

**4.2. Domestic Abuse Bill 2019 –
Second Reading approved**

Mr Malarkey to move:

That the Domestic Abuse Bill 2019 be read a second time.

The Speaker: Item 4.2, Domestic Abuse Bill 2019. I call on the Hon. Member for Douglas South, Mr Malarkey, to move.

Mr Malarkey: Thank you, Mr Speaker.

800 In moving the Second Reading of this Bill I invite Hon. Members to join me in reflecting on what this Bill is all about.

Domestic abuse is a gross abuse of trust, where people living in an intimate and/or family relationship find they are not safe from those close to them. People are entitled to expect respect, security, trust and love. No one should have to experience the pain and suffer the consequences of abusive behaviour by family members or intimate others. Furthermore, 805 children should not have to witness or indeed suffer the effects of such abusive behaviour in any of its forms. We have a duty to protect our people and to address such behaviour as being unacceptable.

The key object of the Bill, therefore, is to address domestic abuse for the first time in Manx law. Our aim is to protect people from domestic abuse or mitigate the effects of domestic abuse and punish offenders. Other objectives of the Bill include raising awareness of domestic abuse so it is clearly seen by all in our society as a key issue which must be addressed; enhancing the safety of victims of abuse and those at risk of abuse; and providing legal tools and appropriate guidance to enable various agencies, including our justice system, to effectively address 815 domestic abuse by taking specific measures to protect victims, punish offenders and identify perpetrators who may respond positively to programmes designed to rehabilitate them.

Turning to the contents of the Bill very briefly, Part 1 consists of clauses 1 to 6 and provides a comprehensive definition of 'domestic abuse'. The Bill uses the term 'personally connected' and defines 'relative' as a way of ensuring that the Bill is wide enough to cover the variety of 820 relationships we may find in today's society without losing its focus, which is on those close or intimate and family relationships.

Part 2 consists of clauses 7 to 33 and is about powers to protect those caught up in an abusive domestic situation. The provisions do this through Domestic Abuse Protection Notices, which are time limited and given by the Police to deal with immediate situations. Domestic Abuse Protection Orders, which may be made by the courts, can be tailored to deal with the 825 circumstances of any particular case.

Part 3 sets out in clauses 34 and 35 the domestic abuse offence and the controlling or coercive behaviour offence. Both have a maximum penalty of 14 years' custody. Clause 36 deals with those situations where the behaviour maybe occurred outside the Island, and clauses 39 to 830 41 deal with aggravating factors.

Finally, Part 4 consists of clauses 42 to 47 and includes provisions enabling the Department to issue guidance to the Constabulary about the sharing of information and to bodies generally to help them use the Act effectively.

835 Mr Speaker, I commend this Bill to the House and beg to move that the Domestic Abuse Bill 2019 be read for the second time.

The Speaker: I call on the Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

840 I beg to second and also recognise the Minister's personal commitment to getting this Bill of legislation before us today and the importance of actually passing it so that the Constabulary

and all those involved in treating victims of domestic abuse can act when it is needed and actually get the right outcome for those people.

Thank you.

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Mr Thomas: Hear, hear.

The Speaker: Hon. Member for Ramsey, Mr Hooper.

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

I would like to start by congratulating and commending the Minister on bringing this Bill through – I think it is long overdue – and I would like to thank the Department and the drafters for spending some time with me over the summer going through the detail of the consultation draft. I am very glad to see that the version that has been entered into this Hon. House today is a significant improvement, in my view, over the original draft that was consulted on.

855 I am especially glad to see this Bill is addressing the issue of controlling and coercive behaviour as well, and I would like to think that this will also be addressed in the Sexual Offences Bill that the Minister and his Department are bringing through this Hon. House at the same time.

860 I have raised a number of technical queries with the drafters, which I am not going to go into on the floor – you will be glad to hear, Hon. Members – but I am anticipating some small amendments as a result of that.

I am going to focus on two areas of concern, which both relate to the Domestic Abuse Notices that the Minister has mentioned. These are a positive step, in my view, but the way the Bill addresses them would seem to raise two quite important issues.

865 Firstly, although the Minister said they are time limited, there is actually no maximum period for which a notice can be operable. A police officer can issue a notice and then, after 14 days, this needs to be ratified by a court – and that is the only time limit that appears to be mentioned – but if the court adjourns its decision, the time limit would appear to be extended and there is no maximum period for this adjournment, there is no maximum period for this extension, which means technically a court could adjourn one of these decisions for quite some time. I accept in the current circumstances this might not be very likely, but as we cannot predict the future I would very much like to see a maximum time limit for the protection notices enshrined in this Bill. These notices are a police power, there is no immediate court oversight, so it is very important that these do come to courts, they go to the right courts and the right training is provided to the courts where necessary.

