

**3. CONSIDERATION OF CLAUSES**

**3.1 Criminal Evidence Bill 2018 –  
Clauses considered**

Dr Allinson to move.

**The Speaker:** Item 3, Consideration of Clauses, and we have the Criminal Evidence Bill 2018. Just to make sure that we are all working off the same version, there is a Criminal Evidence  
1115 Bill 2018 incorporating Council amendments version – just to make sure we are all working off the same sheet.

With that, I call on Dr Allinson to move.

**Dr Allinson:** Thank you, Mr Speaker.

1120 The Second Reading of this Bill took place on 13th November 2018 and I am grateful to Hon. Members for their support.

With your consent, in turning now to the clauses I propose to move clauses 1 to 3, which form Part 1 of the Bill, together.

1125 Clause 1 provides for the short title of the resulting Act, clause 2 for the making of an Appointed Day Order for the commencement of the Act, and clause 3 with the interpretation of certain terms used throughout the Bill.

I beg to move that clauses 1, 2 and 3 do stand part of the Bill.

**The Speaker:** I call on the Hon. Member for Douglas East, Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** The question I put to the House is that clauses 1, 2 and 3 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

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Clause 4, Dr Allinson.

**Dr Allinson:** Mr Speaker, we then come to Part 2, which contains the new rules on the admissibility of hearsay evidence. The Bill deals both with the issue of admissibility of evidence of a person's bad character and also the admissibility of hearsay evidence.

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Clause 4 defines what is meant by evidence of 'bad character' for the purposes of Division 1. The definition explicitly excludes evidence which is either to do with the alleged facts of the offence with which the defendant is charged, or is evidence of misconduct in connection with the investigation or prosecution of the offence – for example, by way of obstruction of the investigation or attempting to nobble the jury.

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Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

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**The Speaker:** The question I put is that clause 4 stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 5, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1155 In order for the Bill to restate the rules on the admissibility of evidence of bad character it must first abolish the common law rules, and clause 5 of the Bill does that, subject only to an exception for the common law about the admissibility of public records, and evidence of reputation as evidence of bad character.

Mr Speaker, I beg to move that clause 5 do stand part of the Bill.

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**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1165 **The Speaker:** The question I put to the House is that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1170 In order for evidence of the bad character of a person other than the defendant to be admitted, it must satisfy one of three criteria set out in subsection (1) of the clause, namely that: (a) it is important explanatory evidence, (b) it has substantial probative value in relation to a matter which is a matter in issue in the proceedings and is of substantial importance in the context of the case as a whole, or (c) all parties to the proceedings agree to the evidence being  
1175 admissible.

Subsections (2) and (3) explain the meaning of the conditions in paragraphs (a) and (b) of subsection (1).

Subsection (4) makes it clear that evidence of bad character of a person other than the defendant must not be adduced without the leave of the court.

1180 Mr Speaker, I beg to move that clause 6 stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

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**The Speaker:** I put the question that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1190 Clause 7 deals, in a similar fashion to clause 6, with the defendant's own bad character. However, the range of circumstances under which the evidence may be admitted is wider than those in clause 6. The seven gateways in this clause include three which are specific to  
1195 defendants, namely: (a) the evidence is adduced by the defendant or is given in answer to a question asked by the defendant in cross-examination which is intended to elicit it; (b) it is evidence to correct a false impression given by the defendant; or (c) the defendant has made an attack on another's character.

1200 The first of these rather speaks for itself and arises where a defendant has put his own character in issue, either by mentioning it in the witness box or deliberately putting a question to another witness to elicit that same information.

The second arises where a defendant who has some previous convictions – albeit perhaps of a different character – represents himself or herself as a person of previous good character, or perhaps suggests, correctly, that he or she has no previous convictions for sexual offences but omits to mention previous convictions for dishonesty. In these circumstances the evidence of  
1205 bad character becomes admissible.

The third, rather more straightforward, case in which a defendant's character becomes admissible is where he or she attacks the character of another person.

Clauses 8 to 12 supplement the provisions of clause 7(1) and I shall turn to them in a moment.

1210 Mr Speaker, I beg to move that clause 7 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

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**The Speaker:** The question is that clause 7 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clauses 8 to 12, Dr Allinson.

1220 **Dr Allinson:** Thank you.

