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**DIVERSION OF OFFENDERS AND  
DOMESTIC ABUSE BILL 2018**



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# DIVERSION OF OFFENDERS AND DOMESTIC ABUSE BILL 2018

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## Explanatory Memorandum

1. This Bill is promoted by Mr Malarkey MHK on behalf of the Department of Home Affairs (“the Department”).
2. Part 1 contains the Bill’s introductory provisions, dealing with its short title (*clause 1*), commencement (*clause 2*) and the interpretation of some terms used in the Bill (*clause 3*).
3. Part 2 of the Bill (*clauses 4 to 28*) deals with cautioning of offenders. There are two principal changes made by the Part. In future, a caution will only be able to be administered if the offender admits the offence or conduct for which he or she is cautioned, and a new concept, the conditional caution, is introduced.
4. *Division 1* of Part 2 (*clauses 4 to 6*) introduces the Part. *Clause 4* provides an overview of the provisions of Part 2, while *clause 5* defines terms used in the Part, and *Clause 6* imposes a duty on a person who proposes to administer a caution to consult the victim of the offending conduct before doing so.
5. *Division 2* of Part 2 (*clauses 7 and 8*) deals with unconditional cautions. *Clause 7* explains what is meant by an unconditional caution, while *clause 8* spells out the five conditions which must be satisfied before one can be administered.
6. *Division 3* of Part 2 (*clauses 9 to 19*) deals with conditional cautions.
7. *Clause 9* sets out the conditions which may be attached to a caution.
8. *Clause 10* specifies the five requirements which must be satisfied before a conditional caution is given. Among them is a requirement that the offender must admit the offence for which it is given, thereby ending the possibility that contested criminal proceedings may be ended by a caution where the offender still denies the conduct giving rise to them.
9. *Clause 11* requires the Department to produce a statement of available remedies, that is the things which an offender may be required to do (or abstain from doing) as a condition of the caution.
10. *Clause 12* deals with out-of-court disposals in the context of anti-social behaviour.
11. *Clause 13* deals with variation of the conditions of a conditional caution, and *clause 14* with failure to comply with the conditions. *Clause 15* confers a power of arrest for failure to comply with the conditions, and *clause 16* applies some provisions of the *Police Powers and Procedures Act 1998* in the case of a person so arrested.

12. *Clause 17* empowers the Department to produce a code of practice about conditional cautions, and makes non-compliance with such a code by a constable a disciplinary offence.
13. *Clause 18* provides for the assistance of probation officers in the making of decisions about the conditions to be attached to a caution.
14. *Clause 19* makes provision about the conditional cautioning of offenders under 18.
15. *Division 4 of Part 2*, comprising *clauses 20 to 28* and *Schedule 1*, makes a series of amendments to other Acts of Tynwald consequent on the new régime for cautions and in particular on the limitation on their use to cases where the offender has admitted the conduct for which he or she is being cautioned. *Schedule 1* brings cautions within the ambit of the *Rehabilitation of Offenders Act 2001*.
16. *Part 3 (clauses 29 – 39)* provides a new mechanism for dealing with offenders by way of an on-the-spot financial penalty.
17. *Clause 29* specifies which offences may be dealt with in this way.
18. *Clause 30* provides a mechanism for giving the offender a penalty notice.
19. *Clause 31* specifies the amount of such a penalty and the content of a penalty notice.
20. *Clause 32* specifies the effect of a penalty notice. If by the end of the suspended enforcement period (*see clause 33*) provided for in the notice an offender has neither paid the penalty nor made a request that he or she be tried for the offence to which it relates, a sum equal to 1½ times the penalty may be registered for enforcement as if it were a fine.
21. *Clause 33* provides that where a penalty notice has been given, proceedings for the offence to which it relates may not be given until a period of 21 days has elapsed since the giving of the notice. This is the “suspended enforcement period”. If the penalty is paid within the period, it acts as a bar to the institution of proceedings for the offence.
22. *Clause 34* empowers the Department to issue a code of practice about the giving of on-the-spot penalties under Part 3 and provides that constables will be liable to disciplinary proceedings for failure to comply with such a code.
23. *Clause 35* makes provision for the payment of an on-the-spot penalty, and *clauses 36 to 38* provide that an unpaid penalty may be certified by the Chief Constable to the Chief Registrar, whereupon it becomes enforceable as if it were a fine adjudged to be paid by a criminal court.
24. *Clause 39* contains a glossary of terms used in the Part.
25. *Part 4* makes fresh provision about dealing with domestic violence and other behaviour in a domestic or family context.
26. *Clause 40* empowers a police inspector to issue a domestic violence prevention notice (a “DVPN”) where the officer has reasonable grounds for believing that

the person on whom the notice is to be served has been violent towards or has threatened violence towards an associated person. It also sets out the procedural steps which must be taken before the notice is issued, including ascertaining the views of the person for whose protection the notice is to be given. It should be noted however that the consent of that person is not required (see subsection (5) of the clause).

27. *Clause 41* specifies the content, and the method of service of a DVPN. The DVPN must be followed within 48 hours by an application for a domestic violence protection order (a “DVPO”).
28. *Clause 42* deals with breach of the provisions of a DVPN. Where a person is arrested in breach of a DVPN the person must be held in custody until the person is brought before a court of summary jurisdiction.
29. *Clause 43* provides the mechanism for applying for a DVPO.
30. *Clause 44* sets out the conditions which must be satisfied before a court may issue a DVPO, and *clause 45* specifies the consequences of breach of a DVPO. Where a person is brought before the court in connection with a breach of a DVPN or a DVPO and the proceedings are adjourned, *clause 46* empowers the court to remand the person either on custody or on bail and, if it suspects the person may be suffering from mental illness, may remand the person for medical reports.
31. Finally *clause 47* creates a new criminal offence of controlling or coercive behaviour in an intimate or family relationship, and *clause 48* empowers the Department to issue guidance in connection with the investigation of offences under clause 47.
32. The Bill is expected to be revenue- and cost-neutral.
33. 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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## DIVERSION OF OFFENDERS AND DOMESTIC ABUSE BILL 2018

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## DIVERSION OF OFFENDERS AND DOMESTIC ABUSE BILL 2018

A **BILL** to make fresh provision about the diversion of offenders from criminal proceedings; about domestic abuse; and for connected purposes.

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**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 Diversion of Offender and Domestic Abuse Act 2018.

#### 2 Commencement

- (1) This Act comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental, supplemental, transitional and transitory provision as appears to the Department to be necessary or expedient.

#### 3 Interpretation

Drafting

In this Act—

“**the Department**” means the Department of Home Affairs;

“**PPPA 1998**” means the *Police Powers and Procedures Act 1998*.

