
- (15) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.
- (16) Those circumstances include in particular—
- (a) in the case of a direction relating to a witness—
 - (i) the importance of the witness's evidence to the proceedings;
 - (ii) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence;
 - (b) in the case of a direction relating to any participant in the proceedings—
 - (i) the availability of the person;
 - (ii) the need for the person to attend in person;
 - (iii) any representations made by the person;
 - (iv) the suitability of the facilities at the place where the person would take part in the proceedings in accordance with the direction;
 - (v) whether the person will be able to take part in the proceedings effectively if he or she takes part in accordance with the direction.
- (17) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a court of summary jurisdiction, must cause them to be entered in the order book.
- (18) A court may not refuse or revoke bail for a person (P) at eligible criminal proceedings if—
- (a) any person takes part in the proceedings, other than for the purpose of giving evidence, through a live audio link, and
 - (b) P objects to the refusal or revocation.
- (19) A court may not deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at eligible criminal proceedings in which any person takes part,

other than for the purpose of giving evidence, through a live audio link.”.

7 Effect of, and rescission of decision: section 31 disapplied

P2020/7/Sch. 23, para 2(10)

Section 31 does not apply.

8 Courts permitted to sit at other locations: section 32 modified

P2020/7/Sch. 23, para 3

(1) Section 32 has effect as if amended as follows.

(2) In subsection (1) —

(a) for paragraph (a) substitute—

“(a) a court is minded to give a direction under section 30 for substitute “a person to take part in proceedings before the court through a live audio link or a live video link”;

(b) in paragraph (b), for “receiving such evidence” substitute “such participation”.

9 Requirement to attend at court, holding proceedings in court etc: section 32A treated as inserted

P2020/7/Sch. 23, para 4

After section 32 insert—

“32A Requirement to attend court, perjury

(1) A person who takes part in eligible criminal proceedings in accordance with a direction under section 30 is to be treated as complying with any requirement (however imposed or expressed) for that person to attend or appear before court, or to surrender to the custody of the court, for the purposes of that participation in those proceedings.

(2) A person who takes part in eligible criminal proceedings in accordance with a direction under section 30 is to be treated as present in court for the purposes of those proceedings.

(3) A statement made on oath by a witness outside the Island and given in evidence through a live audio link or a live video link in accordance with a direction under section 30 is to be treated for the purposes of section 1 of the *Perjury Act 1952* as having been made in the proceedings in which it is given in evidence.”.

10 Directions to jury: section 33 modified

P2020/7/Sch. 23, para 5

In section 33(1), for “a live link” substitute “a live audio link or a live video link by a witness (including the defendant)”.

11 Rules of court: section 35 modified

P2020/7/Sch. 23, para 6

- (1) Section 35 is modified as follows.
- (2) In subsection (2)—
 - (a) in paragraph (a), omit “or 31”;
 - (b) in paragraph (b), for “live links” substitute “live audio links and live video links”.
- (3) In subsection (3)—
 - (a) in paragraph (a), omit “uncontested”;
 - (b) in paragraph (c), omit “or 31”.

12 Interpretation for the purposes of Part 9: section 38 modified

- (1) Section 38 is modified as follows.
- (2) In subsection (1) at the appropriate point in the alphabetical list insert the following definitions—
 - “ **“bail”** includes remand to accommodation provided for that purpose by the Department of Health and Social Care under section 76(1) of the *Children and Young Persons Act 2001*,”;
 - “ **“eligible criminal proceedings”** has the meaning given in section 30(4),”.
- (3) For subsection (2) substitute—
 - “(2A) A reference to a person taking part in eligible criminal proceedings includes—
 - (a) giving evidence in the proceedings, and
 - (b) attending the proceedings when not giving evidence.
 - (2B) A “**live audio link**”, in relation to a person (P) taking part in eligible criminal proceedings, is a live telephone link or other arrangement which—
 - (a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.
 - (2C) Eligible criminal proceedings are conducted wholly as audio proceedings if—