875 Secondly – and, I think, the more significant issue – is that these protection notices can prohibit a person from returning to their home; that is what they are designed for. So, what happens to the subject of that notice? Where do they go? Up to 14 days before the notice has to be heard by a court, which means the Police will be given the power by this Bill to essentially make a person homeless with no court oversight for up to two weeks. That is an awful position to put a police officer in. So, an officer responds to a domestic incident and is in a position where they feel using one of these protection notices is appropriate, but then they have to worry about where the subject goes to live. If they choose not to use these powers to issue a protection notice, they could be leaving a vulnerable person at risk; but if they do use these powers, they could be leaving a different vulnerable person at risk. What if the subject of this notice has mental health difficulties and, being removed from their home and forced into a state of homelessness, they spiral and end up doing themselves or others harm? That is a lot of responsibility to put on a police officer at the scene making these decisions.

885 I would like to ask the Minister: where are these people going to go? Are we expecting the Police to put them up in holding cells? Are we expecting the third sector to step in, a charity provider? Perhaps we are expecting everyone to be able to afford hotel rooms or rent on a second property. But what if they cannot afford a second property? So, the person has been removed from their home under a notice and then this is formalised by the court by way of a

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895 protection order and they now need to find a more permanent home for themselves. Can they
afford to pay rent or mortgage on two properties – the one they were previously living in and
their new home? Does this then risk making the victim of abuse also homeless if rent or
mortgage payments cannot be kept up on the property they are living in? And how will our
Housing Division and Social Security treat people in these instances? If they own the property
they have been evicted from, they would not be eligible for public sector housing. They may
900 actually be a public sector tenant and so would not be eligible for a second tenancy. The housing
element of Income Support or EPA is capped, so I do not think it will cover the cost of two
rented properties. And if the person owns a property but is not living in it, the property could
potentially be treated as an income-generating asset, which would, bizarrely, increase the
person's income despite the fact they have just been evicted from their home.

905 This is yet another example of policy being made in isolation. It is not the Department of
Home Affairs that makes social policy, or housing policy or benefits policy, but this legislation
does not come with any assurances of updates to those other essential pieces of the puzzle.
There is a social policy deficit at the heart of this Government and that was clearly demonstrated
this morning when we were unable to get a coherent answer about access to pension services.
910 This legislation is missing even recognition that there might need to be consequential changes to
social security law and to housing policies and procedures. I think this Hon. House needs
assurances. Personally, I would much prefer there to be a statutory duty of some kind on
Government, on the DoI, to provide housing of some sort for people, or at the very least a
statutory requirement to ensure these issues are resolved before these sections of this Act come
915 into force.

I would like to ask the Hon. Minister to confirm that a suitable amendment is coming from
Government to make sure we do not end up with a power the Police simply cannot use because
of these and potentially other unforeseen circumstances and consequences.

Thank you, Mr Speaker.

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The Speaker: Hon. Member for Douglas Central, Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

925 The Domestic Abuse Bill recognises for the first time that domestic abuse is a pattern of
controlling behaviour that can include significant emotional and psychological abuse, as well as
physical and sexual assaults. The Bill reflects the reality of domestic abuse. It recognises the
complex nature of coercive control and is an important step toward improving the protections
for all who experience domestic abuse. The controlling or coercive behaviour offence gives a
clear warning that all forms of domestic abuse are criminal offences.

930 The trauma of domestic abuse and the impact that it can have on those who experience it,
including children and young people, cannot be overestimated. It is important to make sure that
the harm done to children by perpetrators of domestic abuse is fully recognised in law. It is true
to say some of the biggest victims of domestic abuse are the smallest. Children are present at
around 50% of reported domestic abuse incidents. Violence has no place in a child's life. The
935 provision within the Bill of statutory aggravation when a child sees, hears or is present during an
incident of behaviour acknowledges that domestic abuse has an impact on children and ensures
that account is taken of this.

The Bill does state that the Department can by order add factors that constitute aggravation,
such as offences committed towards a woman during or after pregnancy and where an element
940 of the offence includes strangulation. I would like to ask the Minister why these two offences are
not actually included in the Bill itself.