## PART 2 – CAUTIONING OF OFFENDERS

### DIVISION 1 – INTRODUCTION

#### 4 Introduction

[Drafting]

- (1) This Part makes provision about the cautioning of offenders.
- (2) Division 2 deals with unconditional cautions (sometimes called simple cautions).
- (3) Division 3 deals with cautions to which conditions are attached (conditional cautions).
- (4) Division 4 deals with consequential amendments.

#### 5 Interpretation

[P2003/44/27 and drafting]

- (1) In this Part —

**“anti-social behaviour”** means behaviour occurring in circumstances in which harassment, alarm or distress is caused by the perpetrator to one or more persons not of the same household as the perpetrator;

**“appropriate adult”**, in relation to a young person, means —

- (a) the young person’s parent or guardian;
- (b) if the young person is in the care of the Department of Health and Social Care, a person representing that Department; or
- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

**“authorised person”** means —

- (a) a constable;
- (b) an officer authorised by a Department or a Statutory Board for the purposes of this Part ;
- (c) a person authorised by the Attorney General for the purposes of this Part; or
- (d) a person authorised by a body prescribed by order made for the purposes of this Part by the Department;

*Tynwald procedure for an order under paragraph (d)— approval required.*

**“caution”** (without qualification) means a conditional or unconditional caution.

**“conditional caution”** means a caution administered under section 9;

**“the offender”** has the meaning given by section 7 or 9;

“**unconditional caution**”: see section 7;

“**victim**” means the particular person who seems, to the person dealing with the matter, to have been affected, or principally affected, by another person's conduct giving rise to the proposed caution or disposal.

“**young person**” means a person aged 16 or 17;

“**youth caution**” means a caution, administered under section 7 to a young person;

“**youth conditional caution**” has the meaning given by section 19(1).

- (2) The Department may by order amend the definition of “young person” in subsection (1) so as to include within its scope persons younger than the lower of the two ages for the time being specified in the definition.

## 6 Duty to consult victims

[Drafting]

- (1) Before deciding whether a caution (either unconditional or conditional) is to be administered to an offender, an authorised person must take reasonable steps to consult the victim (if any) of the offence in respect of which it is proposed to administer it.
- (2) After a caution has been administered in respect of the offence, the authorised person must take reasonable steps to inform the victim as soon as possible –
- (a) that it has been administered; and
  - (b) of any conditions imposed.

### DIVISION 2 – UNCONDITIONAL CAUTIONS

## 7 Unconditional cautions

[Drafting]

- (1) An authorised person may administer a caution to a young person or a person aged 18 or over (“**the offender**”) if all five of the requirements in section 8 are satisfied.
- (2) In this Part “**unconditional caution**” means a caution—
- (a) administered in respect of an offence committed by the offender; and
  - (b) to which no conditions are attached.
- (3) An unconditional condition may only be given to a young person in the presence of an appropriate adult.
- (4) For the sake of clarity, this Division is not to be taken to cast doubt on the validity of any caution administered before it comes into operation.

*Note:* Cautions have been administered without express statutory authority by prosecuting authorities in the Island for a considerable time. This clause places them on a statutory footing, but is not intended to raise doubt as to the validity of existing cautions, which have in the past been given in the exercise of an inherent discretion, by a prosecutor or a constable.

## 8 Unconditional cautions: the five requirements

[Drafting]

- (1) The first requirement is that the authorised person has evidence that the offender has committed the offence.
- (2) The second requirement is that the authorised person decides —
  - (a) that there is sufficient evidence to charge the offender with the offence; and
  - (b) that an unconditional caution should be administered to the offender in respect of the offence.
- (3) The third requirement is that the offender admits to the authorised person that the offender committed the offence.
- (4) The fourth requirement is that the authorised person explains the effect of the caution to the offender.
- (5) The fifth requirement is that the offender signs a document which contains—
  - (a) details of the offence;
  - (b) an admission that the offender committed the offence; and
  - (c) the consent of the offender to being cautioned.

### DIVISION 3 – CONDITIONAL CAUTIONS

## 9 Conditional cautions

[P2003/44/22 as amended by P2006/48 and P2012/10 and drafting]

- (1) An authorised person may give a conditional caution to a young person or a person aged 18 or over (“**the offender**”) if all five of the requirements in section 10 are satisfied.
- (2) In this Part “**conditional caution**” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.
- (3) The conditions which may be attached to such a caution are those which have any or all of the following objects—
  - (a) facilitating the rehabilitation of the offender;
  - (b) ensuring that the offender makes reparation for the offence (including paying compensation not exceeding a sum prescribed by regulations to a victim of the offending);

- (c) punishing the offender.
- (4) The conditions which may be attached to a conditional caution include a condition that the offender attend at a specified place at specified times.  
Here “specified” means specified in the condition.
- (5) Conditions attached by virtue of subsection (4) may not require the offender to attend for more than 20 hours in total, not including any attendance required by conditions attached for the purpose of facilitating the offender’s rehabilitation.
- (6) The Department may by order amend subsection (5) by substituting a different number of hours.  
*Tynwald procedure –approval required.*
- (7) A conditional caution given to a relevant offender may have conditions attached to it that have either or both of the objects mentioned in subsection (8) (whether or not in addition to conditions with one or more of the objects mentioned in subsection (3)).
- (8) The objects are—
- (a) bringing about the departure of the relevant offender from the Island;
  - (b) ensuring that the relevant offender does not return to the Island for a period of time.
- (9) If a relevant offender is given a conditional caution with a condition attached to it with the object of ensuring that the offender does not return to the Island for a period of time, the expiry of that period does not of itself give rise to any right on the part of the offender to return to the Island.
- (10) In this section “**relevant offender**” means—
- (a) a person in respect of whom an exclusion order under the *Criminal Justice (Exclusion of Non-Resident Offenders) Act 1989* might be made if he or she were convicted of the offence for which the conditional caution is to be given;
  - (b) an offender directions for whose removal from the Island have been given under—
    - (i) Schedule 2 to the Immigration Act 1971; or
    - (ii) section 10 of the Immigration and Asylum Act 1999; or
  - (c) an offender against whom a deportation order under section 5 of the Immigration Act 1971 is in force.

Here references to provisions of the Immigration Acts (within the meaning given to that term by section 61 of the UK Borders Act 2007 (of Parliament)<sup>1</sup>) are to those provisions as they apply in the Island.