- (a) directions have been given under section 30 for all of the persons taking part in the proceedings to do so through a live audio link, and
 - (b) all of those persons take part in the proceedings in accordance with those directions.
 - (2D) A “**live video link**”, in relation to a person (P) taking part in eligible criminal proceedings, is a live television link or other arrangement which—
 - (a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.
 - (2E) Eligible criminal proceedings are conducted wholly as video proceedings if—
 - (a) directions have been given, whether under section 30 or any other power, for all of the persons taking part in the proceedings to do so through a live video link, and
 - (b) all of those persons take part in the proceedings in accordance with those directions.”.
- (4) In subsection (3)—
 - (a) for the words before paragraph (a) substitute—
 - “(3) A reference to the persons participating in eligible criminal proceedings includes—”;
 - (b) in paragraph (c), for “the High Bailiff or the Justices of the Peace” substitute “the member or members of the court”;
 - (c) after paragraph (c) insert—
 - “(ca) witnesses in the proceedings,”;
 - (d) in paragraph (e), for “the witness” substitute “in the proceedings”.
 - (5) After subsection (3) insert—
 - “(3A) Subsections (2A) to (3) apply for the purposes of this Part.”.
 - (6) For subsection (4) substitute—
 - “(4) The following matters are to be disregarded for the purposes of subsections (2B) and (2D)—
 - (a) the extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing;
 - (b) the effect of any direction or order which provides for one person taking part in proceedings to be prevented by means of a screen or other arrangement from seeing another person taking part in the proceedings.”.

13 Saving: section 39(1) disapplied

Section 39(1) (which provides for the provisions of the Part not to apply in respect of proceedings commenced before they come into operation) does not apply in relation to anything done during the period while these Regulations are in operation.

14 Schedule treated as added

The Schedule set out as the Schedule to these Regulations is to be treated as added to the Act.

PART 3 – BAIL**15 Police Powers and Procedures Act 1998 modified**

The Police Powers and Procedures Act 1998 is modified, in its application during the Coronavirus proclamation period, as follows.

16 Entry for purpose of arrest, etc: section 20 modified

(1) Section 20 is modified as follows.

(2) In subsection (1) after paragraph (b) insert—

“(ba) of arresting a person who is subject to a duty to surrender to custody (whether at a court or a police station) and whom he reasonably believes has failed to do so;

(bb) of arresting a person who has failed to attend at a police station at the time appointed for him to do so;

(bc) of arresting a person who has been granted bail subject to conditions if the constable reasonably suspects that he has failed to comply with the conditions;”.

17 Bail for the purposes of Part IV: section 50 amended

At the end of section 50 (bail for the purposes of Part IV) there is to be treated as inserted—

“(7) Section 50A make further provision about bail granted by a custody officer.”.

18 Conditional bail granted by a custody officer to appear before a court or attend at a police station: section 50A inserted

After section 50 there is to be treated as inserted—

“50A Bail with conditions

- (1) This section applies if it appears to the custody officer to be necessary that bail granted under section 50 should be subject to conditions.
- (2) Conditions may be imposed under this section only —
 - (a) for the purpose of securing that the accused —
 - (i) surrenders to custody;
 - (ii) does not offend while on bail; or
 - (iii) does not interfere with witnesses or otherwise obstruct the course of justice (whether in relation to the accused or any other person); or
 - (b) for the accused’s own protection or, in the case of an accused person who is under the age of 18, his or her own welfare.
- (3) If it appears to the custody officer that a person who is to be released on bail is unlikely to remain in the Island until the time appointed for that person’s surrender to custody, the custody officer may require that person, before release on bail, to give security for his or her surrender to custody.
- (4) A grant of bail with conditions under this section must require the person to whom bail is granted to appear before a court of summary jurisdiction, or surrender to custody at a police station, in accordance with the grant.
- (5) A defendant may apply in writing to a justice of the peace for a review of the conditions attached to a grant of bail, and the justice of the peace is to decide the matter after seeking the written views of the prosecution on the application.
- (6) The decision of the justice of the peace on an application under subsection (5) is final.”.

19 Failure to answer bail: section 52 modified

- (1) Section 52 is modified as follows.
- (2) In subsection (1) for “him” substitute “that person”.
- (3) After subsection (1) insert —
 - “(1B) A person who has been released on bail under this Part may be arrested without warrant by a constable if the constable has reasonable grounds for suspecting that the person has broken any of the conditions of the person’s bail.”.

