

**4.2. Sexual Offences and Obscene Publications Bill 2019 –
Second Reading approved**

Dr Allinson to move:

That the Sexual Offences and Obscene Publications Bill 2019 be read a second time.

The Speaker: Next Item, Sexual Offences and Obscene Publications Bill 2019 and I call on the Hon. Member for Ramsey, Dr Allinson to move.

1155 **Dr Allinson:** Thank you, Mr Speaker.

I would like to thank the Minister for Home Affairs, the Hon. Bill Malarkey for asking me to take this important piece of legislation through Tynwald.

1160 We live in a country with the lowest crime rate in the British Isles. This sense of safety and absence of fear is a vital foundation of our society. It allows our population to thrive, our young people to develop and attracts people from around the world searching for a better way of life.

Despite this low crime rate, we are not immune from the harm of sexual offences, crimes which represent an expression of power rather than desire and which leave victims hurt, damaged and often robbed of their own self confidence.

1165 In his latest Annual Report, the Chief Constable discussed the rise in reported sexual offences on the Island over the last few years. He discussed the way that when crimes were classified according to their impact and severity, sexual offences were by far the most harmful. The Constabulary continues to vigorously investigate such crimes and bring the perpetrators to justice. This Bill seeks to update and strengthen the tools available to them to do so and to reinforce a trust in the criminal justice system which will encourage more victims to come
1170 forward.

The latest crime survey statistics have shown that one in five women in England and Wales have experienced some type of sexual assault, including attempted assault, since the age of 16 and just under 4% of men have experienced sexual assault in their adult lives.

1175 Mr Speaker, it is vital that as a society we clearly state these crimes must stop and as a parliament we pass legislation to outlaw such offences and provide reassurance to victims that they will be treated appropriately by the criminal justice system, their truth heard and the perpetrators of these acts prosecuted accordingly.

1180 We last updated our legislation 27 years ago. The previous 1967 Sexual Offences Act was outdated and victimised the people of our Island according to their sexuality. The 1992 Act was a step forward but I would argue that Tynwald should regularly review such legislation as, whilst sometimes technical in nature, it reflects our current society's morals, ethics and world view.

1185 As we debate and refine this Bill it will touch on offences and impacts that may have been experienced by you, your families, your constituents and those people listening to our deliberations. This is one of the first major pieces of criminal law this Tynwald has had to deal with and I hope we can proceed with dignity and sincerity. I also hope that those affected by sexual offences can receive help and support from the excellent organisations we have on the Island.

1190 The Bill in front of you is based on the United Kingdom Sexual Offences Act 2003. It is important that our criminal legislation corresponds to that of the adjacent isle as sometimes sexual offences can cross between borders, and their detection and prosecution involves multiple jurisdictions.

1195 It also repeals and updates the Obscene Publications and Indecent Advertisements Act 1907. With new technologies the ability to produce, sell and share indecent images is greater than ever. There is now a real crossover into sexual offences, especially in relation to indecent images of children and other forms of extreme pornography. Often these images depict graphic sexual offences and can encourage their commission.

1200 I would like to thank all the staff at the Department of Home Affairs, the Courts, Constabulary and Attorney General's Office for their help, advice and assistance in drafting this Bill. I would also like to thank Mr Hooper and Mr Speaker for their engagement and help during the consultation period and afterwards in terms of refining some of the detailed clauses. After looking at the application of laws in England and Wales we have also incorporated concepts from Scotland and Australia, and consulted law experts in the United Kingdom to enable our legislation to be as relevant to our Island as possible.

1205 One of the key issues raised by this Bill is that of consent. Consent simply refers to a person's capacity to make a choice. It cannot be merely implied and in terms of an alleged sexual offence has to be proved. The Bill specifically details presumptions that may be challenged by the defendant but makes a clear statement about body autonomy and consensual sexual acts.

1210 This substantial Bill comprises 14 Parts explained by a comprehensive explanatory memorandum. Part 1 is the introduction to the Bill, and defines a 'child' as a person under the age of 16, unless specified otherwise in the Bill. Sixteen-year-olds are legally able to vote, marry and join the British Army yet they cannot buy alcohol or cigarettes until 18. The criminal justice system is reviewing the way it classes and treats young people, especially men up to the age of 25. There are clauses in this Bill where the Department felt an older age was more suitable and I look forward to discussing this aspect further with Hon. Members as our debate on the individual clauses develops.

1215 Part 2 deals with sexual offences and describes the act of rape, penetration, sexual assault, child sex offences and grooming. The wording of these clauses is blunt and graphic. In criminal law this is important in order to steer the courts and jury to determine if an offence was committed beyond reasonable doubt.

1220 Part 2 also deals in detail with abuses of a position of trust and familial child sex offences which can often remain hidden behind a veil of denial and disbelief. It is important that the victims of these crimes are encouraged to come forward and their voices are heard.

1225 The Bill goes on to deal with offences committed against vulnerable adults including those with a mental disorder and is specific in its description of the roles and responsibility of care workers.

The exploitation of sex workers is dealt with. Loitering and soliciting remain an offence as does the keeping of a brothel. Clear powers are vested in the Police to close such premises, if necessary, for the public good.

1230 There is expanded and clear guidance on offences relating to indecent photographs of children. In a digital age the terms 'image' and 'pseudo-image' are used and the increasing use of the internet to circulate images and commission offences is recognised.

1235 As recommended by the United Kingdom Independent Inquiry into Child Sexual Abuse, clause 86 makes it mandatory that professionals such as teachers, social care workers and health care professionals notify the Police promptly if they discover that a child appears to have been subjected to sexual abuse. This duty strengthens formal routes of information-sharing and clearly defines the boundaries of confidentiality.

Part 3 of the Bill details offences related to indecent matter which is publicly displayed but exempts displays within art galleries or when included in the performance of a play or licensed film.

1240 Part 4 deals with the separate issue of extreme pornographic images. These may have been created through the commissioning of an offence. There is increasing evidence that repeated exposure to such images can also encourage or initiate such offences. Due to this concern it is entirely appropriate that there is a separate offence for the possession of such images, although the Bill details images which may be excluded if they are all or part of a classified work.

1245 Part 5 discusses the tests of obscenity to be applied to publications and advertisements which may be thought by some to be obscene. There is exploration of the existing classification system for moving images and a clause detailing those works which may be defended as being of public good.

1250 The reality today is that with the preponderance of mobile phones, most people now have a camera in their pocket. Part 6 of the Bill deals with the crime of voyeurism and recording an intimate image without consent. Although the press has used such terms as ‘upskirting’ and ‘revenge porn’ these are inaccurate and sometimes minimise the effect such actions can have on the victim. In the Bill we refer to these offences as ‘image-based sexual abuse’ to truly represent their significance.