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<sup>1</sup> 2007 c. 30

**10 Conditional caution — the five requirements**

[P2003/44/23]

- (1) The first requirement is that the authorised person has evidence that the offender has committed the offence.
- (2) The second requirement is that the authorised person decides —
  - (a) that there is sufficient evidence to charge the offender with the offence; and
  - (b) that a conditional caution should be administered to the offender in respect of the offence.
- (3) The third requirement is that the offender admits to the authorised person that the offender committed the offence.
- (4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns the offender that failure to comply with any of the conditions attached to the caution may result in the offender being prosecuted for the offence.
- (5) The fifth requirement is that the offender signs a document which contains—
  - (a) details of the offence;
  - (b) an admission that the offender committed the offence;
  - (c) the consent of the offender to being given the conditional caution; and
  - (d) the conditions attached to the caution.

**11 Statement of available remedies**

P2014/12/101

- (1) The Department must prepare a statement of available remedies, and may revise the statement at any time.
- (2) The statement of available remedies is a list of actions, any of which might in the opinion of the Department, be appropriate in a particular case to be carried out by a person who —
  - (a) has engaged in anti-social behaviour or has committed an offence; and
  - (b) is to be dealt with for that behaviour or offence without court proceedings.
- (3) For the purposes of subsection (2), an action is appropriate to be carried out by a person only if it has one or more of the following objects—
  - (a) facilitating the person's rehabilitation;
  - (b) ensuring that the person makes reparation for the behaviour or offence in question;
  - (c) punishing the person.



- (4) In preparing or revising the statement of available remedies the Department must—
  - (a) have regard to the need to promote public confidence in the out-of-court disposal process;
  - (b) carry out the necessary consultation and take account of all views expressed by those consulted.
- (5) In subsection (4)(b) “the necessary consultation” means—
  - (a) consultation with the Chief Constable,
  - (b) consultation with —
    - (i) the Attorney General;
    - (ii) the Department of Education, Sport and Culture; and
    - (iii) the Department of Health and Social Care; and
  - (c) such other public consultation as the Department thinks appropriate.
- (6) The Department must agree the statement of available remedies, and any revised statement, with the Chief Constable.
- (7) Once the statement of available remedies, or a revised statement, has been agreed with the Chief Constable, the Department must lay it before Tynwald and publish it in such other ways as it thinks appropriate.
- (8) In this section “out of court disposal process” means the process by which a person is dealt with under section 12 or by means of a conditional caution or youth conditional caution.

## **12 Anti-social behaviour etc: out-of-court disposals**

P2014/12/102

- (1) This section applies where—
  - (a) a person (P) within subsection (2) has evidence that an individual (A) has engaged in anti-social behaviour or committed an offence;
  - (b) A admits to P that he or she has done so;
  - (c) P thinks that the evidence is enough for taking proceedings for an injunction against A for the conduct referred to in paragraph (a), or taking other court proceedings, but decides that it would be appropriate for A to carry out action of some sort instead; and
  - (d) if the evidence is that A has committed an offence, P does not think that it would be more appropriate for A to be given a caution or a fixed penalty notice.
- (2) The persons within this subsection are—
  - (a) a constable;
  - (b) an authorised person.

- (3) When deciding what action to invite A to carry out, P must –
- (a) make reasonable efforts to consult the victim (if any) of the anti-social behaviour or the offence, to ascertain the victim's views as to whether A should carry out any of the actions listed in the statement of available remedies; and
  - (b) take into account the views so expressed.
- (4) Where there is more than one victim and they express different views, P must take account of any views expressed by the victim (or victims) in deciding what action to invite A to carry out.

- (5) In this section—

“action” includes the making of a payment to the victim (but does not include the payment of a fixed penalty);

“caution” —

- (a) in the case of a person aged 18 or over, includes a conditional caution within the meaning of this Division;
- (b) in the case of a person under that age, means a youth caution, or a youth conditional caution;

“statement of available remedies ” means the statement of available remedies (as revised from time to time) published under section 11;

“victim” means the particular person who seems to P to have been affected, or principally affected, by A's anti-social behaviour or offence.

### **13 Variation of conditions**

[P2003/44/23B]

An authorised person may, with the consent of the offender, vary the conditions attached to a conditional caution by—

- (a) modifying or omitting any of the conditions;
- (b) adding a condition.

### **14 Failure to comply with conditions**

[P2003/44/24]

- (1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the person for the offence for which the conditional caution was given.
- (2) The document mentioned in section 10(5) is to be admissible in such proceedings.
- (3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

- (4) Section 75(1) of the *Summary Jurisdiction Act 1989* (limitation of time for instituting proceedings) does not apply to such proceedings if the offender has signed the document referred to in section 10(5) within 6 months from the time when the offence was committed.

## 15 Arrest for failure to comply

P2003/44/24A and drafting (ss. (4))

- (1) If a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, the constable may arrest the offender without warrant.
- (2) A person arrested under this section must be —
- (a) charged with the offence in question;
  - (b) released without charge and on bail to enable a decision to be made as to whether the person should be charged with the offence; or
  - (c) released without charge and without bail (with or without any variation in the conditions attached to the caution).
- (3) Subsection (2) also applies in the case of —
- (a) a person who, having been released on bail under subsection (2)(b), returns to a police station to answer bail or is otherwise in police detention at a police station;
  - (b) a person who, having been released on bail under section 33 of PPPA 1998 (bail elsewhere than at police station) as applied by section 16, attends at a police station to answer bail or is otherwise in police detention at a police station;
  - (c) a person who is arrested under section 33D or 52 of PPPA 1998 (power of arrest for failure to answer to police bail) as applied by section 16.
- (4) If a person is charged under subsection (2)(a), the conditional caution ceases to apply.
- (5) If a person is released under subsection (2)(b), the custody officer must inform him that he is being released to enable a decision to be made as to whether he should be charged with the offence in question.
- (6) A person arrested under this section, or any other person in whose case subsection (2) applies by virtue of subsection (3), may be kept in police detention —
- (a) to enable him to be dealt with in accordance with that subsection; or

- (b) where applicable, to enable the power under section 50B(1) of the PPPA 1998<sup>2</sup> (power of custody officer to appoint a different or additional time for answering to police bail), as applied by section 16 of this Act, to be exercised.
- (7) If the person is not in a fit state to enable him or her to be so dealt with, or to enable that power to be exercised, he or she may be kept in police detention until he or she is in such a state.
- (8) The power under subsection (6)(a) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether he or she has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.
- (9) Subsection (2) must be complied with as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.
- (10) Subsection (2) does not require a person who —
  - (a) falls within subsection (3)(a) or (b); and
  - (b) is in police detention in relation to a matter other than the conditional caution,to be released if the person is liable to be kept in detention in relation to that other matter.

