



CONTEMPT OF COURT BILL 2018

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, HM Attorney General, John Quinn, QC, MLC.

Introduction

1. These explanatory notes relate to the draft Contempt of Court Bill 2018. They have been prepared by the Attorney General's Chambers in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the Legislative Council.
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.

Background

3. A trial in a recent criminal case in the Manx courts had to be abandoned because photographs were taken in court during the closing stages of the trial, seemingly of the jurors and the prosecuting advocate. The jury had to be discharged.
4. The Deemster directed the police to conduct an inquiry into possible contempt of court or an offence of attempting to pervert the course of justice. It was then discovered that, unlike England, which has legislation prohibiting photography in courts without the leave of the Court, nothing in this jurisdiction, other than perhaps the inherent power of the court to regulate its own proceedings, precludes such photographs from being taken.
3. In order to remedy the situation the changes made by the Bill are proposed.

Commentary on Clauses

PART 1 – OPENING PROVISIONS

5. **Clause 1** gives the short title of the resulting Act of Tynwald. **Clause 2** provides for the Act to be brought into operation by one or more orders made by the Council of Ministers. The power includes provision to make consequential, incidental, supplementary and transitional provision in connection with its commencement.

PART 2 — STRICT LIABILITY

6. **Clause 3** explains the meaning of the term "the strict liability rule". The term means the existing rule of law, under which conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings, regardless of intent to do so.

7. **Clause 4** imposes a limit on the scope of the strict liability rule in that it applies—
 - (a) only to publications (including publications in broadcast and other media);
 - (b) only to publications which create a substantial risk of impeding or prejudicing the course of justice in particular proceedings;
 - (c) only where the proceedings are active at the time of the publication, Whether proceedings are active is determined in accordance with Schedule 1.
8. **Clause 5** creates a defence of innocent publication in the case of a person who publishes something but, having taken reasonable care does not know, and has no reasonable grounds to suspect that the relevant proceedings are active. A similar defence is created for a person who distributes a publication containing matter about proceedings which are active if he does not know, and has no reasonable grounds for suspecting that it contains such matter, having taken all reasonable care.
9. **Clause 6** confers a defence from the strict liability rule in respect of the contemporary publication in good faith of a report of public court proceedings, unless the court imposes restrictions to avoid a substantial risk of prejudice in those or other pending or imminent proceedings.
10. **Clause 7** makes it clear that the strict liability rule does not preclude the discussion in good faith of public affairs and other matters of general public interest if the risk to particular proceedings is merely incidental to the discussion.
11. **Clause 8** contains important interpretative savings in relation sections 3 to 7 and the strict liability rule and the defences to it. Firstly it makes it clear that nothing in those sections prejudices any common law defence in proceedings for contempt. Second, nothing in those sections implies a publication is punishable as a contempt under the strict liability rule that would not be so punishable apart from those provisions. Third, and most important, nothing in those sections restricts liability for contempt in respect of conduct intended to impede or prejudice the administration of justice.
12. **Clause 9** makes it clear that proceedings for contempt under the strict liability rule may be instituted only —
 - (a) on the motion of a court having jurisdiction to deal with it,
 - (b) by the Attorney General, or
 - (c) with the consent of the Attorney General.
13. **Clause 10** makes it clear that it is a contempt of court to obtain disclose or solicit any particulars of any aspect of a jury’s deliberations in proceedings, other than particulars in the proceedings which are disclosed in order to enable the jury to reach a verdict (e.g. in a note to a judge seeking further directions) or in respect of proceedings for contempt on the part of a juror for disclosing such information. The same restrictions apply to proceedings under this section as apply for the purposes of contempt proceedings under the strict liability rule.
14. **Clause 11** makes it a contempt of court to use, or bring into a courtroom for use, a tape recorder or any other instrument for recording sound, without the leave of the court; to publish a recording obtained by the use of such equipment; or to use any recording in contravention of leave.
12. **Clause 12** creates an offence if a person makes a recording in any court of a judge, juror, witness, or a party in any civil or criminal proceedings, or publishes such a

recording, The offences are punishable with 12 months' custody or a level 5 fine or both.

16. **Clause 13** makes it clear that neither clause 11 nor clause 12 applies in the case of a recording for an official transcript of the proceedings in question. The Deemsters are in addition given power to disapply those provisions by an order for particular types of recording or for the purposes of particular proceedings if prescribed conditions are met. The court in particular proceedings may nevertheless reapply a restriction if it is in the interests of justice to do so or to prevent under prejudice to a person.
17. **Clause 14** protects sources of information from disclosure at the behest of a court unless it is of the opinion that disclosure is necessary —
 - (a) in the interests of justice;
 - (b) in the interests of the national security of the Island or of the United Kingdom;
or
 - (c) for the prevention of disorder or crime.
18. **Clause 15** deals with the giving of directions in connection with the non-disclosure of a name or other information which a court has ordered to be withheld.
19. **Clause 16** deals with contempt before a court of summary jurisdiction, currently covered by section 90 of the Summary Jurisdiction Act 1989.
20. **Clause 17** creates a mechanism in respect of contempt in relation to the proceedings of certain tribunals. If a person does something in relation to a tribunal which, if done in relation to the High Court would constitute contempt, the tribunal may either certify the conduct to the High Court so it may take action or direct the Attorney General to consider the institution of proceedings under section 18.
21. **Clause 18** creates a summary offence in respect of conduct in respect of which the Attorney General has been given a direction under clause 17(2)(b) and a person has acted in violation of section 17(1)(a) which if done before the High Court would constitute a contempt.
22. **Clause 19** provides a mechanism for an appeal to the Staff of Government Division against a decision imposing restrictions on the reporting of proceedings under clause 6 or clause 15.
23. **Clause 20 and Schedule 2** make provision about legal aid in relation to some of the proceedings which may be instituted under the Bill.
24. **Clause 21** deals with the maxima which are to apply in respect of some other forms of contempt.
25. Finally, **clause 22** repeals section 90 of the Summary Jurisdiction Act 1989 which is re-enacted, in slightly modified form, by clause 16.
26. The Bill is not expected to give rise to any increase in public sector expenditure or a reduction in its income.
27. In the opinion of HM Attorney General, the provisions of the draft Bill are compatible with the Convention rights (within the meaning of the Human Rights Act 2001).