

IN THE KEYS

CONSULTATION DRAFT





# COURTS, TRIBUNALS AND LOCAL AUTHORITY PROCEDURES, AND MISCELLANEOUS PROVISIONS BILL 2020

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# COURTS, TRIBUNALS AND LOCAL AUTHORITY PROCEDURES, AND MISCELLANEOUS PROVISIONS BILL 2020

A **BILL** to make provision about procedures under the Criminal Justice Police and Courts Act 2007, the Police Powers and Procedures Act 1998 and the Criminal Law Act 1981, and Local Authority procedures in respect of meetings and casual vacancies, to make provision in respect of the vacation of Departmental facilities and the use of information, to amend the Public Health Act 1990; and for connected purposes

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 – INTRODUCTORY

### 1 Short title

The short title of this Act is the Courts, Government and Local Authority Procedures, and Miscellaneous Provisions Act 2020.

### 2 Commencement

- (1) This Act, apart from section 1 and this section, comes into operation on such day or days as [XXXX] may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to [XXXX] to be necessary or expedient.

## PART 2 – COURTS AND TRIBUNALS

### DIVISION 1- CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

#### 3 Amendment of the Criminal Justice, Police and Courts Act 2007

The *Criminal Justice, Police and Courts Act 2007* is amended in accordance with this Part.

#### 4 Repeal of section 29

Section 29 (use of live television links at preliminary hearings) is omitted.

#### 5 Amendment of section 30

For section 30 (live links in criminal proceedings) substitute—

##### **30 Live links in criminal proceedings**

- (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 Departmental Division and any proceedings that are preliminary or incidental to such an appeal;
  - (d) a reference to the Staff of Departmental 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 direction—

- (a) that is applicable to several, or all, of the persons taking part in particular eligible criminal proceedings;
- (b) 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);
- (c) for a person who is outside the Island to take part in eligible criminal proceedings through such a 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 where it does so the provisions of this Part that apply to the giving of such a direction also apply to its variation.

(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, and
- (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.

- (14) But such an application may not be made unless there has been a material change of circumstances since the direction was given.
- (15) 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.
- (16) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.
- (17) 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 that person takes part in accordance with the direction.
- (18) 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.
- (19) 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.
- (20) 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. <sup>22</sup>.

## 6 Repeal of section 31

Section 31 (effect of, and rescission of, direction) is omitted.

## 7 Amendment of section 32

In section 32 (courts permitted to sit at other locations), in subsection (1) —

- (a) in paragraph (a) for “a court is minded to give a direction under section 30 for” there is substituted <sup>23</sup>a person is to take part in proceedings before the court through a live audio link or a live video link <sup>22</sup>;
- (b) in paragraph (b), for “receiving such evidence” there is substituted <sup>23</sup>such participation <sup>22</sup>.

## 8 New section 32A

After section 32 there is inserted —

### <sup>23</sup>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. <sup>22</sup>.

## 9 Amendment of section 33

In section 33 (directions to jury), in subsection (1) for “a live link” there is substituted <sup>23</sup>a live audio link or a live video link by a witness (including the defendant) <sup>22</sup>.

## 10 Amendment of section 35

Section 35 (rules of court) is amended as follows —

- (a) in subsection (2)—
  - (i) in paragraph (a), omit “or 31”;
  - (ii) in paragraph (b), for “live links” there is substituted **“live audio links and live video links”**;
- (b) in subsection (3)—
  - (i) in paragraph (a), omit “uncontested”;
  - (ii) in paragraph (c), omit “or 31”.

## 11 Amendment of section 38

Section 38 (interpretation of Part 9) is amended as follows—

- (a) in subsection (1) at the appropriate places there are inserted 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), **;**

