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**CRIMINAL JUSTICE, POLICE AND
COURTS (AMENDMENT) BILL 2018**

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CRIMINAL JUSTICE, POLICE AND COURTS (AMENDMENT) BILL 2018

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CRIMINAL JUSTICE, POLICE AND COURTS (AMENDMENT) BILL 2018

Explanatory Memorandum

1. This Bill is promoted by Mr Malarkey MHK on behalf of the Council of Ministers.
2. *Clauses 1 and 2* deal with the short title and commencement of the resulting Act. The Act will be brought into operation by an appointed day order under clause 2.
3. *Clause 3* provides for the continued existence of the Criminal Justice Board. The clause includes power to apply provisions of the *Statutory Boards Act 1987* in the future.
4. *Clause 4* amends the *Criminal Justice, Police and Courts Act 2007* to extend the circumstances in which live links may be used for the purposes of appearances before the criminal courts.
5. *Clauses 5 to 9(3)* amend the *Police Powers and Procedures Act 1998* in connection with the imposition of conditions on bail granted by a constable.
6. *Clauses 10 to 19* amend Part VIII of the *Summary Jurisdiction Act 1989* to improve the effectiveness of the enforcement mechanisms for fixed penalties.
7. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.

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CRIMINAL JUSTICE, POLICE AND COURTS (AMENDMENT) BILL 2018

A **BILL** to make new provision in respect of the use of live links in criminal and enforcement proceedings, and to provide for conditional police bail.

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 – INTRODUCTION

1 Short title

The short title of this Act is the Criminal Justice, Police and Courts (Amendment) Act 2018.

2 Commencement

- (1) This Act comes into operation on such day or days as the Department for Home Affairs (“the Department”) may by order appoint.
- (2) An order under subsection (1) may make such consequential, incidental and transitional provision as the Department considers necessary.

PART 2 – CRIMINAL JUSTICE BOARD

3 Criminal Justice Board to continue to exist

- (1) The Criminal Justice Board, originally established by the Department in accordance with its Criminal Justice Strategy¹ in 2012, continues to exist.
- (2) The following are to be members of the Board—
 - (a) the Chief Executive of the Department (who is to preside);
 - (b) the Deputy Chief Executive of the Department;

¹ GD 0061/12, received by Tynwald at its sitting in December 2012.

- (c) the Chief Constable;
 - (d) the Head of the Prison and Probation Service;
 - (e) a representative of the Attorney General's Chambers nominated by the Attorney General;
 - (f) the Chief Registrar or a representative nominated by the Chief Registrar;
 - (g) a representative of the Cabinet Office nominated by the Chief Secretary; and
 - (h) a representative of the Isle of Man Law Society nominated by the Council of the Society.
- (3) The Department may by order amend subsection (2).
- (4) The Chief Executive of the Department, after consulting the other members of the Board, may appoint such other persons to be members of the Board as the Chief Executive considers appropriate.
- (5) The Board is to have the following functions—
- (a) co-ordinating and facilitating the activities of those who have statutory functions in respect of criminal justice;
 - (b) monitoring the operation of the criminal justice system and the provision of criminal justice services;
 - (c) advising the Department on —
 - (i) the operation of that system and the provision of those services;
 - (ii) steps to be taken which, in the opinion of the Board, would improve the operation of that system and those services.
- (6) The Department may by order amend subsection (5) to vary the Board's functions
- Before making an order under this subsection the Department must consult the Board and such other persons as it thinks appropriate.
- (7) The *Statutory Boards Act 1987* applies to the Board to such extent as may be specified in an order made by the Department (but not otherwise).

Tynwald procedure for an order under any provision of this section — affirmative.

PART 3 — USE OF LIVE LINKS IN PROCEEDINGS

4 Criminal Justice, Police and Courts Act 2007 amended

- (1) The *Criminal Justice, Police and Courts Act 2007* is amended as follows.
- (2) For sections 29 to 31 substitute—

«DIVISION 1 — LIVE LINKS FOR ACCUSED'S ATTENDANCE AT
CERTAIN HEARINGS

29A Introductory

P1998/37/57A

- (1) This Division –
 - (a) applies to preliminary hearings and sentencing hearings in the course of proceedings for an offence and enforcement hearings relating to confiscation orders; and
 - (b) enables the court in the circumstances provided for in sections 29B, 29C, 29E and 29F and to direct the use of a live link for securing the accused's attendance at a hearing to which this Division applies.
- (2) The accused is to be treated as present in court when, by virtue of a live link direction under this Division, he or she attends a hearing through a live link.