1255 Part 7 of the Bill gives the Constabulary the power to issue a closure notice on premises used in the commission of prostitution or pornographic offences or child sexual offences on the Island. Once these have been given the constable must apply to a court for a closure order and the Bill gives clear guidance regarding the duration of such orders, the right of appeal and possible compensation.

1260 If our society is to honestly tackle the effects and damage caused by sexual offences we must provide the right access to health care and psychological help and support to victims and their families. But we must also reinforce trust in the criminal justice system for those who decide to press charges.

1265 Part 8 of the Bill grants automatic anonymity to the victims and witnesses following an allegation. It is important that the general public have confidence in the court system and the press have an important role in ensuring that justice is seen to be done. However, on a small Island there can be serious long-term repercussions for anyone mentioned in a court report and implicated in a sexual offence. For this reason, clause 138 extends anonymity to suspects and defendants as well. This anonymity is not unconditional and can be lifted by an application from
1270 the Constabulary, the prosecution or the judge themselves if deemed to be in the public interest or essential to encourage other witnesses to come forward.

The balance between the freedom of the press and personal privacy is one which needs constant review. The intention to grant anonymity for those suspected of committing sexual offences should not be seen in any way to support the erroneous myth that victims make false
1275 allegations of rape. In a comprehensive 2012 report of over 5,651 prosecutions brought for rape, the English Crown Prosecution Service found only 35 cases had been malicious. The reality is that only around 15% of those who experience sexual violence report it to the Police and that conviction rates for rape are far lower than other crimes. It is the hope of the Department that greater anonymity will encourage more victims to come forward to seek justice.

1280 There are unfortunately many myths surrounding rape, sexual assault and sexual offences. Some are based on ignorance or prejudice but others stem from misogyny. The Constabulary and Courts have made significant progress in understanding and responding to the needs of victims. It is essential that both young people and the wider population are educated about healthy relationships and consent. Part 9 of the Bill gives clear guidance about restrictions on
1285 evidence or questions about the complainant’s previous sexual history and is aimed to ensure any victim is supported during the court process.

There is also a balance which must be made between agreed fundamental human rights such as the right to privacy and the need to protect the wider public from harm. Part 10 details the notification requirements which a person can be subject to after conviction of a sexual offence.
1290 For the most serious offences, indefinite restrictions and notifications to the Police can be ordered and travel outside the Island can be monitored or curtailed. The Bill also details the powers the Police have to enter and search the home of an offender to assess and determine any further risks they may present.

Sexual Harm Prevention Orders can be made by the court to include any prohibition
1295 considered necessary to protect children, vulnerable adults or the wider general public from sexual harm. These protections can be wide ranging and include forms of employment, engaging in particular activities on the internet or travelling off the Island.

The Chief Constable may apply to the court for a Sexual Risk Order to protect the public or particular members of the public from harm from a defendant who has previously, or is likely to
1300 commit a sexual offence. In the United Kingdom these have allowed authorities to take

1305 preventative action where there is evidence that a child may be at risk of sexual abuse from a specific individual, and can be used to prevent other individuals from travelling to countries where the sexual exploitation of children is more prevalent. Whilst there have been public campaigns about their use in the United Kingdom from some civil liberty groups, their application has been measured and they continue to exist as a discretionary power in certain rare cases.

1310 Mr Speaker, as I have previously stated it is important that our legislation on sexual offences is regularly reviewed to reflect the views and experiences of our society. Previous Acts have outlawed sexual activity between men and led to a climate of persecution and fear among sections of our community.

1315 Our young people must now look incredulously at reports from our Island during the 1980s where it was an offence for a man to love another man. We will never know the harm and damage our legislation caused to those men or their families. There is no record of the number of people who took their own lives due to the strain and pressure these laws caused, or the countless Manxmen who left our Island in disgust never to return. In this very Chamber language was used by politicians at the time that has no place in any modern society. It was only due to those who spoke out against injustice and campaigned publicly that our law was changed in 1992 but the damage had been done and even today peoples' lives remain tarnished by a criminal record from a past era.

1320 Whilst intolerance against the LGBT+ community continues here and abroad, our Equality Act tries to define the society which we have become: one that embraces and values diversity and strives for tolerance and fairness. Part 11 of this Bill deals with pardons and disregards for certain offences. **(A Member: Hear, hear.)**

1325 In the United Kingdom the campaign established to pardon for historic sexual offences and publicity around the case of the late Alan Turing led to an amnesty contained in the Policing and Crime Act 2017.

It seems more fitting that in writing our new Sexual Offences Bill we incorporated this concept in the very framework which previously was used against sections of our population. The purpose of Part 11 is clearly set out in clause 211 which states it is to:

...acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences...

1330 It is intended that, as in Scotland, an automatic pardon is given to all those convicted of certain specified offences which are no longer illegal. But there may still be people on our Island who carry a criminal record from our misguided past, a criminal record which may stop them applying for certain employment or restricts their ability to move forward in their lives.

1335 The Bill before you enables a person who has been convicted of a historical sexual offence to apply to the Department to have this disregarded and removed from their records. The effects of this disregard are explained along with an appeals process.

I sincerely hope Hon. Members will see this measure as an important step forward to reconcile our past and ensure that the Isle of Man continues to strive towards becoming an equal, inclusive and progressive society.

1340 As our society becomes more diverse, our legislation needs to adapt to new concepts and challenges. Part 13 of the Bill updates our legislation to prohibit the act of female genital mutilation which is a child-safeguarding issue. This physical assault on female sexuality is still practised in some countries and has no place in a modern society. The extra provisions offered here will reinforce the existing Prohibition of Female Genital Mutilation Act 2010.

1345 Finally, Part 14 contains enabling powers to allow the Department, after full consultation with the judiciary and others, to introduce sentencing guidelines in relation to sexual offences. Our criminal justice system is now faced with offences involving hundreds of thousands of images, comprising numerous individual sexual offences often against children, in multiple

1350 jurisdictions. It is essential that there is consistency in the prosecution of justice and the sentences applied. In addition to providing guidelines about child image cases it is envisaged these powers may be exercised in relation to other sexual offences, albeit sparingly and only where the dual test is met – that is, guidelines must be in the public interest and enhance the interests of justice.

1355 Mr Speaker, I would like to thank Hon. Members for their patience today. This is a substantial and important Bill with over 230 clauses spanning 260 pages. As I suggested at the outset, such pieces of criminal law have to reflect the standards we hold as a society, standards of decency and care for those in our community who become victims of sexual abuse.