## **16 Application of provisions of PPPA 1998**

P2003/44/24B

- (1) In the case of a person arrested under section 15 the provisions of PPPA 1998 specified in subsection (2) apply, with the modifications specified in subsection (3) and with such further modifications as are necessary, as they apply in the case of a person arrested for an offence.
- (2) The provisions are—
  - (a) section 33 (arrest elsewhere than at police station);
  - (b) sections 33A to 33D (bail elsewhere than at police station);
  - (c) section 34 (arrest for further offence);
  - (d) section 37(1) to (5) (limitations on police detention);
  - (e) section 39 (custody officers at police stations);
  - (f) section 40(3) to (5) (which concern records of grounds for detention);
  - (g) section 41 (duties of custody officer after charge);
  - (h) section 42 (responsibilities in relation to persons detained);
  - (i) sections 50A to 50D (provisions about bail);

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<sup>2</sup> See the Bail (Amendment) Bill.

- (i) section 58A (x-rays and ultrasound scans).
- (3) The modifications are —
- (a) in section 39(5) and (7), for the references to being involved in the investigation of an offence for which the person is in police detention substitute references to being involved —
    - (i) in the investigation of the offence in respect of which the person was given the conditional caution, or
    - (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution;
  - (b) in section 42(2) and (3), for the references to an offence substitute references to a failure to comply with conditions attached to the conditional caution.
- (4) Section 43 of PPPA 1998 (review of police detention) applies to a person in police detention by virtue of section 15 above as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications —
- (a) omit subsection (8);
  - (b) in subsection (9), for the reference to section 40(8) substitute a reference to section 15(7) of this Act.
- (5) The following provisions of PPPA 1998 apply to a person released on bail under section 15 above as they apply to a person released on bail under section 40 of PPPA 1998—
- (a) section 50 to 50D (bail after arrest); and
  - (b) section 52 (power of arrest for failure to answer to police bail).
- (6) Section 57 of PPPA 1998 (searches of detained persons) applies in the case of a person who falls within subsection (3) of section 15 above and is detained in a police station under that section as it applies in the case of a person who falls within section 37(6) of PPPA 1998 and is detained at a police station under section 40 of that Act.
- (7) In the case of a person who is detained in a police station under section 15 above, section 57A of PPPA 1998 (searches and examination to ascertain identity) applies with the following modifications—
- (a) in subsections (1)(a) and (12), after “as a person involved in the commission of an offence” insert “or as having failed to comply with any of the conditions attached to his conditional caution”;
  - (b) in subsection (9)(a), after “the investigation of an offence” insert “, the investigation of whether the person in question has failed to comply with any of the conditions attached to his conditional caution”.

**17 Code of practice: conditional cautions**

P2003/44/25

- (1) The Department may by order provide for a code of practice in relation to conditional cautions.
- (2) The code may, in particular, include provision as to—
  - (a) the circumstances in which conditional cautions may be given;
  - (b) the procedure to be followed in connection with the giving of such cautions;
  - (c) the conditions which may be attached to such cautions and the time for which they may have effect;
  - (d) the category of constable or investigating officer by whom such cautions may be given;
  - (e) the form which such cautions are to take and the manner in which they are to be given and recorded;
  - (f) the places where such cautions may be given; and
  - (g) the monitoring of compliance with conditions attached to such cautions.
- (3) Subsections (2) and (3) of section 75 of PPPA 1998 and section 76 of that Act apply to an order under subsection (1) as they apply to an order under section 75(1) of that Act.

**18 Assistance of probation officers**

Drafting: see P2007/21/1(1)(b) and (c)

Probation officers may give assistance to authorised persons in determining—

- (a) whether conditional cautions should be given and which conditions to attach to conditional cautions; and
- (b) the supervision and rehabilitation of persons to whom conditional cautions are given.

**19 Youth conditional cautions**

[Drafting]

- (1) Where a conditional caution is given to a young person, the conditional caution is to be known as a “**youth conditional caution**”.
- (2) Where a youth conditional caution is given to a young person, the explanation and warning mentioned in section 10(4) must be given in the presence of an appropriate adult.

## DIVISION 4 – CONSEQUENTIAL AMENDMENTS

**20 PPPA 1998 amended**

PPPA 1998 is amended as follows.

**21 Fingerprinting – section 64 amended**

- (1) Section 64 is amended as follows
- (2) For subsection (6) substitute –
  - «(6) The fingerprints of a person detained at a police station may also be taken without the appropriate consent if the person has been convicted of a recordable offence.
  - (6A) The fingerprints of a person who is at a police station (with or without being detained there) may also be taken without the appropriate consent if the person has been cautioned in respect of a recordable offence.».
- (3) In subsection (7) for “subsection (3) or (6)” substitute «subsection (3), (6) or (6A)».

**22 Other samples – section 66 amended**

In section 66(5) for the words following “if” substitute –

- «(a) the person has been convicted of a recordable offence; or
- (b) the person been cautioned for a recordable offence.».

**23 Fingerprints and samples: supplementary provisions – section 67 amended**

- (1) Section 67 is amended as follows.
- (2) Before subsection (1) insert –
  - «(A1) This section applies if a person—
    - (a) has been arrested on suspicion of being involved in a recordable offence;
    - (b) has been charged with such an offence;
    - (c) has been informed that he or she will be reported for such an offence; or
    - (d) has been cautioned for such an offence.».
- (3) In subsection (1) for the words from “Where a person” to “reported for such an offence,” substitute «If this section applies,».
- (4) For subsection (1A)(b) substitute –

- «(b) the National Crime Agency formed under section 1 of the Crime and Courts Act 2013 (of Parliament);».
- (5) In subsection (1E)(a) for “but otherwise than in circumstances to which subsection (1) applies;” substitute—  
«in circumstances not falling within any paragraph of subsection (A1);».
- (6) In subsection (1G) after “64(6)” insert «or (6A)».
- (7) In subsection (4)—
- (a) at the end of paragraph (a) omit «or»;
- (b) after paragraph (b) insert—
- «or;
- (c) the person has been cautioned for a recordable offence and either he has not had a sample taken from him since the time when he was cautioned, or he has had such a sample taken from him (before or after the time when he was cautioned) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.».
- (8) In subsection (5) at the end insert —
- «(c) in the case of a person falling within paragraph (c), one month beginning with the date of the caution or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.».
- (9) In subsection (8) at the end insert —
- «(c) in the case of a person falling within subsection (4)(c), the officer in charge of the police station from which the investigation of the offence for which he was cautioned was conducted.».