- (b) for subsection (2) there is substituted—

**(2)** 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.

**(2A)** 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.

**(2B)** 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.

**(2C)** 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.
- (2D) 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. **22**;
- (c) in subsection (3)—
- (i) for the words before paragraph (a) there is substituted—  
**23** A reference to the persons participating in eligible criminal proceedings includes— **22**;
  - (ii) in paragraph (c), for “the High Bailiff or the Justices of the Peace” there is substituted **23** the member or members of the court **22**;
  - (iii) after paragraph (c) insert—  
**23**(ca) witnesses in the proceedings, **22**;
  - (iv) in paragraph (e), for “the witness” there is substituted **23** in the proceedings **22**;
- (d) after subsection (3) there is inserted—
- 23** (3A) Subsections (2A) to (3) apply for the purposes of this Part. **22**;
- (e) for subsection (4) there is substituted—
- 23** (4) The following matters are to be disregarded for the purposes of subsections (2A) and (2C)—
- (a) the extent (if any) to which a person is unable to—
    - (i) see by reason of any impairment of eyesight, or
    - (ii) hear by reason of any impairment of 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. **22**.

## 12 New Schedule

After section 52 (short title and commencement) there is inserted the Schedule (which deals with prohibitions and limitations on the use of live links and has effect for that purpose) set out in the Schedule to this Act.

## DIVISION 2 -PROCEDURE OF TRIBUNALS

**13 Use of live video links and live audio links for tribunal purposes**

- (1) No enactment or other rule of law is to be taken 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 section —  
“live audio link” is to be construed in accordance with subsection (5);  
“live video link” is to be construed in accordance with subsection (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.

## PART 3 - BAIL

### 14 Amendment of the Police Powers and Procedures Act 1998

The *Police Powers and Procedures Act 1998* is amended as follows.

### 15 Amendment of section 20

(1) Section 20 (entry for the purpose of arrest etc) is amended as follows.

(2) In subsection (1) after paragraph (b) there is inserted—

- (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; **22**.

### 16 Amendment of section 50

In section 50 (bail for the purposes of Part IV) after subsection (6) there is inserted—

- 23**(7) Section 50A make further provision about bail granted by a custody officer. **22**.

### 17 New section 50A

After section 50 there is inserted—

#### **24** 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, the accused’s own welfare.
- (3) If it appears to the custody officer that a person (P) who is to be released on bail is unlikely to remain in the Island until the time appointed for P’s surrender to custody, the custody officer may require P, before release on bail, to give security for P’s 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. **22**.

## 18 Amendment of section 52

Section 52 (power of arrest for failure to answer police bail) is amended as follows—

- (a) in subsection (1) for “him” there is substituted **23** that person **22**;
- (b) after subsection (1) there is inserted —

**23**(1A) 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. **22**.

## 19 Amendment of Criminal Law Act 1981

The Criminal Law Act 1981 is amended as follows.

## 20 Amendment of section 5

- (1) Section 5 (arrest of persons granted bail) is amended as follows.
- (2) In subsection (1) —
  - (a) in paragraph (a) —
    - (i) after “time and place required” there is inserted **24** (“the surrender conditions”) **22**;
    - (ii) for “any such other condition” there is substituted **25** the surrender condition or any other condition **22**;

- (b) in paragraph (b), for “the first-mentioned condition” there is substituted **“the surrender condition”**.
- (3) In subsection (2)(a) for “on which he is required by virtue of his bail to appear before” there is substituted **“he is required to surrender to the custody of”**.
- (4) In subsection (3) after “admitted to bail” there is inserted **“(including for clarity, the surrender conditions)”**.

## PART 4 - LOCAL AUTHORITY MEETINGS AND CASUAL VACANCIES

### 21 Interpretation

In this Part —

**“the 1985 Act”** means the *Local Government Act 1985*;

**“annual meeting”**, in relation to a local authority, means the meeting of the authority held in pursuance of paragraph 1 of Schedule 1 to the 1985 Act;

**“joint board”** means a joint board established or deemed to be established by an order under section 7 of the 1985 Act;

**“joint committee”** means a committee appointed by one or more local authorities under section 17 of the 1985 Act or another enactment, but does not include a joint board which is a body corporate;

**“local authority”** means (as the case requires) —

- (a) a local authority within the meaning given by the 1985 Act,
- (b) a joint board,
- (c) a joint committee, and
- (d) a committee or sub-committee of anything within paragraphs (a) to (c);

**“local authority meeting”** means a meeting of a local authority;

**“local election”** has the meaning given in the *Local Elections Act 1986*;

**“the Regulations”** means the Emergency Powers (Coronavirus) (Local Departmental) Regulations 2020 (SD 2020/0277) as amended from time to time and as continued by the Emergency Powers (Coronavirus) (No.2) (Continuation) Regulations 2020 (SD 2020/0370).