1360 Defining such standards is not an exact science, and relies on measured debate and careful consideration of the sensitive topics involved. There are already a number of amendments which need to be tabled following the publication of this Bill, but I ask all of you to take part and co-operate in the further debates on the individual clauses so that we can, as the representatives of the people of this Island, mould and craft legislation fit for the present and the future.

1365 Mr Speaker, I beg to move that the Sexual Offences and Obscene Publications Bill 2019 receives its Second Reading.

The Speaker: I call on the Hon. Member for Douglas West, Mr Malarkey.

1370 **Mr Malarkey:** Mr Speaker, I beg to second and reserve my remarks.

The Speaker: Thank you. I call next the Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

1375 I commend the mover of the Bill for the clearly very significant amount of work that has gone into this very important Bill. I fear I have not yet done it justice as I have only read through the Bill once at this stage and obviously will give it very close attention as we progress through the clauses.

1380 I would, however, make two points at this early stage and it is a very difficult area at clause 4, subsections 4 and 5 where the Bill addresses the matter of rape within marriage or civil partnership. How incredibly sensitive and difficult that matter is when it comes to proof of consent. I look forward to examining that in very careful detail, particularly with regard to subsection 5 of the same clause which says that the maximum penalty here is life imprisonment. So that from my perspective will enjoy very close deliberation.

1385 I also at first read had some concerns with regard to clause 132 where it talks about exemption from liability for certain damages with regard to the Constabulary, and when I read about the matter in the UK that has currently gone through, known as the ‘Nick’ affair – where this character brought extraordinary claims against people like, for example, the Chief of General Staff, whose reputation was utterly destroyed, and whose wife has done her absolute damndest to recover her husband’s reputation – is moving now to a successful conclusion of that.

1390 Frankly, the failure of the Police in regard to that whole case brings me to a point of concern about removal of liability with regard to the Police. I look forward to examining that in very close detail as well.

So those are the only two points at this stage that I wish to make.

1395 But also, because it is the Second Reading, I would like to make a general point. It is a strange description but I hope it has some traction.

1400 When I read this Bill, an image came to mind of somebody standing at a sink in a kitchen with an overflowing sink trying to turn the tap off in order to stop the flooding from happening. Yet at the same time – I suppose it is post-Laxey floods, really – one imagined that while the person was concentrating on trying to stop the sink overflowing there was actually a flood outside and a

huge flood came through the door, and had people standing up to their knees in cold water. The reason I described that strange analogy is that I fear when we are dealing with this Bill there is a whole huge area that we are not concerned with, and that is access to pornography on the internet for children – which must be a real worry to us all.

1405 So I wonder whether, in his remarks in responding to my comments, he would recognise the fact that there is little or nothing in here about control of internet pornography accessible by children, and does he wish to express concern about that area, and what he must have obviously considered in this regard when he was putting this Bill together in the first instance?

Thank you, Mr Speaker.

1410

The Speaker: I call on the Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

1415 I welcome the legislation before us today. I believe this Bill brings significant modernisation of our laws, in keeping with a digital society necessary for 21st century life and modern technology.

1420 Clauses enabling pardons for people convicted of homosexual activity prior to the 1992 legalisation are particularly welcome, and I commend the Department of Home Affairs for ensuring people impacted now have the ability to receive an official pardon, even accepting that for many it will come too late. Can I ask, though, for clarity why pardons are automatic for historical homosexual offences but people must apply to the Department of Home Affairs for their criminal record to be wiped clean?

1425 Among the many positive provisions, I do have some concerns over section 138, in that people charged and even on trial for rape and certain other sexual offences will be granted anonymity unless, on coming to trial, the judge is satisfied that this would impose ‘a substantial and unreasonable restriction upon the reporting of proceedings at the trial’. This overturns the whole principle of open justice and would seem to be a significant precedent to set. The default position in rape and sexual offences from henceforth, if this law passes, will be no public reporting of any named individual by any media or members of the public during the trial unless
1430 a judge is persuaded that naming the defendant is in the public interest.

If it is considered that going on trial for rape and serious sexual offences is so damaging to a person’s reputation, what about other serious offences of violence or even murder? Will those defendants not equally have a case that their identity should also be withheld, that they should also have the protection of anonymity unless and until found guilty of the charges against them?

1435 I can accept that there is a particular stigma with sexual offences, but I wonder if this is a case of the Isle of Man believing we are special, given the size of our Island community, and that protection of the individual outweighs the long-established tenets of open justice. Is this a result of being in a digital age, when news is communicated around the world in minutes thanks to social media platforms; and the digital record of one’s crimes and the details of reported court cases can be seen forever with a simple internet search? But that is also the case for court proceedings in other jurisdictions.

1440 Could we conceive of a time in the future when media organisations will be prevented from naming suspects, as well as the alleged victims and underage defendants, in all Isle of Man court cases because of the perceived damage to someone’s reputation in the event they are found not guilty?
1445

1450 I can foresee a time when overstretched journalists do not bother to attend court and perform that duty of reporting the detail of both prosecution and defence cases, because the human interest simply will not be there with unnamed defendants. So crimes could go unreported, even when defendants are convicted of offences. The details of those crimes as relayed in court may not be reported because it has not been worth the while of the media to sit through several days of evidence of anonymous people.

1455 What is the opposite of open justice? Because open justice, that citizens have taken for granted for centuries, of justice being seen to be done, is under threat here. Will a judge consider that the likely reputational damage to a rich, powerful or famous individual is more significant than a lesser-known person in our community? Could it lead to one law for the rich and another for ordinary working class?

1460 I do have deep concerns that this would set an unwelcome precedent and that, even when equally applied, the right to anonymity for defendants throughout their trial will put the Isle of Man at risk of being considered a jurisdiction that is less transparent and one that does not uphold the principle of open justice.

Can I ask the hon. mover to confirm whether any media organisations were consulted or have commented about this significant change?

Thank you, Mr Speaker.

1465 **The Speaker:** I call on the Hon. Member for Douglas North, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I thank the Department and the Hon. Member for Ramsey for bringing this forward.

1470 I am sure many of us find it hard to understand a lot of the content in here but generally I think it is about trust and stealing people's future for their own personal gratification must be stopped, it is abhorrent. It is very important that these adverse childhood experiences are helped. They have a damaging effect; a hugely damaging effect on the rest of their lives.

1475 It will be hard to hear and a lot of these words and phrases will be difficult to listen to, but it is important that we debate them. We must do all that we can to protect the young people from these perpetrators and it is right that we update and review this legislation.

Thank you.

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

1480 **Mr Hooper:** Thank you very much, Mr Speaker.