## 24 Destruction of fingerprints and samples — section 68 amended

In section 68(2)(b) for the words “and he has not admitted it and been dealt with by way of being cautioned by a constable,” substitute «and that person has not been cautioned for the offence».

## 25 Footwear impressions, etc — section A77 amended

In section A77(3) for the words “and that person has not admitted it and been dealt with by way of being cautioned by a constable,” substitute «and that person has not been cautioned for the offence».



**26 Criminal Justice Act 2001 amended**

- (1) Schedule 1 to the *Criminal Justice Act 2001* is amended as follows.
- (2) In paragraph 1—
  - (a) in head (a) of subparagraph (2) omit “which at the time when the caution is given, he has admitted”; and
  - (b) omit “and” immediately after that head.
- (3) In paragraph 6(3) omit ““which at the time when the caution is given, he has admitted””.

**27 Rehabilitation of Offenders Act 2001 amended**

- (1) The *Rehabilitation of Offenders Act 2001* is amended as follows.
- (2) After section 7 insert—

**«7A Protection afforded to spent cautions**

P1974/53/8A

- (1) Schedule 1A (protection for spent cautions) has effect.
- (2) A reference in this Act to a caution —
  - (a) if the caution is given in the Island, is to be construed in accordance with Part 2 of the *Diversion of Offenders and Domestic Abuse Act 2018*;
  - (b) if the caution is given in England and Wales, is to be construed in accordance with section 8A(2)(a) or (b) of the *Rehabilitation of Offenders Act 1974* (of Parliament);
  - (c) includes anything which corresponds to a caution falling within paragraph (a) or (b) (however described) which is given to a person in respect of an offence under the law of a country or territory outside the Island
- (3) After section 8 insert—

**8A Unauthorised disclosure of spent cautions**

- (1) In this section—
  - (a) “official record” means a record which—
    - (i) contains information about persons given a caution for any offence or offences; and
    - (ii) is kept for the purposes of its functions by any court, police force, Department, Statutory Board or other public authority in the Island;
  - (b) “caution information” means information imputing that a named or otherwise identifiable living person (“the named

person”) has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution; and

- (c) “relevant person” means any person who, in the course of his or her official duties (anywhere in the Island), has or at any time has had custody of or access to any official record or the information contained in it.

- (2) Subject to the terms of any order made under subsection (5), a relevant person commits an offence if, knowing or having reasonable cause to suspect that any caution information he or she has obtained in the course of his or her official duties is caution information, he or she discloses it, otherwise than in the course of those duties, to another person.

*Maximum penalty (summary) – level 4 fine.*

- (3) In any proceedings for an offence under subsection (2) it is a defence for the defendant to show that the disclosure was made—

- (a) to the named person or to another person at the express request of the named person;
- (b) to a person whom the defendant reasonably believed to be the named person or to another person at the express request of a person whom he or she reasonably believed to be the named person.

- (4) Any person who obtains any caution information from any official record by means of any fraud, dishonesty or bribe commits an offence.

*Maximum penalty (summary) – 12 months’ custody or a level 5 fine.*

- (5) The Department of Home Affairs may by order make such provision as appears to it to be appropriate for excepting the disclosure of caution information derived from an official record from the provisions of subsection (2) in such cases or classes of case as may be specified in the order.»

- (4) After Schedule 1 insert the Schedule set out as the Schedule to this Act.

## 28 Sex Offenders Act 2006 amended

In section 13(1) of the *Sex Offenders Act 2006* in the definition of “caution” after “constable” insert «or other authorised person (within the meaning of section 5 of the *Diversion of Offences and Domestic Abuse Act 2018*)».

**PART 3 –IMMEDIATE FINANCIAL PENALTIES**

**DIVISION 1 – OFFENCES TO WHICH THIS DIVISION APPLIES**

**29 Offences leading to immediate financial penalties**

P2001/16/1

- (1) For the purposes of this Part, “**penalty offence**” means an offence committed under any of the provisions mentioned in the first column of the following table and described, in general terms, in the second column—

<b>Provision creating offence</b>	<b>Description of offence</b>
<i>Telecommunications Act 1984, s 28(1)(b)</i>	Using public telecommunications system for sending message known to be false in order to cause annoyance
<i>Fire Services Act 1984, s.7</i>	Knowingly giving a false alarm of fire
<i>Licensing Act 1995</i> s. 34(1) or (2) s. 73(1) s. 74A(1) s. 75(1) or (2) s. 76(1)	Procuring drink for drunken persons Consumption of liquor by minors Agents, etc. obtaining liquor for minors Public drunkenness Drinking in public places
<i>Public Order Act 1998, s.3</i>	Behaviour likely to cause harassment, alarm or distress
<i>Fireworks Act 2004, s 4(1)</i>	Restrictions on fireworks displays

- (2) The Department may by order amend an entry in the table in subsection (1) or add or remove an entry.

*Tynwald procedure – approval required.*

- (3) An order under subsection (2) may make such amendment of any provision of this Part as the Department considers appropriate in consequence of any change in the table made by the order.

## DIVISION 2 — PENALTY NOTICES AND PENALTIES

**30 Penalty notices**

- (1) A constable or authorised person who has reason to believe that a person aged 10 or over has committed a penalty offence may give him or her a penalty notice in respect of the offence.
- (2) Unless the notice is given in a police station, the person giving it must be a constable in uniform.
- (3) At a police station, a penalty notice may be given by a constable or an authorised person.
- (4) Before giving a penalty notice in the case of a person under the age of 16, the person giving it must take reasonable steps—
  - (a) to notify the person’s parent or guardian that the notice is to be given; and
  - (b) if the notice is to be given at a police station, to secure the attendance of the parent or guardian at the police station.
- (5) In this Division —

“**authorised person**” means a person authorised by the Chief Constable to give penalty notices; and

“**penalty notice**” means a notice offering the opportunity, by paying a penalty in accordance with this Division, to discharge any liability to be convicted of the offence to which the notice relates and—

- (i) where a person whose age is lower than 16 is given a penalty notice, for a parent or guardian of that person to be notified of the giving of the notice; and
- (ii) for that parent or guardian to be liable to pay the penalty under the notice.

*Tynwald procedure — approval required.*

- (6) The provision which may be made by virtue of subsection (5)(b) includes provision amending, or applying (with or without modifications), this Part or any other enactment (whenever passed or made).

**31 Amount of penalty and form of penalty notice**

P2001/16/3

- (1) The penalty payable in respect of a penalty offence is £120.
- (2) The Department may by order amend subsection (1) so as to—
  - (a) substitute another amount to the amount currently specified; or
  - (b) specify different amounts for persons of different ages.