29B Use of live link at preliminary hearings where accused is in custody

P1998/37/57B

- (1) This section applies in relation to a preliminary hearing in a court of summary jurisdiction or the Court of General Gaol Delivery.
- (2) Where it appears to the court before which the preliminary hearing is to take place that the accused is likely to be held in custody during the hearing, the court may give a live link direction under this section in relation to the attendance of the accused at the hearing.
- (3) A live link direction under this section is a direction requiring the accused, if the accused is being held in custody during the hearing, to attend it through a live link from the place at which he or she is being held.
- (4) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit a person attending the hearing to do so through a live link.
- (5) The court must not give or rescind such a direction (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.
- (6) If in a case where it has power to do so a court of summary jurisdiction decides not to give a live link direction under this section, it must –
 - (a) state in open court its reasons for not doing so; and

- (b) cause those reasons to be entered in the order book.
- (7) The following functions of a court of summary jurisdiction under this section may be discharged by a single justice —
 - (a) giving a live link direction under this section;
 - (b) rescinding a live link direction before a preliminary hearing begins; and
 - (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).

29C Use of live link at preliminary hearings where accused is at police station

P1998/37/57C

- (1) This section applies in relation to a preliminary hearing in a court of summary jurisdiction.
- (2) Where subsection (3) or (4) applies to the accused, the court may give a live link direction in relation to his or her attendance at the preliminary hearing.
- (3) This subsection applies to the accused if —
 - (a) he or she is in police detention at a police station in connection with the offence; and
 - (b) it appears to the court that he or she is likely to remain at that station in police detention until the beginning of the preliminary hearing.
- (4) This subsection applies to the accused if he or she is at a police station in answer to live link bail in connection with the offence.
- (5) A live link direction under this section is a direction requiring the accused to attend the preliminary hearing through a live link from the police station.
- (6) But a direction given in relation to an accused to whom subsection (3) applies has no effect if he or she does not remain in police detention at the police station until the beginning of the preliminary hearing.
- (7) A live link direction under this section may not be given unless the court is satisfied that it is not contrary to the interests of justice to give the direction.
- (8) A court of summary jurisdiction may rescind a live link direction under this section at any time during a hearing to which it relates.
- (9) A court of summary jurisdiction may require or permit any party to the proceedings who wishes to make representations in relation to the giving or rescission of a live link direction under this section to do so through a live link.

- (10) Where a live link direction under this section is given in relation to an accused person who is answering to live link bail he or she is to be treated as having surrendered to the custody of the court (at the time when he or she answers live link bail).
- (11) In this section, “**live link bail**” means bail granted under Part 4 of the *Police Powers and Procedures Act 1998* subject to the duty mentioned in section 50(3)(b)(ii) of that Act.

29D Continued use of live link for sentencing hearing following a preliminary hearing

P1998/37/57D

- (1) Subsection (2) applies where —
 - (a) a live link direction under section 29B or 29C is in force;
 - (b) the accused is attending a preliminary hearing through a live link by virtue of the direction;
 - (c) the court convicts him or her of the offence in the course of that hearing (whether by virtue of a guilty plea or an indication of an intention to plead guilty); and
 - (d) the court proposes to continue the hearing as a sentencing hearing in relation to the offence.
- (2) The accused may continue to attend through the live link by virtue of the direction if —
 - (a) the hearing is continued as a sentencing hearing in relation to the offence; and
 - (c) the court is satisfied that the accused continuing to attend through the live link is not contrary to the interests of justice.
- (3) But the accused may not give oral evidence through the live link during a continued hearing under subsection (2) unless the court is satisfied that it is not contrary to the interests of justice for the accused to give it in that way.

29E Use of live link in sentencing hearings

P1998/37/57E

- (1) This section applies where the accused is convicted of the offence.
- (2) If it appears to the court by or before which the accused is convicted that it is likely that he or she will be held in custody during any sentencing hearing for the offence, the court may give a live link direction under this section in relation to that hearing.
- (3) A live link direction under this section is a direction requiring the accused, if he or she is being held in custody during the hearing,

to attend it through a live link from the place at which he or she is being held.

- (4) Such a direction —
- (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent sentencing hearings before the court or to such hearing or hearings as may be specified or described in the direction.