1485 Firstly, I would like to welcome the automatic pardon that has been included in here and the inclusion of a disregard process. I think both of those things are long overdue and I would like to congratulate the hon. mover on this aspect of the Bill. I did have the same question as the Hon. Member for Garff, however, about this dual process and I would just appreciate some clarity on that, if possible.

I would like to thank the Hon. Member and the officers from the Department and from the Attorney General's Chambers for the time they have spent over the summer going through this Bill with me so I can get a bit more clarity on this.

1490 We all know how important this legislation is and I think the hon. mover has set out very well why we need this Bill and why we need to do this update and this modernising of the legislation, so I am not going to dwell on that. Instead, I am just going to talk very briefly about the areas where I have some concerns in this Bill. As was mentioned in the opening remarks, this is a huge piece of criminal legislation and it is absolutely essential that we get this right.

1495 To start with, right at the start in the definitions section of the Bill it defines a 'vulnerable adult' as somebody over the age of 18. But in very many cases throughout the Bill a 'child' is somebody under the age of 16. So there are circumstances where a vulnerable adult is not being treated as a child or a vulnerable adult, they are being treated as neither. So there are a number of instances throughout the Bill where there is the potential as someone who is vulnerable to fall through the cracks or protections that are built into the Bill, because they are not being classified as a child and entitled to those protections, and they are not being classified as a vulnerable adult and entitled to those protections.

1500

This is 16 and 17-year-olds I am talking about. There is a real risk that people at that age will fall through the cracks, and this is repeated throughout the Bill and I intend to pick this up with the hon. mover separately on the specific instances, but I think there are still a number of them.

1505 The first major gap, I think, in this Bill is in the start of Part 2, specifically clauses 4 to 7. They do not cover the concept of something called 'forced to penetrate'. This is instances where a female is the primary perpetrator of a rape against a man or where a man is forced to engage in sexual activity without consent.

1510 There is an offence in the Bill and it is called 'Causing a person to engage in sexual activity without consent'; but, apart from that, there is no acceptance that this offence is rape. In the Australian state of Victoria there is a specific offence of rape by a compelling penetration – it is missing from our Bill.

1515 There is a recent study by a Dr Siobhan Weare, a lecturer in law at Lancaster University Law School, which is entitled, 'Experiences of men forced-to-penetrate women in the UK: Context consequences and engagement with the criminal justice system.' She summarises the legal problem quite succinctly so I will quote briefly from that report:

Participants were aware that the current legal definition of rape excludes FTP cases. This is because the legal definition in section 1 of the Sexual Offences Act ...

– which are provisions, Hon Members, that are repeated here –

... requires penile penetration of the victim's anus, vagina or mouth by the perpetrator. Therefore, only men can be recognised as principal offenders of rape ... Participants were not, however, aware that what they experienced was already criminalised under section 4 of the Sexual Offences Act.

– which is the section I have just talked about. But:

As discussed at the beginning of the report, this is a very different offence with a different sentencing regime. Suggestions for law reform were put forward by participants ... When participants were asked how they labelled their [FTP] cases the most frequently used label was 'rape'. There is therefore a clear disconnect between how male [FTP] victims label their experiences, and how the law does so.

1520 So highlighting that in this draft Bill, rape carries a life sentence causing a person to engage in sexual activity without consent has a maximum sentence of 10 years. That is a substantial difference. The report concludes:

The importance of appropriately labelling experiences of sexual violence within the criminal law is well-recognised, and therefore serious consideration needs to be given to reforming the law of rape to incorporate FTP cases. There are multiple ways this could be done, including the introduction of a completely gender-neutral definition of rape, or the introduction of a new offence of rape by compelled penetration ...

1525 This issue matters. I would like to ask the Hon. Member moving the Bill that he gives these proposed changes serious consideration and then either makes these changes or comes back to this Hon. House and explains to us why these cases are deserving of less serious criminal penalties when the victims themselves most often classify their experiences as rape.

1530 Clauses 12 to 16, these are later clauses. Later clauses after this in respect of children actually flip an evidential presumption. Clause 21 basically talks about if a person is under 18 it is on the defendant to prove they did not reasonably believe that the person they were engaged with was a child. But for some reason in the earlier clauses this evidential flip is missing. So it would seem that the prosecution has to make this case. I would like to understand from the Hon. Member why there is a difference in treatment here. From my perspective, the Bill needs to be consistent, either it should be of the onus to prove consent should be on the defendant or it should be on the prosecution. But I would like to think it would be consistently treated throughout the Bill.

1535 One of the areas in the Bill where 17-year-olds I think are being poorly treated or, rather, not considered properly, is in clauses 18 and 19, sexual grooming – 'Meeting a child following sexual

grooming'. it would seem that it is impossible for a 17-year-old to commit these offences. I wonder if that could be confirmed at some point by the Hon. Member and explained why that decision was made.

1540 Strangely, this issue again rears its head further in the in the Bill, section 48, 'Sexual exploitation of children'. Again, I would like an understanding really, maybe not today, I appreciate these are quite technical points, but if the Hon. Member could circulate something following that I would be grateful.

1545 Moving a little bit further into the Bill, I think there are some problems with what is defined as sexual exploitation in the Bill. So Section 52 talks about sexual exploitation as where, 'An indecent image of a B' – B being a child – 'is recorded.' There is no age reference there. So it means that if two consenting 17-year-olds or two consenting 16-year-olds in a relationship where one takes an intimate image of another they have now committed an offence, simply by taking the image.

1550 By taking the image the law recognises they have sexually exploited their fully consenting partner. Now, I suggest that this is slightly ridiculous, and I would like the Hon. Member to maybe consider fixing this. Given the risks involved, I fully appreciate that this is behaviour that should not be encouraged, but it should not be criminalised.

1555 Moving to section 57, there is a very broad interpretation in the Act of the term 'prostitution', simply defined as somebody who 'offers or provides sexual services'. Now, turning to Mr Robertshaw's earlier remarks, does this include somebody who is making pornography? Surely that is someone providing a sexual service. I have no idea if this is an industry on the Island and I do not know whether it is something that should be encouraged or discouraged, and perhaps the Enterprise Minister might wish to weigh in on that. (*Laughter*)

1560 But I think we could all agree that whatever the case, this is not something that should be criminalised. What about regular films that have sexual scenes in them? An actor being paid to perform a sexual scene – is this covered by the term 'sexual services'? It does not seem to be defined anywhere and from the research I have done it seems to be interpreted quite broadly across the UK. I think some clarity would be appreciated here because the same goes for
1565 instances of people operating a webcam service or a chatline, I suppose. Again, I have no idea whether this is happening on the Island, but whilst it might be something you wish to discourage it is not something you want to criminalise.