With your permission, Mr Speaker, I shall speak to clauses 8 to 12 together because each of these defines a concept which is used in clause 7.

Clause 8 defines the concept of 'important explanatory evidence', for the purposes of clause 7(1)(c).

1225 Clause 9 defines 'matter in issue between the defendant and the prosecutor' for the purposes of clause 7(1)(d).

Clause 10 defines 'matter in issue between the defendant and a co-defendant' for the purposes of clause 7(1)(e).

Clause 11 defines 'evidence to correct a false impression' used in clause 7(1)(f).

1230 Clause 12 defines 'attack on another person's character'.

Mr Speaker, I beg to move that clauses 8 to 12 do stand part of the Bill.

**The Speaker:** Miss Bettison.

1235 **Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** The question is that clauses 8 to 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Dr Allinson.

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**Dr Allinson:** Mr Speaker, clause 13 contains a very important safeguard which empowers the trial Deemster to stop a jury trial in its tracks where evidence has been adduced under one of paragraphs (c) to (g) of clause 7(1) but the Deemster later concludes that the evidence so admitted is contaminated and the extent of the contamination is such that any resulting conviction would be unsafe. Subsection (4) makes it clear that the powers to stop proceedings under the provisions of the clause do not limit any other power a Deemster has to stop a trial.

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Mr Speaker, I beg to move that clause 13 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 14, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1260 I turn next to clause 14. Since the rulings which are given under clause 7 will normally be given at or before the start of the defendant's trial, the assessment of the relevance or probative value of the evidence to be adduced is necessarily speculative. Clause 14 therefore provides that in evaluating the evidence which would form part of the case if it were admitted, it is to be assumed to be true unless there is clear evidence before the court that no court or jury could reasonably find it true.

1265 Mr Speaker, I beg to move that clause 14 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1270 **The Speaker:** The question I put to the House is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 15, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1275 Clause 15 requires the court to give reasons for: (a) any rulings under the Bill about whether any item of evidence is evidence of a person's bad character; and (b) any ruling about the admissibility of evidence under clause 6 or clause 7.

Mr Speaker, I beg to move that clause 15 do stand part of the Bill.

1280 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1285 **The Speaker:** I put the question that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 16.

**Dr Allinson:** Mr Speaker, clause 16 provides definitions for some of the terms used in the Division.

1290 I beg to move that clause 16 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1295 **The Speaker:** I put the question that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 17, Dr Allinson.

1300 **Dr Allinson:** Thank you, Mr Speaker.

1305 We now come to Division 2 of this Part of the Bill, which deals with hearsay evidence in some detail, in part restating the common law exceptions to the general rule under which hearsay evidence is inadmissible in criminal proceedings. The Division effectively constitutes an overarching code on the admissibility of hearsay evidence, although some existing statutory provisions in the area are retained as free-standing rules.

Clause 17(1) provides four bases for hearsay to be admissible, namely: (a) a provision of this Division of the Bill or other statutory provision makes it admissible; (b) any of the previous common law rules preserved by clause 21 makes it admissible; (c) all parties in the case agree

1310 that it should be admitted; or (d) the court is satisfied in the interests of justice that it should be admitted.

Clause 17(3) makes it clear that nothing in the Division prevents a court from excluding a piece of evidence on grounds which do not relate to the fact that it is hearsay. For example, a Deemster may take the view that, although it would otherwise be admissible, a piece of evidence is more prejudicial than probative and may therefore determine not to admit it in any event.

Mr Speaker, I beg to move that clause 17 do stand part of the Bill.

**The Speaker:** Miss Bettison.

1320 **Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I call on the Hon. Member for Onchan, Ms Edge.

**Ms Edge:** Thank you, Mr Speaker.

1325 I am finding in principle that hearsay evidence is extremely concerning on a small Island, where a person's reputation or character can be tainted on the hearsay of someone else. Are we really taking away a person's fundamental basic right to face their accuser?

1330 Can the hon. mover please advise under what criteria hearsay evidence can be gathered and what governs this? Can they scour social media? Can they listen to a mate? Do we believe that vexatious or malicious evidence can be put before a judge?