PART 4 – PROCEDURE OF TRIBUNALS

20 Use of live video links and live audio links for tribunal purposes

- (1) No enactment or other rule of law is to be taken, during the Coronavirus Proclamation period, to prevent a relevant tribunal from using a live video link or live audio link if it considers it appropriate to do so for the purposes of conducting a hearing.
- (2) In deciding whether it is appropriate to use a live audio link or a live video link, a relevant tribunal must have regard to all the circumstances and (in particular) whether it is in the interest of justice to use such a link.
- (3) A person who participates in a hearing of a relevant tribunal by means of a live video link or live audio link is to be regarded for all purposes as being present at the hearing.
- (4) In this regulation –
“live audio link” is to be construed in accordance with paragraph (5);
“live video link” is to be construed in accordance with paragraph (6); and
“relevant tribunal” means any of the following—
 - (a) a tribunal listed in Part 1 or Part 2 of Schedule 2 to the Tribunals Act 2006;
 - (b) the Advocates Disciplinary Tribunal constituted by section 15A of the Advocates Act 1976;
 - (c) the Interception of Communications Tribunal established by section 8 of the Interception of Communications Act 1988.
- (5) A “live audio link”, in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live telephone link or other arrangement which—
 - (a) enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to hear P.
- (6) A “live video link” in relation to a person (P) taking part in proceedings before a relevant tribunal, is a live television link or other arrangement which—
 - (a) enables P to see and hear all other persons taking part in the proceedings who are not in same location as P, and
 - (b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.

MADE AT 18:24 ON 22 APRIL 2020

W GREENHOW
Chief Secretary

SCHEDULE

SCHEDULE TO BE TREATED AS ADDED TO THE CRIMINAL JUSTICE, POLICE
AND COURTS ACT 2007

[Regulation 14]

“SCHEDULE

PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS

[Section 30(8)]

1 Conduct of proceedings wholly as audio proceedings

- (1) Eligible criminal proceedings may be conducted wholly as audio proceedings only if the proceedings meet one of the following conditions.
- (2) *Condition A*: the proceedings are preliminary or incidental to a criminal appeal to the Staff of Government Division.
- (3) *Condition B*: the proceedings are preliminary or incidental to a reference, or the hearing of a reference, under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) *Condition C*: the proceedings are a hearing following conviction held for the purpose of making a decision about whether to impose or vary conditions of bail in respect of the person convicted.
- (5) *Condition D*:—
 - (a) the proceedings are a hearing following conviction held for the purpose of deciding whether to grant or continue bail in respect of the person convicted, and
 - (b) the making of the decision is not disputed (including where the court is minded to refuse or revoke bail of its own motion).
- (6) But proceedings which meet any of those conditions may not be conducted wholly as audio proceedings if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings.

2 Conduct of proceedings wholly as video proceedings

- (1) Eligible criminal proceedings may be conducted wholly as video proceedings only if the proceedings meet one of the following conditions.

- (2) *Condition A* : the proceedings are—
- (a) an appeal to the Staff of Government Division which is an appeal only against sentence,
 - (b) an appeal to that Division arising out of a trial by a court of summary jurisdiction—
 - (i) which is an appeal arising out of a trial by a court of summary jurisdiction which was itself conducted wholly as video proceedings, and
 - (ii) which the parties agree may be conducted wholly as video proceedings, or
 - (c) preliminary or incidental to any criminal appeal to the Staff of Government Division.
- (3) *Condition B*: the proceedings are preliminary or incidental to a reference to the Staff of Government Division under section 39, 40 or 41 of the *Criminal Jurisdiction Act 1993*.
- (4) *Condition C*: the proceedings are a hearing following conviction held for the purpose of making a decision about bail in respect of the person convicted.
- (5) *Condition D*:—
- (a) the proceedings are a trial in a court of summary jurisdiction, and
 - (b) the parties agree to the proceedings being conducted wholly as video proceedings.
- (6) *Condition E*: the proceedings are a hearing under section 33 or 33A of the *Summary Jurisdiction Act 1989*.

3 Other use of live audio links in preliminary and incidental proceedings etc

- (1) This paragraph applies to eligible criminal proceedings which meet any of the conditions in paragraph 1.
- (2) The defendant may not take part in the proceedings through a live audio link for the purpose of giving evidence.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link for the purpose of giving evidence unless—
- (a) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (b) the parties agree to that person giving evidence through a live audio link.

- (4) This paragraph does not apply to proceedings which meet any of the conditions in paragraph 1 if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment) at the proceedings (but see paragraph 4).