- (5) The court may not give such a direction unless the court is satisfied that it is not contrary to the interests of justice to give the direction.

- (6) The court may rescind such a direction at any time before or during a hearing to which it relates if it appears to the court to be in the interests of justice to do so (but this does not affect the court's power to give a further live link direction in relation to the offender).

The court may exercise this power of its own motion or on an application by a party.

- (7) The offender may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for the offender to give it in that way.

- (8) The court must—
- (a) state in open court its reasons for refusing an application for, or for the rescission of, a live link direction under this section; and
 - (b) if it is a court of summary jurisdiction, cause those reasons to be entered in the order book.

29F Use of live link in certain enforcement hearings

P1998/37/57F

- (1) This section applies where—
- (a) a confiscation order is made against a person; and
 - (b) the amount required to be paid under the order is not paid when it is required to be paid.
- (2) This section also applies where —
- (a) a sum has been registered with a court of summary jurisdiction for enforcement as if it were a sum adjudged to be paid on conviction (such sum being referred to below as “the registered sum”); and

- (b) the registered sum or any part of it is not paid when it is required to be paid.
- (2) If it appears to the court before which an enforcement hearing relating to the confiscation order or the registered sum is to take place that it is likely that the person will be held in custody at the time of the hearing, the court may give a live link direction under this section in relation to that hearing.
 - (3) A live link direction under this section is a direction requiring the person, if the person is being held in custody at the time of the hearing, to attend it through a live link from the place at which the person is being held.
 - (4) Such a direction—
 - (a) may be given by the court of its own motion or on an application by a party; and
 - (b) may be given in relation to all subsequent enforcement hearings before the court or to such hearing or hearings as may be specified or described in the direction.
 - (5) The court may rescind a live link direction under this section at any time before or during a hearing to which it relates.
 - (6) The court may not give or rescind a live link direction under this section (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.
 - (7) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit any party to the proceedings who wishes to make representations in relation to the giving or rescission of a live link direction under this section to do so through a live link.
 - (8) The person may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for the person to give it that way.
 - (9) If, in a case where it has power to do so, a court decides not to give a live link direction under this section, it must—
 - (a) state in open court its reasons for not doing so; and
 - (b) cause those reasons to be entered in the register of its proceedings or, in the case of a court of summary jurisdiction, in the order book.
 - (10) The following functions of a court of summary jurisdiction under this section may be discharged by a single justice—
 - (a) giving a live link direction under this section;-

- (b) rescinding a live link direction before a preliminary hearing begins; and
- (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).».

(3) Before section 32 insert –

«DIVISION 2: PROCEDURAL PROVISIONS IN CONNECTION WITH
LIVE LINKS».

(4) In section 33 for “section 30” substitute «section 29B».

(5) In section 35 for “section 30 or 31” substitute “section 29E or 29F”.

(6) Before section 36 insert-

«DIVISION 3: USE OF VIDEO EVIDENCE».

(7) Before section 38 insert –

«DIVISION 4: GENERAL PROVISIONS FOR THIS PART».

(8) In section 38 -

- (a) in subsection (1) at the appropriate point in the alphabetical list insert the following definitions-

“**confiscation order**” means an order made under section 66 of the *Proceeds of Crime Act 2008*;

“**custody**” -

- (a) means custody in an institution (within the meaning of the *Custody Act 1995*); but
- (b) does not include police detention;

“**enforcement hearing**” means a hearing to consider the issuing of a warrant of committal or to inquire into a person’s means;

“**police detention**” has the meaning given by section 81(2) of the *Police Powers and Procedures Act 1998*;

“**preliminary hearing**” means a hearing in the proceedings held before the start of the trial, that is to say—

- (a) when the court begins to hear evidence for the prosecution at the trial;
- (b) if the court accepts a plea of guilty without proceeding as mentioned in paragraph (a), when that plea is accepted; or
- (c) in the case of proceedings in the Court of General Gaol Delivery, when a preparatory or preliminary hearing held under section 8C or 8D of the *Criminal Jurisdiction Act 1993* is held;

- “**sentencing hearing**” means any hearing following conviction which is held for the purpose of—
- (a) proceedings relating to the giving or rescinding of a direction under section 29E;
 - (b) proceedings (in a court of summary jurisdiction) relating to committal to the Court of General Gaol Delivery for sentencing; or
 - (c) sentencing the offender or determining how the court should deal with the offender in respect of the offence.»;
- (b) at the end of subsection (2) insert—
- «For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.».
- (9) Section 39(1) (which is spent) is repealed.