I would like to talk briefly now about the imagery-based offences in the Bill, because I am concerned at the very specific way that Division 16 in the Bill deals with imagery. It is an offence
1570 to have an indecent image of a child in your possession, tick. It is an offence to take, make distribute or show an indecent image of a child, tick. Is it an offence to simply view the image off a screen or off a livestream?

Now I have asked this question and I have been told that case law says yes, it is treated as making an image when you stream it, when it appears on your computer. But I am not
1575 comfortable leaving this up to case law. I think there should be a specific and clear reference in the Bill to streaming, to ensure that the intent of the law is clear when it is further interpreted by the judiciary.

It is also quite relevant when you get into Section 98, it is even more relevant actually because that section appears to make it an offence to possess extreme pornography but not to
1580 *make* extreme pornography, which seems to mean the case law about streaming would not even apply in that circumstance. So I think streaming needs to be factored into the law because it does not seem to have been properly and consistently addressed.

I would also like to ask the hon. mover if he could perhaps clarify what 'distributing an image' means in practice? Does it have to be the whole image or something identifiable as an image?
1585 The reason I ask this is quite straightforward. Imagine if you will a jigsaw with a picture of a cat in a field. Now, imagine I have made a hundred of these identical jigsaws. It is possible for one person to go to a random selection of these jigsaws and remove randomly selected pieces to make their own jigsaw image. Imagine if they are doing this after flipping the jigsaws over.

1590 Without looking at the image itself, they will not know which pieces of the image came from
which jigsaw; nor from which person they have taken; nor from which section of the image they
are actually taking – not until they have reconstructed the whole jigsaw and flipped it over. And
that is basically how peer-to-peer file sharing works, although in the digital world pieces are
copied not removed.

1595 So I would like to ask: has any one of those hundred people shared an image of a cat in a
field? Now, imagine that is an image of child abuse: has any one of those hundred people shared
an image of child abuse? How about the person who has just shared a corner piece of that
jigsaw? And until the entire jigsaw is put together and flipped over, has the person collecting the
pieces of that jigsaw possession of an image? What if they stopped halfway through and only
had enough jigsaw to, say, make the field, not the child. This would then surely come down to
1600 intent, but it does not appear to be a criminal act to intend to download an image of child abuse;
only the act of actually doing it would seem to be covered by the Bill.

There is a case in the UK, *R v Dooley 2006*, which seems to make the position in respect to
peer-to-peer software quite clear but not particularly pleasant. According to CPS guidance the
words included in the Bill, 'with a view to' requires that distribution or showing must be one of
1605 the suspect's purposes but not necessarily his primary purpose. So in this case, the defendant
was aware, because of the way his computer was set up that other people could access and
share the photographs he had stored. But because he gave evidence it was not his intention and
not one of the reasons he had these images, the court held that in those circumstances
awareness the photographs were likely to be seen by others was not enough, and he was
1610 entitled to be acquitted.

The point I am making is in doing some research for this Bill it came across very clearly just
how difficult it is to prosecute people who are operating with this sort of modern technology in
light of the way these Bills are worded. It is clear the law is not strong enough here and I would
urge the hon. mover to review this as a matter of priority.

1615 Some of these sections also have a real flaw in treating anybody under the age of 18 as a
child. This section would make it a criminal offence for two 17-year-olds in a consenting
relationship to have in their possession any sexual imagery of the other unless – and this is
bizarre – they live together in an enduring family relationship. Not if they live apart in such a
relationship. This language is repeated a few times in the Bill and in the schedules and, given the
1620 hon. Mover's comment at the start about needing to make sure that our law keeps pace with
changing society and family structures, this looks to me to be an oversight which needs
correcting.

Moving on to the exposure offences, I wonder if my hon. colleague could advise why it is a
requirement for it to be an offence exposing your genitals has to be *intended* to cause alarm and
1625 distress. What if that was the effect but not the intention? 'I didn't mean to upset anyone
officer, honest'.

Equally, why is exposing others not a specific offence? It has been mentioned in previous
correspondence that I have had that it would probably be considered sexual assault, but sexual
assault requires that the touching be sexual. Now, is the act of exposing somebody always
1630 sexual? Maybe the act is not but the intended results, the intended end product might be.

Hon. Member, why is intercourse with a dead animal not an offence? Why only a live animal?
And actually it is not just a live animal: it is a live animal if I *knew* it was alive, or I did not *care* if it
was alive. I really think we need an explanation of that one.

1635 In clause 86 I would like to question why childminders are not included in the list of
professions with a duty to mandatory report. I am also aware of concerns from teaching unions
about the mandatory reporting in respect of teachers and I would appreciate a little bit of clarity
on how this clause was consulted on.

I am also concerned this clause does not apply to vulnerable people and it does not seem like
there is an equivalent provision elsewhere in the Bill that does. I would argue that the purpose

1640 of mandatory reporting of suspected sexual abuse is to protect those who cannot protect themselves. This applies to children and it must equally apply to vulnerable adults.

I would like to talk briefly about consent now. Can a child consent? Because in some circumstances a child is someone defined as under the age of 18. Section 89 simply says consent is agreeing by choice with 'the freedom and capacity to make that choice.' But earlier sections of the draft Bill talk about where a child has consented and it makes no reference to the age of that child. So I think this is a little bit unclear and risks potentially confusing the issue of the age of consent.

The definitions of consent also make no reference to mental disability, only physical disability. Clause 90 highlights if a person because of a physical disability cannot communicate consent there can be no consent. There are sections of the Bill that deal with mental disabilities but it looks like in order for them to be relevant the defendant could not be charged with rape. They would have to be charged with sexual activity with a 'person with a mental disorder impeding choice'. Now again, this matters because the sentencing is different: life for rape, 14 years for the other charge.

Section 90 also talks about threats of violence, fear of violence and using violence. There is no recognition or acceptance of the concept of coercive control, which is recognised in the Domestic Abuse Bill.

It is also more than slightly concerning that only threats of violence are covered and not other types of threats – so blackmail, for example. This is the same in clause 116 which deals with intimate image offences.

I think the issues of non-violent threats need to be covered when you are talking about consent because interestingly, section 56, which talks about paying for sexual services of a prostitute subjected to force, does refer to a situation where a person uses force, threats or any other form of coercion. So can the hon. mover please advise why it was felt appropriate to include non-violent threats here in respect of the exploitation of individuals through prostitution but not in respect of every other aspect of the Bill?

In clause 95, this talks to Mr Robertshaw's point about online pornography. Can the hon. mover advise if a website is considered to be a public place? Because if it is considered to be a public place I think this Bill does actually adequately address some of the concerns raised by the Hon. Member for Douglas East.