Concern is turning in the UK on whether the changes to clause 11 of the UK Criminal Justice Act 2003 that the hearsay rules are contrary to the idea of facing your accuser ... I would appreciate if the hon. mover can advise whether it is an infringement of common law and civil liberty rights, taking into consideration we live in a small jurisdiction. We should have the right laws for our Island, not becoming followers of other jurisdictions, and I would just like the hon. mover to respond to that.

**The Speaker:** If no other Member wishes to speak, I will call on Dr Allinson to reply.

1340 **Dr Allinson:** Thank you, Mr Speaker.

I think the Hon. Member makes a very valid case. The parts of this Bill that we are bringing in very much mirror the Criminal Justice Act 2003 which was brought in across the water. What she is concerned about is the inherent provision of innocent until proven guilty, but also we need to balance that with the way that justice is delivered, and in a time when we have different crimes, different ways crimes are committed, it is important that a jury is provided with the right evidence in the right way to make a valid judgment.

1350 Whilst she has concerns about the admissibility of hearsay evidence, if I can draw her attention to clause 17(1), it explicitly says that all parties of the proceedings agree to it being admissible or the court is satisfied that in the interests of justice it has to be admissible. So what we are doing here is not creating a *carte blanche* for hearsay evidence to be brought in, but we are replacing judge-made laws with laws made by the legislative system to actually ensure that a jury is provided with the right levels of evidence that it needs to arrive at the correct decision, but already having the safeguards in there that hearsay evidence cannot be misused just for the sake of either the prosecution or the defence.

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**The Speaker:** The question I put to the House is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Dr Allinson.

1360 **Dr Allinson:** Thank you, Mr Speaker.

Clause 18 deals with the concepts of 'statements' and 'matters stated' for the purpose of this Division of Part 2.

Mr Speaker, I beg to move that clause 18 do stand part of the Bill.

1365 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Member for Middle, Mr Shimmins.

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**Mr Shimmins:** Thank you, Mr Speaker.

I would like to ask the Member whether social media posts and messages are covered by clause 18, for the avoidance of any doubt.

1375 **The Speaker:** I call on Dr Allinson to reply.

**Dr Allinson:** Thank you, Mr Speaker.

I would like to thank the Hon. Member for bringing this up, as he did previously. I can confirm that the interpretive key is that whether it is a text via a mobile or material sent or extracted from social media, it merely has to be a representation of fact or opinion made by a person by whatever means. The clause goes on to add that this could also include a sketch, photo-fit or other pictorial form, so if a person is accused of making a threat, or the intention is to cause another to believe they are going to be threatened, an inappropriate emoji could be constituted as such a statement.

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We have previously discussed the problems with horizon scanning, looking at different parts of legislation that has been brought across from other jurisdictions and making sure that they are adopted, and that is very important but also it is extremely important to make our laws future proof as much as possible, and so I can confirm and guarantee to him that, with the advent of social media and different ways of communication, this law will be able to take that, if necessary, as evidence in a criminal procedure.

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**The Speaker:** The question I put to the House is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19, Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

We come, then, to the principal categories for admissibility of hearsay evidence, which are set out in this clause and in clauses 20 to 23.

Clause 19 deals with circumstances in which a witness is unavailable to give evidence either because the witness is dead, unfit to give evidence because of bodily or medical condition, outside the Island in circumstances where his or her attendance cannot be reasonably secured, cannot be found, or has been placed in a state of fear such that he or she will not give evidence.

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'Fear' in this context is given a very wide meaning. This is often a factor leading to the collapse of trials, but there are appropriate safeguards within the section, in subsection (4), to ensure that leave to adduce hearsay evidence in reliance on the basis that the maker is fearful is given only in appropriate circumstances.

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Mr Speaker, I beg to move that clause 19 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 19 stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

1415 Clause 20, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1420 One of the longstanding exceptions to the hearsay rule relates to documents which are generated in the course of a trade, business or performance of an official function by one person relying on information given him by another – for example, a registrar of births and deaths – and clause 20 maintains this rule.

Mr Speaker, I beg to move that clause 20 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1430 Clause 21, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1435 Clause 21 preserves a variety of common law exceptions from the general hearsay rule. They were the product of judicial creativity in particular circumstances where it was recognised the normal hearsay rule would create injustice and be completely impracticable.

Mr Speaker, I beg to move that clause 21 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I call on the Hon. Member for Ramsey, Mr Hooper.