PART 4 — BAIL

5 **Police Powers and Procedures Act 1998 amended**

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

6 **Bail for the purposes of Part IV — section 50 amended**

For section 50(3) (which concerns the meaning of bail for the purposes of Part IV) substitute—

- «(3) In this Part references to “**bail**” are references to bail subject to a duty—
- (a) to appear before a court of summary jurisdiction at such time and such place as the custody officer may appoint;
 - (b) to attend at such police station and at such time as the custody officer may appoint for the purposes of—
 - (i) proceedings in relation to a live link direction under section 29C of the *Criminal Justice, Police and Courts Act 2007* (use of live link direction at preliminary hearings where accused is at police station); and
 - (ii) any preliminary hearing in relation to which such a direction is given.

Subsection (4) and section 50A make further provision about bail granted by a custody officer.».

7 Conditional bail granted by a constable to appear before a court or attend at a police station – section 50A inserted

After section 50 insert—

«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;
 - (iii) does not interfere with witnesses or otherwise obstruct the course of justice (whether in relation to the accused or any other person);
 - (iv) makes himself or herself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him or her for the offences; or
 - (b) for the accused’s own protection or, in the case of an accused person who is under the age of 17, 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 Isle of Man 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 within 14 days beginning with the day of the grant.

8 Live link bail – section A52 inserted

Before section 52 insert the following section—

A52 Persons granted live link bail

P1984/60/46ZA as amended by P2009/25/s.107(2)

- (1) This section applies in relation to bail granted under this Part subject to the duty mentioned in section 50(3)(b)(ii) (“live link bail”).

- (2) An accused person who attends a police station to answer to live link bail is not to be treated as in police detention for the purposes of this Act.
- (3) Subsection (2) does not apply in relation to an accused if—
 - (a) at any time before the beginning of proceedings in relation to a live link direction under section 29C of the Criminal Justice, Police and Courts Act 2007 in relation to the accused, a constable informs the accused that a live link will not be available for his or her use for the purposes of that section; or
 - (b) the court determines for any reason not to give such a direction.

9 Failure to answer bail – section 52 amended

- (1) Section 52 is amended as follows.
- (2) In subsection (1) for “him” substitute “that person”.
- (3) After subsection (1) insert —
 - «(1A) The reference in subsection (1) to a person who fails to attend at a police station at the time appointed for that person to do so includes a reference to a person who—
 - (a) attends at a police station to answer to bail granted subject to the duty mentioned in , but
 - (b) leaves the police station at any time before the beginning of proceedings in relation to a live link direction under section 29C of the *Criminal Justice, Police and Courts Act 2007* in relation to that person.
 - (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 bail.».

PART 5 — ENFORCEMENT OF FIXED PENALTIES AND OTHER SUMS REGISTERED WITH COURTS OF SUMMARY JURISDICTION

10 Summary Jurisdiction Act 1989 amended

The *Summary Jurisdiction Act 1989* is amended as follows.

11 Methods of enforcement — section 94 amended

After section 94(1)(a) insert—

«(aa) registered or recorded with such a court in connection with the non-payment of a fixed penalty imposed under an enactment;».

12 Enforcement by attachment of earnings or benefit deduction — section 94A amended

- (1) Section 94A is amended as follows.
- (2) For subsection (2) substitute—
 - «(2) The powers conferred by subsection (1) may be exercised more than once, and accordingly an order under subsection (1)(a) and an application under subsection (1)(b) may be made at different times, and the making of one does not preclude the making of the other.».
- (3) In subsection (3)(a) for “a sum adjudged to be paid by conviction or order of a court” substitute «a relevant sum».
- (4) In subsection (4)(a) and (b) for “the sum” substitute «the relevant sum».
- (5) In subsection (5) for the words following “in respect of” substitute «any relevant sum».
- (6) In subsection (6) for the words from “on or after” to “order of a court” substitute «on or after the amendment of this section by section 12 of the *Criminal Justice, Police and Courts (Amendment) Act 2018*, a relevant sum is outstanding».
- (7) In subsection (9) for “the sum” substitute «the relevant sum».

13 Statement of earnings — section 94C amended

In section 94C(1)(a) for “the sum in question” substitute «the relevant sum».