Turning now to Part 5 of the Bill, I would like an explanation from the hon. mover of why clause 104 is so specific. What is it about a moving picture film of a width of not less than 16mm that means a prosecution requires the consent of the Attorney General? This seems to have come from a 1959 Act, but I would suggest technology has moved on somewhat since then.

In this Part there is a defence when it comes to making of obscene films. And we have seen 'film' being defined as something which might 'deprave and corrupt' its viewer – that is quite a broad definition, if ever I have heard one. It is not an offence if you make something which gets an age classification.

So my question for the hon. mover is: how much pornography is actually classified under an official classification body? Can you give us an indication? How about online pornography? Again, I do not know if this Part applies to digital publishing, it would appear to. I am not saying there is an industry involved in making pornography on the Isle of Man but we have a number of data centres. We are a rapidly expanding digital economy and it is not beyond the scope that this material could be hosted or distributed through or via the Isle of Man. I would like to be very careful that we are not criminalising this behaviour accidentally.

Part 6 of the Bill deals with voyeurism and image-based abuse. I am actually really glad to see the two issues separately identified. I am concerned about the way consent is referred to here; voyeurism only appears to be an offence if the offender knows the victim did not consent. There is no recklessness, there is no knowledge or reasonably should have known, you must know someone did not consent. That seems quite hard to prove that someone did not *know* that their victim did not consent. I would have thought that, as is mentioned in several other points in the

Bill, that this concept of 'recklessness', as in 'I did not care if they consented or not', needs to be factored in here.

1695 I have also got some concerns about what a court may order rectified. If I record an image without consent, or distribute that image without consent, a court can force me to delete the image. But if I have an intimate image and I threaten to distribute it, I can be convicted of that offence but the court cannot order the image destroyed. So I can then go ahead and threaten you again or actually release the image. It seems a little bit of an oversight.

1700 Part 7 deals with 'Closure Orders' and there is a bit of inconsistency here as well. If a court makes a closure order it can direct that nobody can enter a premises for three months, not even if you live there. It seems a little bit unusual and I would like some clarity on that because the previous clauses actually talk about exceptions for residents, whereas the actual closure orders do not.

1705 Hon. Members, there are a lot more detailed questions that remain unanswered, for example, around the clauses dealing with sexual risk orders and anonymity. I am not going to go through those. I am not going to go through any more of the Bill here today.

1710 What I have tried to do is give an indication and give a flavour of just the serious amount of work there is still to be done on this Bill; and why it is absolutely essential that this Hon. House is given enough time for proper consideration. I really do look forward to engaging further with the hon. mover on all of these issues.

Thank you, Mr Speaker.

The Speaker: Next, I call on the Hon. Member for Douglas Central, Mr Thomas.

1715 **Mr Thomas:** Thank you very much, Mr Speaker.

I have very brief comments in two areas, as a constituency MHK and as a former Member of the Department of Home Affairs.

1720 The first point is I congratulate the mover, in fact this Hon. House more generally, on bringing this important piece of social legislation. Would the hon. mover agree with me – although full credit has been given to the officers around the place and the current Minister and Members – that this has been coming for some time? I would just like to put on record massive thanks from my personal point of view to a group of mums and dads, constituents, who worked with Mr Speaker – who was then Minister – in the background, using disguised voices on the media to make sure that we did everything we could to change this legislation and the sentencing legislation; and also social care procedures and also the procedures around how the courts work.

1725 And with that I would like to just say that basically, I suppose guilt and satisfaction is now there that this legislation is beginning its passage through these things, so a big thank you to that group of mums and dads who had some difficult issues to deal with back five or six years ago.

1730 The second point I would like to say is that, as parliamentarians, obviously we all welcome this legislation that deals with the shocking situation in respect of homosexuality legislation, and often when this sort of legislation has come forward other things have come forward to provide some comfort to those who have endured injustices in the past. I would hope that at some point during the passage of this Bill our Government and parliamentarians can provide that degree of comfort at the appropriate point.

1735 I do not need to dwell on that point, but to me it would be absolutely appropriate for that to be associated with the pardon that is implicit in this piece of legislation.

Thank you, Mr Speaker.

1740 **The Speaker:** Now, I have no-one else on my list to speak, so with that I will call on the Hon. Member for Ramsey, Dr Allinson to reply.

Dr Allinson: Thank you very much, Mr Speaker.

1745 I would like to thank all those people who have talked and all those people who have not talked because this is very much a draft Bill before you. As I said at the outset I think it is really important, as the Hon. Member for Ramsey has said, that we spend the right amount of time on this so that we get it right. But we also agree that nothing we do today will be perfect and it will have to change, it will have to evolve. These sorts of laws do. They may be right for this time but in five or 10 years' time as technology moves on and as society moves on we will have to go back and revisit it.

1750 So whilst I am keen on trying to get this as precise as possible, some of these concepts are very nebulous; some of them are a balance between different rights and different responsibilities and we will have to decide which side of that balance we stand on. We will have to accept that and vote on that and live with that decision until it is reviewed.

1755 If I can just go through some of the points raised, but obviously say that there is quite a lot of detailed work here which we will have to go through clause by clause to adequately balance it up, and also balance up the way the whole Bill sits together as a whole, which is really I suppose the role of the Second Reading to give that overall context, and then later on drill down into the specifics.

1760 Mr Robertshaw talks about the concept of a rape within a marriage and a civil partnership, and this is certainly something that previous legislation was deficient in – the previous legislation did not make it an offence to be raped within a marriage or a civil partnership. That is inherently wrong; we need to have that ability, particularly when we are looking at other aspects of domestic abuse and domestic violence, that we are quite clear that rape is rape. But he is right that we need to consider the consequences of that, the sentencing, and we need to be cognisant of that.

1765 He also brought up the case in the United Kingdom recently with false accusations of historical childhood sexual abuse. Again, was that a failure of the legislation? Or was that a failure of the application of it on behalf of the Police? I think there is some work to be done about that.

1770 Certainly at the time it was said, I think by the police officers involved, there was an atmosphere at the time that politicians wanted prosecution and so they went after various people. And we need to be very clear that what we do as parliamentarians in terms of drafting the legislation stops there. We are giving the Constabulary and the judiciary the tools to do *their* job. Our job is getting these tools as right and proper as we can.

1775 He also touches on, I suppose, the challenge of our times which is the role of the internet and the amazing good things that have come out of that, but the inherent dangers at the same time, and again getting that balance.

1780 Only last week, the United Kingdom backed down on one of their policies which was trying to bring in age verification for pornographic sites, because they had just found out it was unworkable in a global internet industry, where it was crossing through *many* jurisdictions. I think it is a challenge whether any individual government, however big, can regulate the internet or whether they can put pressure on the internet providers to do so.