- (3) But the Department may not specify an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence.

*Tynwald procedure for an order under this subsection — affirmative.*

- (4) A penalty notice must—
- (a) be in a form approved by the Department;
  - (b) state the alleged offence;
  - (c) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
  - (d) specify the suspended enforcement period (as to which see section 33) and explain its effect;
  - (e) state the amount of the penalty;
  - (f) state that the penalty is to be paid to the Chief Registrar and state the address at which the penalty may be paid; and
  - (g) inform the person to whom it is given of his or her right to request that he or she should be tried for the alleged offence and explain how that right may be exercised.

## 32 Effect of penalty notice

P2001/16/4

- (1) This section applies if a penalty notice is given to a person (“A”) under section 30.
- (2) If A makes a request to be tried for the alleged offence, proceedings may be brought against him or her.
- (3) Such a request must be made by a notice given by A—
  - (a) in the manner specified in the penalty notice; and
  - (b) before the end of the period of suspended enforcement (as to which see section 33).
- (4) A request which is made in accordance with subsection (3) is referred to in this Division as a “**request to be tried**”.
- (5) If, by the end of the suspended enforcement period—
  - (a) the penalty has not been paid in accordance with this Part; and
  - (b) A has not made a request to be tried,
 a sum equal to one and a half times the amount of the penalty may be registered under section 36 for enforcement against A as a fine.

**33 General restriction on proceedings**

P2001/16/5

- (1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 21 days beginning with the date on which the notice was given (“**the suspended enforcement period**”).
- (2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.
- (3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

**34 Code of practice**

P2001/16/6 (ss(1)) and drafting (and see 1998/75(2) &amp;(3) and 76) for ss. (2)).

- (1) The Department may by order provide for a code of practice —
  - (a) about the exercise of the discretion given to constables and authorised persons by this Division;
  - (b) about the issuing of penalty notices;
  - (c) with a view to encouraging good practice in connection with the operation of this Part.

*Tynwald procedure — affirmative.*

- (2) Subsections (2) and (3) of section 75 of PPPA 1998 apply to an order under subsection (1), and section 76 of that Act applies to a code under subsection (1), as they respectively apply to an order or a code under section 75 of that Act.

## DIVISION 3 — PROCEDURE

**35 Payment of penalty**

P2001/16/7

- (1) If a person to whom a penalty notice is given decides to pay the penalty, he or she must pay it to the Chief Registrar by one of the methods specified in the penalty notice.
- (2) A sum payable by way of a penalty is to be treated for the purposes of the *Collection of Fines etc. Act 1985* as a fine adjudged to be paid on conviction by a criminal court.
- (3) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).
- (4) But subsection (3) does not prevent the payment of a penalty by other means.
- (5) Subsection (5) applies if a person—

- (a) claims to have made payment in accordance with subsection (3); and
  - (b) shows that the letter was posted.
- (6) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.
- (7) A letter is properly addressed for the purposes of subsection (3) if it is addressed in accordance with the requirements specified in the penalty notice.

### 36 Registration certificates

P2001/16/8

- (1) The Chief Constable may, in respect of any registrable sum, issue a certificate (a “**registration certificate**”) stating that the sum is registrable for enforcement against the defaulter as if it were a fine adjudged to be paid on conviction by a court.
- (2) If the Chief Constable issues a registration certificate, he or she must cause it to be sent to the Chief Registrar.
- (3) A registration certificate must—
- (a) give particulars of the offence to which the penalty notice relates; and
  - (b) state the name and last known address of the defaulter and the amount of the registrable sum.
- (4) In this Division—
- (a) “**registrable sum**” means a sum that may be registered under this section as a result of section 32(5); and
  - (b) “**defaulter**” means the person against whom that sum may be registered.

### 37 Registration of sums payable in default

P2001/16/9

- (1) If the Chief Registrar receives a registration certificate, he or she must register the registrable sum for enforcement, as if it were a fine adjudged to be paid on conviction by a court, in such manner as he or she considers appropriate.
- (2) The Chief Registrar must give the defaulter notice of the registration.
- (3) The notice must—
- (a) specify the amount of the sum registered; and
  - (b) give the information with respect to the offence which was included in the registration certificate under section 36.

- (4) If a sum is registered as a result of this section, any enactment referring (in whatever terms) to a fine imposed, or other sum adjudged to be paid, on conviction by a criminal court applies as if the registered sum were a fine imposed by such a court on the conviction of the defaulter on the date on which the sum was registered.

### 38 Enforcement of fines

P2001/16/10

- (1) In this section—
  - (a) “fine” means a sum which is enforceable as a fine as a result of section 37; and
  - (b) “proceedings” means proceedings for enforcing such a fine.
- (2) Subsection (3) applies if, in any proceedings, the defaulter claims that he or she was not the person to whom the penalty notice concerned was issued.
- (3) The court may adjourn the proceedings for a period of not more than 28 days for the purpose of allowing that claim to be investigated.
- (4) On the resumption of proceedings that have been adjourned under subsection (3), the court must accept the defaulter’s claim unless it is shown, on a balance of probabilities, that he or she was the recipient of the penalty notice.
- (5) The court may set aside a fine in the interests of justice.
- (6) If the court does set a fine aside it must—
  - (a) give such directions for further consideration of the case as it considers appropriate; or
  - (b) direct that no further action is to be taken in respect of the allegation that gave rise to the penalty notice concerned.

#### DIVISION 4 – INTERPRETATION

### 39 Glossary

P2001/16/11

In this Part—

“**defaulter**” has the meaning given in section 36(4);

“**penalty notice**” has the meaning given in section 30(5);

“**penalty offence**” has the meaning given in section 29;

“**registrable sum**” has the meaning given in section 36(4).