4 Other use of live audio links in other eligible criminal proceedings

- (1) This paragraph applies to—
- (a) eligible criminal proceedings which do not meet any of the conditions in paragraph 1, and
 - (b) eligible criminal proceedings which meet any of those conditions if the court is minded to deal with a person for contempt of court (including enquiring into conduct and imposing punishment).
- (2) The defendant may not take part in the proceedings through a live audio link.
- (3) A person (other than the defendant) may not take part in the proceedings through a live audio link unless—
- (a) that person's participation through the live audio link is only for the purpose of giving evidence in the proceedings,
 - (b) there are no suitable arrangements by means of which that person could give evidence through a live video link, and
 - (c) the parties agree to that person giving evidence through a live audio link.
- (4) Where this paragraph applies by virtue of sub-paragraph (1)(b), references to the defendant include references to the person whom the court is minded to deal with for contempt of court.
- (5) Where this paragraph applies to proceedings under section 9 or 21 of the *Criminal Jurisdiction Act 1993*, it is for the defendant's representative (if such a representative has been appointed), rather than the defendant, to give any agreement under sub-paragraph (3)(c).
- (6) In this paragraph "**defendant's representative**" means the person appointed by the court to put the case for the defence.

5 Other limitations to apply

The limitations imposed under this Schedule are in addition to any others (such as those in section 30(6)) which apply to the exercise of the power to give a direction under section 30."

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations, which are made by the Governor in Council with the consent of the Deemsters, modify the operation of certain criminal law enactments which relate to the use of video or audio links in proceedings and bail in connection with the outbreak of Coronavirus ((SARS CoV-2) also known as Covid-19).

Part 1 (regulations 1 - 3) deals with certain preliminary matters, namely the title and commencement of the Regulations and the interpretation of terms used in them.

Part 2 (regulations 4 - 14) expands the circumstances in which live video and live audio links may be used in criminal proceedings by modifying the Criminal Justice, Police and Courts Act 2007 (“the 2007 Act”).

Regulation 4 introduces the modifications.

Regulation 5 disapplies section 29 of the 2007 Act.

Regulation 6 substitutes, for the duration of the Coronavirus emergency, a version of section 30 of the 2007 Act which permits anyone, other than a member of a jury, to participate in eligible criminal proceedings (as defined in subsection (4) of the substituted section) by means of a live video link or live audio link.

Regulation 7 disapplies section 31 of the 2007 Act (its content is subsumed within the substituted section 30).

Regulation 8 modifies section 32 of the 2007 Act where courts sit elsewhere than in courthouses.

Regulation 9 notionally inserts a new section 32A into the 2007 Act dealing with how a person who participates in eligible criminal proceedings by means of a live video link or live audio link is to be treated in terms of legislation requiring attendance in court and the law relating to perjury and contempt.

Regulations 10 and 11 make minor modifications to sections 33 and 35 of the 2007 Act consequential upon the new provision for live video and live audio links.

Regulation 12 modifies section 38 of the 2007 Act to insert new definitions into the interpretation provision for the purposes of Part 9 of the 2007 Act.

Regulation 13 disapplies an exception in section 39(1) of the 2007 Act because the modifications now made need to apply to all proceedings which are underway when they come into operation as well as those beginning afterwards.

Regulation 14 notionally inserts a Schedule to the 2007 Act which deals with the position where proceedings are conducted wholly as live video proceedings or live audio proceedings.

Part 3 (regulations 15 to 19) deal with modifications to the Police, Powers and Procedures Act 1998 (“the 1998 Act”) in respect of bail during the Coronavirus period.

Regulation 15 introduces the amendments.

Regulation 16 confers a power on a constable to enter premises for the purposes of arresting a person whom the constable believes to be in breach of his or her obligations in respect of bail (including a breach of bail conditions).

Regulation 17 makes an amendment to section 50 of the 1998 Act to insert a signpost to the provision inserted by regulation 18.

Regulation 18 modifies the 1998 Act by notionally inserting a new section 50A to empower a custody officer to grant bail with conditions if the officer is satisfied that the defendant should be granted bail subject to conditions. The purposes for which conditions may be imposed are to secure the accused’s surrender to custody, to prevent interference with witnesses, to prevent the commission of further offences or for the purposes of the accused’s own welfare.

Regulation 19 modifies section 52 of the 1998 Act to confer a power of arrest on a constable where the constable believes that the accused is in breach of any of the conditions attached to his or her bail.

Finally, Part 4, comprising regulation 20, makes it clear that no enactment or rule of law is to be taken to prevent a relevant tribunal (as there defined) from using a live video link or live audio link for the purposes of proceedings before it, providing the tribunal is satisfied it is consistent with the interests of justice in the particular case.