1785 What I would say to him is, as part of this Bill, certainly the Department of Home Affairs is looking at the ability for the Police to gain access to electronic devices where a person is under investigation for pornography and who refuses access to those devices because they are encrypted. So there will be a consultation on a draft Bill which will be classed as the Investigatory Powers Data Encryption Bill, which will give the Police on this Island the ability to look more at online services.

1790 But that will not deal with the wider issue of the internet and how we deal with that. I would advocate that part of that *has* to be down to education. I mean, not just for younger people but also slightly older people. We need to take responsibility for what we view online and how that has been produced. What I hope from the Education Bill, when it is presented to this House, is an overall concept about relationships and sex education, and the role of education about

1795 domestic abuse, education about consent and how key it is that we get that throughout our society from a very young age.

The Hon. Member, Mrs Caine wonders why pardons are automatic but people have to apply for disregards. A very good question. Disregards are about a particular conviction for a particular act and one of the issues involved in historical sexual offences is that they may have been
1800 classified under a whole range of different terms. The Department has felt that the only way to try to deal with this is to do it on an individual case, and for every person who wants their conviction disregarded, for the Department to look at that offence and to go through it with the individual, and to make sure that it is an offence that would no longer be illegal now.

But the experience of the United Kingdom has shown that sometimes offences are far more
1805 nebulous, they include a variety of different offences, and one conviction may encompass a whole range of behaviours, some of which is illegal some of which is now legal. I think the only way we can do that is on an individual basis; but the willingness from the Department is genuinely there, and the willingness from the Constabulary to try to get those records and try to get those convictions and let justice be done.

1810 She also talked quite a lot about the balance we, as parliamentarians, need to get between anonymity and the public right to know; and this idea of where the human interest and the ability for justice is seen to be done, how that links in with an idea of open justice. Again, we live in an age where the tabloid press, in a previous decade, were vilified for publicising cases and now it all goes straight online – sometimes by the same people, sometimes otherwise. But that
1815 is a difficult balance to make.

What the Department is very keen on is trying to get that anonymity in terms of sexual offences. I think the Hon. Member for Garff is right that sexual offences are inherently different to a lot of other crimes in terms of their severity and their impact.

1820 Is this part of a mission creep towards anonymity for lots of other offences? No. It is a proposition that the effect of being put on trial for sexual offences can be devastating for that person, particularly on a small island; and whether we, as parliamentarians, feel that anonymity should be there as default. However, where the Police, the prosecution or the judge themselves feel that anonymity should be waived, the case will be made and that will be done.

1825 She wonders whether this could lead to one law for the rich and one for the rest of the population. I think we have probably already seen that in the United Kingdom where people who can apply for injunctions get them and people who cannot afford them, do not. In fact I would argue we are doing it the other way round: we are giving that protection to everyone and then saying it can be removed as the case warrants.

1830 Anonymity can be very important already with defendants where it is involving a familial sexual offence, because if you mention the perpetrator you are automatically flagging up the victim. So we do use this but – and it is a clause to be debated – it is whether we need to extend that and have that anonymity on the Island.

1835 I thank her very much for her comment because it is very valid. She asks about whether any of the media organisations have fed into the public consultation. We did ask about this idea of anonymity in the consultation and whether it should be extended and got some responses for it. Unfortunately, the media did not feed into that, but I hope that by her comments today we can trigger this debate and we can think about it in a bit more detail. Because, as the Hon. Member, Mr Hooper says this Bill does deserve the proper consideration and the proper time to do so.

1840 I would like to thank Mr Peake for his comments, and very much they were about trust and I suppose that is trust in the criminal justice system. But also trusting people and saying to people who have been victims of sexual offences, ‘We believe you; come forward and talk to us; you will be heard’.

1845 He also talks about the damaging effects of sexual offences and I think that goes throughout society. What this Bill is doing is not just concentrating on one person, anyone can be a victim of sexual offences whatever their age or their sexual orientation; whatever their nationality or their culture. We know, as parliamentarians, the increasing evidence about adverse childhood

experiences and the way those affect people later on in life. So it is intrinsically right to try to deal with that at the source and try to reduce the risk of people being victims of sexual offences.

1850 My hon. colleague from Ramsey makes a number of very valid points about various clauses in the Bill and these are inherently, some are technical and some are conceptual and I will try to deal with them as much as I can, but obviously we need to revisit these as we go through the various clauses.

1855 He mentions the pardons and disregards and I think I have answered that issue, that with convictions there may be a range of sexual offences there, and we need to look at which ones can be disregarded and which ones cannot. But the automatic pardon is there. I am hoping it will be a line drawn to say that was then, we are in a different place now and we are a different society.

1860 He has concerns about the ages used in the Bill – 16 and 18 – and people falling through the cracks and he mentions a number of different scenarios where two consensual 17-year-olds might be taking images of each other of a sexual nature, or might be in a sexual relationship. And that is a very valid point. We as a Department, and with the drafters, struggled with some of these ages. The age of consent is 16: that went out to public consultation and was very much upheld. But when do we think it is permissible to be a prostitute? Aged 16 and one day? Sixteen and two days? Seventeen?

1865 These are very much value judgements; what resonates with us and what resonates with society. What I would say though and, as I have said at the outset, this is not an exact science. These are giving the tools to the judiciary and to the Police and to the Attorney General's Office to bring charges.

1870 I believe our Attorney General and the officers there look very closely at what offences they bring to court, in the public good. If two 17-year-olds are in a consensual sexual relationship and something is discovered about them, is it in the public good to bring that to prosecution? The answer is no; and I think we need to have some trust in the Attorney General's Office to do the right thing by that.

1875 I would like to thank the Hon. Member, Mr Hooper, for circulating the papers about the experience of men forced to penetrate women. Again, as we go through this Bill, there are some fairly graphic and blunt offences to be dealt with. He quite clearly states that there has been research into this.

1880 I think this is part of a broader issue in terms of men being the victims of sexual offences. Traditionally, and in fact some of our legislation has made only women being the victims, but we *know* that men are victims of sexual abuse at whatever age they are. We have to make sure that not only the legislation is there to recognise that, but that our criminal justice system allows people – men – to come forward and tell their story, and does it in the right way.

1885 The papers that Mr Hooper circulated are very much of that ilk, that many men do not report because they do not think they are going to be believed, because they do not recognise themselves that they have been raped. We need to break that taboo and break that stigma.