## PART 4 – DOMESTIC ABUSE

### DIVISION 1 – DOMESTIC VIOLENCE PROTECTION NOTICES

#### 40 Power to issue a domestic violence protection notice

P2010/17/24

- (1) A member of the Isle of Man Constabulary not below the rank of inspector (“**the authorising officer**”) may issue a domestic violence protection notice (a “**DVPN**”) under this section.
- (2) A DVPN may be issued to a person (“**P**”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—
  - (a) P has been violent towards, or has threatened violence towards, an associated person; and
  - (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.
- (3) Before issuing a DVPN, the authorising officer must, in particular, consider—
  - (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person);
  - (b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN;
  - (c) any representations made by P as to the issuing of the DVPN; and
  - (d) in the case of provision included by virtue of subsection (8), the opinion of any other associated person who lives in the premises to which the provision would relate.
- (4) The authorising officer must take reasonable steps to discover the opinions mentioned in subsection (3).
- (5) But the authorising officer may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.
- (6) A DVPN must contain provision to prohibit P from molesting the person for whose protection it is issued.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain provision—
  - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPN is issued;

- (b) to prohibit P from entering the premises;
  - (c) to require P to leave the premises; or
  - (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPN.
- (9) For the purposes of this Part, two persons are “**associated persons**” if—
- (a) they are or have been married to each other;
  - (b) they are or have been civil partners of each other;
  - (c) they are cohabitants or former cohabitants;
  - (d) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
  - (e) they are relatives;
  - (f) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (g) they have or have had an intimate personal relationship with each other which is or was of significant duration;
  - (h) they have entered into a civil partnership agreement (as defined by section 71(3) of the *Civil Partnership Act 2011*) (whether or not that agreement has been terminated);
  - (i) in relation to any child, they are both persons falling within subsection (10).
- (10) A person falls within this subsection in relation to a child if—
- (a) he or she is a parent of the child; or
  - (b) he or she has or has had parental responsibility for the child.
- (11) If a child has been adopted or falls within subsection (13) two persons are also associated with each other for the purposes of this Division if—
- (a) one is a natural parent of the child or a parent of such a natural parent; and
  - (b) the other is the child or any person—
    - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (12) A body corporate and another person are not, by virtue of subsection (3)(f) or (g) or (9)(i), to be regarded for the purposes of this Part as associated with each other.
- (13) A child falls within this subsection if—
- (a) an adoption agency, within the meaning of section 58 of the *Adoption Act 1984* has power to place him or her for adoption

under section 2 of that Act (placing children with parental consent); or

- (b) he or she is freed for adoption by virtue of an order which falls within any paragraph of section 5(2A) of that Act (order freeing child for adoption in any part of the United Kingdom).

#### **41 Contents and service of a domestic violence protection notice**

P2010/17/25

- (1) A DVPN must state—
  - (a) the grounds on which it has been issued;
  - (b) that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPN;
  - (c) that an application for a domestic violence protection order under section 43 will be heard within 48 hours of the time of service of the DVPN and a notice of the hearing will be given to P;
  - (d) that the DVPN continues in effect until that application has been determined; and
  - (e) the provision that a court of summary jurisdiction may include in a domestic violence protection order.
- (2) A DVPN must be in writing and must be served on P personally by a constable.
- (3) On serving P with a DVPN, the constable must ask P for an address for the purposes of being given the notice of the hearing of the application for the domestic violence protection order.

#### **42 Breach of a domestic violence protection notice**

P2010/17/26

- (1) A person arrested by virtue of section 41(1)(b) for a breach of a DVPN must be held in custody and brought before a court of summary jurisdiction—
  - (a) before the end of the period of 24 hours beginning with the time of the arrest; or
  - (b) if earlier, at the hearing of the application for the DVPO under section 43.
- (2) If the person is brought before the court under subsection (1)(a), the court may remand the person.
- (3) If the court adjourns the hearing of the application by virtue of section 43(8), the court may remand the person.
- (4) In calculating when the period of 24 hours mentioned in subsection (1)(a) ends, disregard any non-working day.

## DIVISION 2 — DOMESTIC VIOLENCE PROTECTION ORDERS

**43 Application for a domestic violence protection order**

P2010/17/27

- (1) If a DVPN has been issued, a constable must apply for a domestic violence protection order (a “DVPO”).
- (2) The application must be made by complaint to a court of summary jurisdiction.
- (3) The application must be heard by that court not later than 48 hours after the DVPN was served under section 41(2).
- (4) In calculating when the period of 48 hours mentioned in subsection (3) ends, disregard any non-working day.
- (5) A notice of the hearing of the application must be given to P.
- (6) The notice is deemed given if it has been left at the address given by P under section 41(3).
- (7) But if the notice has not been given because no address was given by P under section 41(3), the court may hear the application for the DVPO if the court is satisfied that the constable applying for the DVPO has made reasonable efforts to give P the notice.
- (8) The court may adjourn the hearing of the application.
- (9) If the court adjourns the hearing, the DVPN continues in effect until the application has been determined.
- (10) On the hearing of an application for a DVPO, section 59 of the *Summary Jurisdiction Act 1989* (attendance of witnesses) does not apply in relation to a person for whose protection the DVPO would be made, unless the person has given oral or written evidence at the hearing.

**44 Conditions for and contents of a domestic violence protection order**

P2010/17/28

- (1) The court may make a DVPO if two conditions are met.
- (2) The first condition is that the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person.
- (3) The second condition is that the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.
- (4) Before making a DVPO, the court must, in particular, consider—
  - (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person); and

- (b) any opinion of which the court is made aware—
  - (i) of the person for whose protection the DVPO would be made, and
  - (ii) in the case of provision included by virtue of subsection (8), of any other associated person who lives in the premises to which the provision would relate.
- (5) But the court may make a DVPO in circumstances where the person for whose protection it is made does not consent to the making of the DVPO.
- (6) A DVPO must contain provision to prohibit P from molesting the person for whose protection it is made.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPO is made, the DVPO may also contain provision—
  - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPO is made;
  - (b) to prohibit P from entering the premises;
  - (c) to require P to leave the premises; or
  - (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPO.
- (9) A DVPO must contain provision empowering a constable to arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPO.
- (10) A DVPO may be in force for—
  - (a) no fewer than 14 days beginning with the day on which it is made; and
  - (b) no more than 28 days beginning with that day.
- (11) A DVPO must state the period for which it is to be in force.

#### **45 Breach of a domestic violence protection order**

P2010/17/29

- (1) A person arrested by virtue of section 44(9) for a breach of a DVPO must be held in custody and brought before a court of summary jurisdiction within the period of 24 hours beginning with the time of the arrest.
- (2) If the matter is not disposed of when the person is brought before the court, the court may remand the person.
- (3) In calculating when the period of 24 hours mentioned in subsection (1) ends, disregard any non-working day.