1445 **Mr Hooper:** Just one brief question for the hon. mover. Clause 21(3), 'Reputation or family tradition', makes specific reference to proving or disproving pedigree or the existence of a marriage: I just want to be clear if this also includes civil partnerships.

**The Speaker:** I call on Dr Allinson to reply.

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**Dr Allinson:** I would like to thank the Hon. Member for his comment there. In terms of the pedigree or existence of a marriage, it is my interpretation that marriage would include civil partnerships.

1455 **The Speaker:** The question I put to the House is that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 22 and 23, Dr Allinson.

**Dr Allinson;** Mr Speaker, with your permission, I will deal with clauses 22 and 23 together.

1460 Clause 22 deals with the status and admissibility of previous inconsistent statements made by a witness, and clause 23 with previous consistent statements which are admitted to dispel a suggestion that a witness is making his evidence up late in the day. Both reflect existing rules of law.

I beg to move that clauses 22 and 23 do stand part of the Bill.

1465 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1470 **The Speaker:** I put the question that clauses 22 and 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 24, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1475 The abolition of the general rule on inadmissibility of hearsay gives rise to a further issues for consideration, namely what to do about multiple hearsay where, for example, A, who saw what happened, tells B, who in turn tells C, and the only person in a position to give evidence now is C who has the story from someone who could only give hearsay evidence himself or herself.

1480 Clause 24 permits the evidence to be admitted but only on the basis that either: (a) one of the statements in question is admissible under the rules in clauses 20, 22 or 23; or (b) the parties agree; or (c) the court is satisfied that the evidential value is so high that the interests of justice require the evidence to be admissible.

Mr Speaker, I beg to move that clause 24 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 24 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
1490 Clause 25, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1495 Clause 25 deals with exhibits admitted into evidence under clause 22 or 23 and provides that unless the Deemster considers it appropriate, or the parties agree, the exhibit should not accompany the jury when they retire.

I beg to move that clause 25 do stand part of the Bill.

**The Speaker:** Miss Bettison.

1500 **Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
1505 Clause 26, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1510 Clause 26 makes it clear that a statement can be admitted in evidence under clauses 19, 22 or 23 if, but only if, the person who made it had the required capability – that is he or she must be capable of understanding questions put to him or her about the matters in issue and giving answers to those questions which can be understood. A similar rule applies in relation to evidence furnished under clause 20 but in modified form to address the fact that the provider of the information may not be readily identified. In such a case the court has to be satisfied that the provider of the information did not lack the required capability.

1515 Finally, subsection (4) makes it plain that proceedings to determine the admissibility of evidence to which clause 26 applies are to take place in the absence of the jury, that expert

evidence may be received for the purpose of determining the issue and that the party seeking to rely on the evidence has the burden of proving its admissibility.

Mr Speaker, I beg to move that clause 26 do stand part of the Bill.

1520 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I call on the Hon. Member for Onchan, Ms Edge.

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**Ms Edge:** Thank you, Mr Speaker.

I wonder if the hon. mover could just clarify, it is clearly stating about capability and how that is reached and is capacity taken into account on this, the person's mental capacity or their physical capacity to be able to deal with this?

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**The Speaker:** I call on Dr Allinson to reply.

**Dr Allinson:** Thank you, Mr Speaker.

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I would like to thank the Hon. Member for asking for that point of clarification. Unfortunately on the Isle of Man we still lack a formal Capacity Act and so what this clause gives is the courts discretion if there is a question of the capability to actually get that expert evidence, whether that necessarily be from a psychiatrist or a doctor, to prove that that person is capable of giving that evidence. So I would like to reassure her that there are steps within this legislation to try to ensure, as much as humanly possible, that the evidence is provided by the right person in the right way with the right safeguards.

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Thank you.

**The Speaker:** I put the question that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 27, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

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Clause 27 deals with the important issue of credibility. Precisely because the new rules admit material which would not have previously been admitted, it is important to balance the scales by affording the court the opportunity to examine the reliability of the evidence which is admitted under the new rules.

Mr Speaker, I beg to move that clause 27 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clauses 28 and 29, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

With your permission I propose to speak to clauses 28 and 29 together as they both deal with circumstances where a Deemster may stop the proceedings.