1890 The papers he circulated do describe the problems redefining rape, redefining being forced to engage in sexual activity. He is quite right that the sentences for different offences do vary according to their severity. Rape is up to life imprisonment, whereas being forced to engage in sexual intercourse without your consent is a maximum of 10 years. I do not know necessarily the way around this, because even in the papers he has circulated they are not quite sure. They gave some scenarios but they do make the point that more research is needed. But I still certainly welcome him to come forward with perhaps an amendment during the clauses stage if he wishes, and to discuss that with the drafters so we can reach a resolution, and as he says trying to get the Bill 'as well as possible'.

1895 He also talked about definition of sexual service and the idea that somebody setting up a business here with webcams or chatrooms could be criminalised as being a prostitute. Again, the definition of 'sexual service' is quite deliberately broad to encompass things that we would find

distasteful. And again it is a value judgement – what we would find distasteful in our society, and what tools we give to the Attorney General to then take it forward.

1900 In terms of licensing and the classification of films and how much of the internet is licensed and classified by the British Board, I am really not quite sure of that, Mr Speaker. And again, one of the problems we have is defining things that come from all over the world that are streamed on to a phone, and trying to regulate that.

1905 I think at the end of the day we have to have inherent legislation that protects our people, whatever age, from harm. How we do that, I think we are going to have to drill down at the clauses stage, because there is that dichotomy between impeding civil liberties and impeding choice and preventing harm; and sometimes that can be a *very* narrow line.

1910 Sometimes we have to trust the courts to decide; we have to trust a jury to decide where that line lies. What we can do, as parliamentarians, is draft the legislation to give them that opportunity to bring that prosecution.

1915 He talks about distributing images and obviously one of the parts of this Bill that differs to the United Kingdom is the idea of image-based sexual abuse and the role that now plays, particularly in young people, being able to abuse other people by using images. And he talks very much about how that relates to different people's ages and consent. Again, that comes down to who brings the complaint and how it is then dealt with.

1920 But he also talks about images and streaming and I think one of the issues in this Bill is not dealing with crimes but sometimes the way that crimes can be committed? The internet and new technologies in general give a huge amount of increased routes for criminality, whether that be financial crime, whether that be pornography, whether that be sexual abuse; and it is sometimes difficult to keep up with those technologies.

But what I can assure him is that the drafters have been working on the idea of streaming. Previously, our laws related to a physical image, a photograph that you had; then it went to an image on a computer disk. Now it is an image in the Cloud – and even my teenagers cannot describe what that is to me.

1925 So we talk about 'virtual images' which may be encrypted, which may be in bits, but what the drafters have been trying to do – and hopefully we will bring forward a series of amendments – is look more at the definition of 'image' as being a whole or part of the overall picture, but also look at the essence of streaming and how that is involved.

1930 In the Bill there is the clause about mandatory reporting of sexual abuse and questions about why vulnerable adults are not included in this. When various people have done studies, in terms of child abuse and abuse of vulnerable adults there are reporting mechanisms and safeguarding mechanisms involved. However, there has been increasing concern about the reporting of child sexual abuse and how sometimes that reporting is missed.

1935 The recent report looking at the Independent Inquiry into Child Sexual Abuse in the United Kingdom did quite a lot of work in terms of mandatory reporting of child sexual abuse and looked at international comparisons; for instance, in France it is mandatory, and in parts of Canada it is mandatory, and in parts of Australia it is mandatory. There is some good evidence from the documents they have looked at that that has increased the reporting and has also increased the rate of conviction – and increased the rate of comfort and security for those people.

1940 In terms of who is mandated to report again, with the clause, it is very much up to the discretion of the Department to bring that forward. He mentions childminders but I could equally mention religious groups, religious organisations particularly those that have a residential component and whether those should be included. And I look forward to our discussions during the clauses stage on that because these are difficult decisions to make – what we, as parliamentarians, want to do and want to force other people to do, and want to mandate that they do. So I look forward to that discussion because again it is about harm reduction and producing that sense of safety.

1950 The Hon. Mr Hooper also talked about coercive control, and today I was extremely proud that the Domestic Abuse Bill got its First Reading. I mean, it is a very important bit of legislation that the Minister has made a point of highlighting and spearheading. There is that crossover at the moment between sexual offences that we are dealing with here and domestic abuse, and both can happen at the same time.

1955 The Domestic Abuse Bill is very much going on to coercive and controlling behaviour. The Sexual Offences Bill is dealing with a sexual act. I would advocate that they are different: that rape can be due to non-violent threats and can be due to coercion, but there are parts of this Bill that allow that. The evidential proof of consent is written down there and we will go through this I think in a bit more detail when we get to the clauses stage.

1960 But coercion and control and consent can co-exist. So I think we need to be really quite careful in terms of defining sexual offences and I hope, again, when we go through the individual clauses we will do so.

He mentions 16 mm film and that is a historical reference, but it is still probably valid because as we go through the various ways of distributing pornography we need to be inclusive and we need to even include those things that may end up being very retro and coming back.

1965 He talks about definitions of obscenity and how they are classified. Decades of lawmakers have tried to deal with that. What to one person is obscene, to another person is art. And really I think we have various classification mechanisms both here and on the adjacent isle and we rely sometimes on the courts to judge that – the *Lady Chatterley's Lover* case was a classic where that came to the courts to decide, because the lawmakers could not draw that line.

1970 What I would say is when we have gone through this Bill – and again a lot of the clauses here have already been in place since 2003 in the United Kingdom. They specify obscenity but they also look at artistic expression through films, through art and through plays and make a clear distinction between those.

1975 In terms of closure orders, I think obviously we will get to that when we go through the clauses stage. Again, I suppose what I and the Department are doing is opening this up to you. It is a work in progress, very much so. Some of these concepts and some of these very technical aspects have to be resolved if there is a difference of opinion. Again, I am very grateful to the drafters for their help in doing this because what we need to do is get something that is right for the Isle of Man but also actually resonates wider, because some of the offences we are talking about here may straddle several different jurisdictions. So we need to make sure that we have some similarity and some synergy with those other laws.

1985 I would like to thank Mr Thomas, in closing, for a very important point that while I thanked a lot of people in terms of the making of this physical document and the concepts behind it, the passion for change has been led by many people – ordinary people on the Isle of Man, unfortunately sometimes because of their own *personal* experience of sexual offences, or their own personal experience of our criminal justice system in the past.

I very much hope that this Bill, once ready, once finalised by you, can resolve some of those problems in the past and lead to a far better future for our population.

1990 With that, Mr Speaker, I beg to move.

The Speaker: I put the question that the Sexual Offences and Obscene Publications Bill 2019 be read for a second time.

Those in favour, please say aye; against, no. The ayes have it. The ayes have it.