**46 Further provision about remand**

P2010/17/30

- (1) This section applies for the purposes of the remand of a person by a court of summary jurisdiction under section 42(2) or (3) or 45(2).
- (2) In the application of section 84(4) of the *Summary Jurisdiction Act 1989* for those purposes, the reference to the “other party” is to be read—
  - (a) in the case of a remand prior to the hearing of an application for a DVPO, as a reference to the authorising officer; and
  - (b) in any other case, as a reference to the constable who applied for the DVPO.
- (3) If the court has reason to suspect that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.
- (4) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.
- (5) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.
- (6) If the court has reason to suspect that the person is suffering from a mental disorder within the meaning of section 1 of the *Mental Health Act 1998*, the court has the same power to make an order under section 23 of the *Summary Jurisdiction Act 1989* (remand for medical report) as it has under that section in the case of a person charged with an offence punishable with custody.
- (7) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

**DIVISION 3 — PREVENTING CONTROLLING OR COERCIVE BEHAVIOUR****47 Controlling or coercive behaviour in an intimate or family relationship**

P2015/9/76

- (1) A person (A) commits an offence if—
  - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive;
  - (b) at the time of the behaviour, A and B are personally connected;
  - (c) the behaviour has a serious effect on B; and
  - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
  - (a) A is in an intimate personal relationship with B; or

- (b) A and B live together and—
- (i) they are members of the same family, or
  - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
- (a) A has responsibility for B, for the purposes of Part I of the *Children and Young Persons Act 1966* (see section 14 of that Act); and
  - (b) B is under 16.
- (4) A's behaviour has a “**serious effect**” on B if—
- (a) it causes B to fear, on at least two occasions, that violence will be used against B; or
  - (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.
- (5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
- (a) they are, or have been, married to each other;
  - (b) they are, or have been, civil partners of each other;
  - (c) they are relatives;
  - (d) they have agreed to marry one another (whether or not the agreement has been terminated);
  - (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
  - (f) they are both parents of the same child;
  - (g) they have, or have had, parental responsibility for the same child.
- (7) In subsection (6)—

“civil partnership agreement” has the meaning given by section 71 of the *Civil Partnership Act 2011*;

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the *Children and Young Persons Act 2001*;

“relative”, in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner, or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

- (8) In proceedings for an offence under this section it is a defence for A to show that—
- (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests; and
  - (b) the behaviour was in all the circumstances reasonable.
- (9) A is to be taken to have shown the facts mentioned in subsection (8) if—
- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them; and
  - (b) the contrary is not proved beyond reasonable doubt.
- (10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

*Maximum penalty for an offence under this section—*

- (a) *(on information) 5 years' custody;*
- (b) *(summary) 12 months' custody or a level 5 fine.*

#### **48 Guidance about investigation of offences under section 47**

P2015/9/77

- (1) The Department may issue guidance about the investigation of offences under section 47 to such persons as the Department considers appropriate.
- (2) The Department may revise any guidance issued under this section.
- (3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as it thinks fit.
- (4) Before issuing or revising guidance under this section the Department must consult such persons as the Department considers appropriate.



## SCHEDULE

SCHEDULE TO BE INSERTED AS SCHEDULE 1A TO THE REHABILITATION OF  
OFFENDERS ACT 2001

[Section 27(4)]

## «SCHEDULE 1A

## PROTECTION FOR SPENT CAUTIONS

[Section 7A]

**1 Preliminary**

- (1) For the purposes of this Schedule a caution shall be regarded as a spent caution—
  - (a) in the case of a conditional caution (as defined in section 9 of the *Diversion of Offenders and Domestic Abuse Act 2018*), at the end of the relevant period for the caution;
  - (b) in any other case, at the time the caution is given.
- (2) In sub-paragraph (1)(a) “the relevant period for the caution” means (subject to sub-paragraph (3)) the period of 3 months from the date on which the conditional caution was given.
- (3) If the person concerned is subsequently prosecuted and convicted of the offence in respect of which a conditional caution was given—
  - (a) the relevant period for the caution shall end at the same time as the rehabilitation period for the offence; and
  - (b) if the conviction occurs after the end of the period mentioned in sub-paragraph (1)(a), the caution shall be treated for the purposes of this Schedule as not having become spent in relation to any period before the end of the rehabilitation period for the offence.

**2 Meaning of “ancillary circumstances” for a caution**

- (1) In this Schedule “ancillary circumstances”, in relation to a caution, means any circumstances of the following—
  - (a) the offence which was the subject of the caution or the conduct constituting that offence;
  - (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution);

- (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end);
  - (d) any judicial review proceedings under a petition of dolence relating to the caution;
  - (e) in the case of a conditional caution, any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions.
- (2) Where the caution relates to 2 or more offences, references in sub-paragraph (1) to the offence which was the subject of the caution include a reference to each of the offences concerned.
- (3) In this Schedule “**proceedings before a judicial authority**” has the same meaning as in section 6(2).

### **3 Protection relating to spent cautions and ancillary circumstances**

- (1) A person who is given a caution for an offence is, from the time the caution is spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence; and notwithstanding the provisions of any other enactment or rule of law to the contrary—
- (a) no evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in the Island to prove that any such person has committed, been charged with or prosecuted for, or been given a caution for the offence; and
  - (b) a person must not, in any such proceedings, be asked and, if asked, is not required to answer, any question relating to his or her past which cannot be answered without acknowledging or referring to a spent caution or any ancillary circumstances.
- (2) Nothing in sub-paragraph (1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution.
- (3) Where a question seeking information with respect to a person’s previous cautions, offences, conduct or circumstances is put to him or her or to any other person otherwise than in proceedings before a judicial authority—
- (a) the question shall be treated as not relating to spent cautions or to any ancillary circumstances, and the answer may be framed accordingly; and
  - (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent caution or any ancillary circumstances in his or her answer to the question.

- (4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person does not extend to requiring him or her to disclose a spent caution or any ancillary circumstances (whether the caution is his or her own or another's).
- (5) A caution which has become spent or any ancillary circumstances, or any failure to disclose such a caution or any such circumstances, does not constitute a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment.
- (6) This paragraph has effect subject to paragraphs 4 to 6.

#### **4 Power to amend by order**

The Department of Home Affairs may by order—

- (a) make provision for excluding or modifying the application of either or both of paragraphs (a) or (b) of paragraph 3(3) in relation to questions put in such circumstances as may be specified in the order;
- (b) provide for exceptions from the provisions of sub-paragraphs (4) and (5) of paragraph 3, in such cases or classes of case, and in relation to cautions of such a description, as may be specified in the order.

#### **5 Exceptions from paragraph 3**

Nothing in paragraph 3 affects—

- (a) the operation of the caution in question; or
- (b) the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution.

#### **6 Application of section 5 for the purposes of Schedule**

- (1) Section 5(2), (3) and (4) apply for the purposes of this Schedule as follows.
- (2) Subsection (2) applies to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary to such convictions.

- (3) Subsection (3) applies to evidence of a person's previous cautions and ancillary circumstances as it applies to evidence of a person's convictions and the circumstances ancillary to such convictions.
- (4) Subsection (4) applies for the purpose of excluding the application of paragraph 3(1).».