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Clause 28 deals with the situation where a Deemster concludes that the case relies in whole or in part upon hearsay evidence, but the Deemster finds the hearsay evidence unconvincing to

the point where any resulting conviction would be unsafe. In such circumstances the Deemster may discharge the jury and, if appropriate, order a retrial.

1570 Clause 29 deals with the court's general discretion to exclude hearsay evidence where, although admissible, the case for excluding the evidence, including the likelihood that to admit it would cause an undue waste of time, substantially outweighs that for admitting it. Finally, subsection (2) of the clause makes it clear that nothing in this particular Division limits or otherwise affects the court's power to exclude evidence.

1575 Mr Speaker, I beg to move that clauses 28 and 29 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1580 **The Speaker:** I put the question that clauses 28 and 29 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 30, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1585 Clause 30 deals with the use of analyses and other information prepared by one person as the basis of an expert's report. If the conditions set out in subsection (1) of the clause are satisfied, the expert may base his or her opinion on the content of the material prepared by the other person and that material becomes admissible evidence in the proceedings.

Mr Speaker, I beg to move that clause 30 do stand part of the Bill.

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**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1595 **The Speaker:** I put the question that clause 30 do stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 31, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1600 Clause 31 deals with the admissibility of a confession by one defendant in the case of his or her co-accused. It is open to the court or any other party to assert that the confession was the product of oppression or was, in the circumstances, unreliable. If that should be the case, the party seeking to adduce the confession in evidence has to demonstrate that it is more likely than not that the confession was not the product of oppression, or is not unreliable. This clause effectively dispenses with one of the absurdities of the law of hearsay, namely that a  
1605 defendant's confession can only be looked at in determining that defendant's guilt, and not that of the co-accused.

Mr Speaker, I beg to move that clause 31 do stand part of the Bill.

1610 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1615 **The Speaker:** I put the question that clause 31 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 32, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1620 Clause 32 deals with evidence produced by a machine, but which necessarily depends on the accuracy of information supplied to it by a human being. Clearly, a machine cannot give oral evidence itself, and the information upon which it relies must be proved separately. Subsection (2) makes an important qualification: the clause does not affect the normal presumption that, in the absence of contrary evidence, a mechanical device, such as a breathalyser, is working properly.

1625 Mr Speaker, I beg to move that clause 32 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

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**The Speaker:** I put the question that clause 32 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 33, Dr Allinson.

1635 **Dr Allinson:** Thank you, Mr Speaker.

Clause 33 addresses the question of evidence to be given at a retrial in the Court of General Gaol Delivery. If evidence was given orally at the first trial, it must be given in that way in the second unless one of three conditions is met, namely: the parties agree; secondly, the conditions in clause 19 are met; or thirdly, the witness is unavailable otherwise than in circumstances mentioned in clause 19(2), but the court decides that it is in the interests of justice of it to be admitted.

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Mr Speaker, I beg to move that clause 33 do stand part of the Bill.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 33 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

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Clause 34, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

Clause 34 deals with the ways in which the content of statements in documents can be proved: either the document, a copy or an extract may be admitted provided it is authenticated in a manner approved by the court. There are numerous circumstances in which it is desirable that a transcript or a redacted copy of a document should be admitted, and this clause permits this to happen.

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Mr Speaker, I beg to move that cause 34 do stand part of the Bill.

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**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 34 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

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Clause 35, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1670 Clause 35 defines certain terms used for the purposes of the Division and also makes it clear that where a defendant is charged with two or more offences, the Division applies as if each were charged in separate proceedings.

Mr Speaker, I beg to move that clause 35 do stand part of the Bill.

1675 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 35 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

1680 Clauses 36 and 37, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

We come to Division 3 of this Part. With your permission I propose to deal with clauses 36 and 37 together as they both deal with video evidence.

1685 Clause 36 deals with the admissibility of a video recording which has been created before a trial, of a witness's evidence in criminal proceedings relating to an offence which is triable on information. The witness must adopt the video recording for it to be admitted. The clause does not apply to a recording of a statement made by a defendant.

1690 Clause 37 contains supplementary provisions about the admission of video recordings under clause 36.

Mr Speaker, I beg to move that clauses 36 and 37 do stand part of the Bill.