### 22 Local authority meetings

Despite the expiry of the Regulations —

- (a) any act or omission of a local authority under and in accordance with the terms of the Regulations continues to be legal, valid and binding;
- (b) any appointment continued under regulation 5(3) of the Regulations continues until the next annual meeting of the local authority in May 2021 or until such earlier time as that local authority may determine, unless the person earlier vacates office;
- (c) if an appointment that would otherwise have been made or required to have been made at an annual meeting of a local authority has been made or is made at a meeting other than the annual meeting of a local authority, such appointment continues until the next annual meeting of that local authority in May 2021 or until such earlier time as that local authority may determine, unless the person earlier vacates office;
- (d) any appointment continued under regulation 5(4) of the Regulations continues until 1 May 2021 or until such earlier time as the joint board may determine, unless the person earlier vacates office;
- (e) if an appointment continued under regulation 5(4) of the Regulations continues until a time earlier than 1 May 2021, any successor appointed shall hold office in accordance with the terms of any statutory document governing the joint board in question;
- (f) any appointment continued under regulation 5(5) of the Regulations shall continue in accordance with the terms of that regulation.

### 23 Ratification

To avoid any doubt, any decision taken at a virtual local authority meeting held before the date on which the Regulations came into operation and ratified by the local authority at a meeting held after that date shall be deemed to be legal valid and binding.

## PART 5 – MISCELLANEOUS PROVISIONS

### DIVISION 1 - DEPARTMENTAL FACILITIES

### 24 Interpretation

In this Part –

- (a) “**Departmental facility**” means any institution, building, structure, room, ward, bed, unit or other place used for, or in connection with, the provision of health and social care services and includes a mobile facility;



- (b) references to a person “**occupying**” (howsoever expressed) a Departmental facility shall be read as including a person being present or accommodated in such a facility.

## 25 Application of this Part

This Part applies where—

- (a) a person (P) occupies any Departmental facility for the purpose of receiving care or treatment (or both);
- (b) an authorised person (A) considers, having taken and considered the advice of those concerned in a professional capacity in the care or treatment (or both) of P, at least one of the following applies —
  - (i) that it is no longer necessary for P to remain in occupation of that facility for that, or any other, purpose;
  - (ii) that facility is required for some other person who requires care or treatment (or both),and P can be removed from it without undue risk of harm to P’s health or wellbeing.

## 26 Vacation procedure

- (1) Before removing P, A must inform P or P’s representative that P is to be removed from the facility and —
  - (a) P must be afforded such time as is reasonable in the circumstances to vacate the facility, or
  - (b) where appropriate, P’s representative must be afforded such time as is reasonable in the circumstances to remove P from the facility.
- (2) Where subsection (1) applies, A may take all necessary steps to remove P from the facility notwithstanding any refusal on P’s part or on the part of P’s representatives.
- (3) If practicable in all the circumstances, P must be moved to another Departmental facility in the same institution or facility.
- (4) But nothing in this Part requires any Department to give effect to, or comply with, P’s wishes as to where P is to be accommodated or re-accommodated where it is impracticable to do so in the circumstances or would put others (including staff of any Departmental facility) at risk of harm of any kind.
- (5) Where P is removed from a Departmental facility and not moved to another Departmental facility, A must —
  - (a) in so far as A is able, ensure that an appropriate care package is in place for P, or
  - (b) without undue delay, notify the relevant social services of the need to put one in place.

- (6) A constable may be called upon to assist in the removal of P and may use reasonable force (if necessary) for that purpose.

## 27 Occupation fee

- (1) Where P without reasonable cause refuses to vacate a Departmental facility in accordance with this Division, P may be charged a daily occupation fee in respect of P's continued occupation of that facility.
- (2) A representative of P who in any way obstructs the removal of P from a Departmental facility in accordance with this Division may (instead of P) be charged an amount equal to the daily occupation fee P could be charged under subsection (1) for each day P remains in occupation of the Departmental facility in question.
- (3) The daily occupation fee must not exceed an amount representing the average daily cost for each occupant of the facility, of—
- (a) the maintenance of the facility and its staff, and
  - (b) the maintenance and treatment of the occupants of the facility.