14 Recovery of sums due by deductions from benefit — section 94E amended

In section 94E(2) for “any sum adjudged” to the end of the subsection substitute «a relevant sum».

15 Disclosure of information in connection with attachment of earnings or application for benefit deductions — section 94F amended

- (1) Section 94F is amended as follows.
- (2) In subsection (1) for “a sum” substitute «a relevant sum».
- (3) In subsection (4) for “a sum adjudged to be paid by conviction or order of the court” substitute «a relevant sum».

16 Committal in default of payment

- (1) Section 95 is amended as follows.
- (2) For subsections (1) and (2) substitute—
- «(1) If —
- (a) a court of summary jurisdiction adjudges a sum to be paid;
- (b) a sum is registered or recorded with a court of summary jurisdiction for enforcement;
- the court may order that, in default of payment, the person liable to pay it (the “**liable person**”) is to be detained for a term not exceeding that specified in subsection (4).
- (1A) If the liable person defaults in paying a sum falling within subsection (1)(a) or (b), a justice may issue a warrant committing the liable person to custody for the term specified in the order under that subsection.».
- (2) If —
- (a) a liable person has defaulted in paying a relevant sum; and
- (b) no order has been made under subsection (1),
- a court of summary jurisdiction may issue a warrant committing the liable person to custody for a term not exceeding that specified in subsection (4).
- (2A) Before issuing a warrant under subsection (2) in a case falling within subsection (1)(b) the court must inquire into the liable person’s means.
- (2B) An inquiry under subsection (2A) must take place in the presence of the liable person unless —
- (a) the liable person appeared at such an inquiry on an earlier occasion; or
- (b) it is proved to the satisfaction of the court that the liable person was notified of the date, time and place of the hearing in accordance with rules under section 94G.».
- (3) In subsection (3) for “imprisonment” substitute «custody».
- (4) In subsection (4) for “imprisoned” substitute «detained».
- (5) In subsection (5)—
- (a) for “imprisoned or committed” substitute «detained»; and
- (b) for the entries in the first column of the table substitute the following—

Not exceeding £400
Exceeding £400 but not exceeding £1,000

Exceeding £1,000

17 Fine defaulters: community service orders — section 95A amended

- (1) Section 95A is amended as follows.
- (2) In subsection (1) for the words following “in paying” substitute «a relevant sum».

18 Application of money found on defaulter — section 99 amended

- (1) Section 99 is amended as follows.
- (2) For subsection (1) substitute—

<p>«(1) A court of summary jurisdiction may order a person before it to be searched if—</p> <ol style="list-style-type: none"> (a) such a court has adjudged a person to pay a sum by a conviction of order; or (b) the person is before the court for the purposes of an inquiry into the person’s means in a case falling within section 95(2A) in connection with the registration or recording with such a court of sum under section 94(1)(aa).
--

19 Interpretation for Part VIII (enforcement) – section 102A inserted

After section 102 insert—

<p>«102A Interpretation for this Part</p>

<p>In this Part—</p>

- | | |
|---|---|
| <ol style="list-style-type: none"> (a) “liable person” has the meaning given in section 95(1); and (b) a reference to a “relevant sum” is a reference to any of the following— <table border="1" style="margin-left: 20px;"> <tr> <td style="vertical-align: top;"> <ol style="list-style-type: none"> (i) a sum adjudged to be paid on conviction; (ii) a sum adjudged to be paid by or under an order of a court; (iii) a sum registered or recorded (in whatever terms) with a court of summary jurisdiction as a sum which is enforceable as if it were a sum payable on conviction. </td> </tr> </table> | <ol style="list-style-type: none"> (i) a sum adjudged to be paid on conviction; (ii) a sum adjudged to be paid by or under an order of a court; (iii) a sum registered or recorded (in whatever terms) with a court of summary jurisdiction as a sum which is enforceable as if it were a sum payable on conviction. |
| <ol style="list-style-type: none"> (i) a sum adjudged to be paid on conviction; (ii) a sum adjudged to be paid by or under an order of a court; (iii) a sum registered or recorded (in whatever terms) with a court of summary jurisdiction as a sum which is enforceable as if it were a sum payable on conviction. | |

<p><i>Example for paragraph (b)(iii) – a fixed penalty notice issued under Schedule 5 to the Road Traffic Regulation Act 1985 or section 20A of the Public Health (Tobacco) Act 2006.».</i></p>