**The Speaker:** Miss Bettison.

1695 **Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 36 and 37 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

1700 Clause 38, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

Clause 38 places a long-standing rule about the use by a witness of contemporaneous notes to refresh his or her memory of events on a statutory basis. It also deals with the use of a transcript of an earlier oral statement.

1705 Mr Speaker, I beg to move that clause 38 stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1710 **The Speaker:** I call on the Member for Ramsey, Mr Hooper.

**Mr Hooper:** Thank you, Mr Speaker.

1715 This section refers to earlier oral statements made or a transcript, but only of a sound recording. I would just like some clarity; what happens if the original recording was a video recording? Could a transcript of that be used to refresh the individual's memory? Would they be able to refer back to a video recording that was made a transcript of that video recording?

**The Speaker:** I call on Dr Allinson to reply.

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1725 **Dr Allinson:** I would like to thank the Hon. Member for his precise interpretation of the legal document. From my interpretation the ability to use documents to refresh memory would include documents which referred to a video confession as well as an auditory confession or a written confession. So whilst I am quite happy to refer back to the Hon. Attorney General, what we are doing here is allowing the use of documents to refresh memory based on previous evidence.

1730 **The Speaker:** The question I put is that clause 38 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.  
Clause 39, Dr Allinson.

1735 **Dr Allinson:** Thank you, Mr Speaker.  
Clause 39 deals with the interpretation of certain terms used in Division 3; I beg to move that clause 39 do stand part of the Bill.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1740 **The Speaker:** I put the question that clause 39 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.  
Clause 40, Dr Allinson.

1745 **Dr Allinson:** Thank you, Mr Speaker.  
We come finally to clause 40 which repeals statutory provisions relating to and dealing with admissibility of certain classes of evidence in criminal proceedings. The provisions repealed are replaced by provisions in the Bill.

1750 Before moving the adoption of this clause, Mr Speaker, I am grateful to my hon. friend, Mrs Caine, the Member for Garff, who has agreed to move the amendment set out on the Order Paper, with your leave.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

1755 **The President:** I call on the Hon. Member for Garff, Mrs Caine, to move amendments 1 and 2 on the Order Paper.

1760 **Mrs Caine:** Thank you, Mr Speaker.  
I rise to move the technical amendment standing in my name by indicating that clause 40 was amended in the Upper Chamber so as to complete the repeal of legislation in sections 1 to 6 of the Criminal Justice Act 1991 relating to the rules on hearsay, which are replaced by this Bill.

1765 It also repealed the definition of 'confession' in section 10, on the basis that the instances of the term in Chapter 1 of Part 1 of that Act are all repealed by the Bill. However, a definition of this term is still required for the purposes of Chapter 2 of that Part. At present, section 19(1) simply refers back to section 10, but the amendment I am moving inserts a full definition of 'confession' in that section instead of the existing cross-reference because the latter would no longer work.

1770 My amendment therefore inserts a new subsection (1) into clause 40 after line 13, giving effect to this. The existing repeals then become subsections (2)(a), (b) and (c), and the heading for the clause in line 13 is replaced to reflect its new content.

Mr Speaker, I beg to move the amendment to clause 40 standing in my name:

*Amendments to clause 40*

1. Page 37, in line 13 (the heading to the clause) for 'Repeals' substitute 'Consequential amendment and repeals'.

2. Page 37, after line 13 insert—

«(1) For section 19(1) of the Criminal Justice Act 1991 (meaning of 'confession' for Chapter II of Part I) substitute—

'(1) In this Chapter "confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.'».

In consequence of this amendment, renumber the existing text of the clause as subsection (2).

**The Speaker:** I call on the Hon. Member for Garff, Mr Perkins.

1775 **Mr Perkins:** Thank you, Mr Speaker.

I beg to second the Hon. Member's amendments.

1780 **The Speaker:** If no Member wishes to speak, I will put the question, firstly, that amendments 1 and 2 together be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting, finally, that clause 40 as amended stand part of the Bill: those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That brings us to the conclusion of the clauses stage of the Criminal Evidence Bill 2018.

1785 That also brings us to the conclusion of the Order Paper, and we therefore stand adjourned until 10 o'clock on 4th December in our own Chamber.

Thank you.

*The House adjourned at 11.38 a.m.*