## 28 Protection

A is not liable in damages or otherwise in respect of anything done in good faith for the purposes of, or in connection with, this Part.

### DIVISION 2 - INFORMATION – USE ETC

## 29 Use and exchange of information

Regulations made by a Department may provide—

- (a) enabling a Department to perform functions ordinarily performed by another Department, and
- (b) pursuant to paragraph (a), for information to be shared between any Department or specified person.

## 30 Regulations

Regulations made under section 31 must specify —

- (a) the information which may be disclosed;
- (b) by which Department information may be disclosed;
- (c) to which Department information may be disclosed;
- (d) the purpose for which information may be processed;
- (e) the safeguards to be put in place by Departments by which the information may be disclosed and received;
- (f) the specified person who may be required by a Department to disclose information;

- (g) by which Department the specified person may be required to disclose information;
- (h) to whom the Department referred to in paragraph (g) may require the specified person to disclose the information (“the recipient”);
- (i) the information which the specified person may be required to disclose;
- (j) the purpose for which the information may be processed by the recipient;
- (k) the safeguards to be put in place by the specified person and the recipient.

### DIVISION 3 - PUBLIC HEALTH

#### 31 Amendment of the Public Health Act 1990

- (1) The *Public Health Act 1990* is amended as follows.
- (2) In section 51C (health protection regulations: domestic), in subsection (1) for “incidence or spread” there is substituted **incidence, spread or effect**.
- (3) In section 51F (health protection regulations: supplementary), in subsection (5) after paragraph (b), there is inserted —
  - (c) custody for a term not exceeding 3 months.**
- (4) After section 51F there is inserted —

#### **51FA Protocols**

- (1) The Cabinet Office may issue a written protocol making provision for purposes connected with preventing, protecting against, controlling or providing a public health response to the incidence, spread or effect of infection or contamination in the Island (whether from risks originating there or elsewhere).
  - Tynwald procedure – laying only.
- (2) The power in subsection (1) may be exercised —
  - (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
  - (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances.
- (3) Without prejudice to the generality of subsection (1), a protocol may make provision —

- (a) for the circumstances in which medicinal products may be sold or supplied by a person otherwise than in accordance with the provisions of the medicines legislation;
  - (b) for the circumstances in which medicinal appliances may be sold or supplied by a person otherwise than in accordance with the provisions of the medicines legislation;
  - (c) for the circumstances in which, and by whom, certificates relating to deaths may be signed otherwise than in accordance with the *Civil Registration Act 1984*, the *Cremation Act 1957* or any Manx legislation made under those Acts.
- (4) The sale or supply by a person of any medicinal product or appliance in accordance with the terms of a protocol does not constitute an offence under the medicines legislation.
- (5) “Medicines legislation” means the *Misuse of Drugs Act 1976*, the *National Health Service Act 2001*, the *Medicines Act 2003* and any Manx legislation made under those Acts. **22**

#### DIVISION 4 – GENERAL

### 32 Regulations

- (1) [XXXX] may by regulations make such provision as it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Such Regulations may make—
  - (a) supplementary, incidental or consequential provision;
  - (b) transitory, transitional or saving provision.
- (3) Regulations may modify, repeal or revoke any provision of any enactment passed or made before or at the same time as this Act.

Tynwald procedure — approval required.

**SCHEDULE**

**SCHEDULE TO BE INSERTED INTO THE CRIMINAL JUSTICE, POLICE AND  
COURTS ACT 2007**

[Section 12]

**▣ SCHEDULE**

**PROHIBITIONS AND LIMITATIONS ON USE OF LIVE LINKS**

[Section 30(8)]

**PART 1 – GENERAL**

**1 Other limitations to apply**

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

**PART 2 – AUDIO PROCEEDINGS**

**2 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 Departmental 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.

### 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.

### 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.

### PART 3 – VIDEO PROCEEDINGS

#### 5 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 Departmental 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 Departmental Division.
- (3) Condition B: the proceedings are preliminary or incidental to a reference to the Staff of Departmental 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*. **22**.

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