Domestic Abuse Prevention Notices and Domestic Abuse Prevention Orders allow for the
person alleged to have committed domestic abuse to be removed from the home. This is
undoubtedly the right way to do it, especially if there are children in the home. It is right that the
945 abuser is removed and not the victim; but, to follow on from Mr Hooper, this does raise

concerns with regard to accommodation. If a person is prevented from entering their own property there is a risk that they will be made homeless. Some people would be able to afford to source alternative accommodation quickly or be able to stay with relatives, but others may be unable to do this. Has consideration been given to providing temporary rented accommodation to those who, as the result of a notice or order, have nowhere to live? Or is it considered appropriate for the homeless shelter to accommodate this? Has the Department considered the adequacy of the current provision of refuge and accommodation for those fleeing domestic abuse? Victims stay in abusive relationships because they simply have nowhere else to go. If a victim of abuse does leave a relationship, they are often driven back because they have nowhere to live. There is nothing in the Bill that supports people in either situation.

I wholeheartedly support the enabling clause to allow disclosure of police information and I appreciate the Department's efforts in finding a way to allow this to happen. Information sharing with the Departments of Health and Social Care and Education, Sport and Culture will allow the implementation of schemes that will help to safeguard and promote the welfare of children.

A domestic violence disclosure scheme – or Clare's Law – would give an individual the right to ask about their partner if they have concerns that they may have been abusive or violent in the past. The right to know would allow the Police to inform a person if they believe that person is at risk.

In the Bill's explanatory notes, under 'Financial effects of the Bill' it states:

it is not expected to increase or decrease revenue or have any financial or personnel implications.

How? There will be a cost to issuing notices and orders, there will be a cost to monitoring notices and orders and there will be a cost to disclosing and sharing information. This Bill is intended to change the understanding of domestic abuse and therefore will need to be complemented by awareness training amongst the relevant agencies, including the judiciary, the legal profession, the courts, adult and child protection professionals and the Police. This cannot be achieved without cost. Has there been a budget identified to make this possible?

We know that on average a victim of domestic violence will be assaulted 35 times before contacting the Police. Victims of domestic abuse are often reluctant to report for fear of reprisal. The stigma which continues to surround domestic abuse means victims may also fear they will not be believed or adequately supported if they do come forward. It is crucial for those in this situation to have the confidence that appropriate support is available to them when they need it. This Bill should be the foundation upon which joined-up services and support for both victims and perpetrators stand.

Those who are experiencing domestic abuse need to feel safe in the knowledge that the justice system and other agencies will do everything they can to protect and support them and their children and pursue their abuser. This Bill is a very positive step towards achieving that.

Thank you, Mr Speaker.

The Speaker: I call on the Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

I rise also to commend the Minister for Home Affairs for bringing this important piece of legislation forward.

I would just like to perhaps provide a bit of perspective on the orders removing the perpetrator from the home. I think the flipside of what my hon. friend from Ramsey is saying is that sometimes perpetrators end up in the family home at the moment, and I find that personally quite unacceptable. In some of the cases I have had to deal with they have been exceptionally loath to leave the family home, they have refused to co-operate with the normal legal process and they have dragged their heels at every opportunity, so I welcome that there

will be orders removing the perpetrators from the family home. I think it is right that they are removed from the family home because they are committing a serious crime and often they are committing a crime against vulnerable people when children are involved.

1000 As my hon. friend Mrs Corlett said, unfortunately there are some circumstances where we see people who have been abused returning to the family home where their abuser is still living. They do that largely for economic reasons and subsequently are abused again. I would be interested in the Minister's comments on this particular issue when he responds to Mr Hooper's comments, but certainly from my perspective it is a welcome step forward.

Thank you.

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The Speaker: Hon. Member for Ayre and Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

1010 I just want to follow on from the Hon. Member for Middle and just pick up on and perhaps further build on the comments that he has just made in response to the Hon. Member for Ramsey.

1015 Frankly these are very serious matters, and if someone is given an order for a serious criminal offence relating to domestic violence it is not necessarily the responsibility of the taxpayer suddenly to house them or to take responsibility for their life. They have to take responsibility for their own actions. Why should the taxpayer suddenly pick up the tab for somebody who is committing a domestic violence offence? I find it quite astonishing that the Hon. Members want to suggest that people who are committing these offences are then ... somehow it is the responsibility of the taxpayer to look after them. Hon. Members, people have to take charge of their own lives. The people concerned who have an order given against them for this type of serious offence have to take responsibility for their actions and they have to sort themselves out. It should not be the responsibility for society to suddenly look after them and find them some housing. That is not right.

1020 Hon. Members, I would urge you to treat this Domestic Abuse Bill as a positive step forward. There may well be some imperfections that need to be picked up, but it is not a social policy deficit and it is not social policy for Government to pick up for those who are choosing to offend in this manner and have these types of orders issued against them.

The Speaker: Hon. Member for Douglas Central, Mr Thomas.

1030 **Mr Thomas:** Thank you, Mr Speaker.

1035 Again, I am only brought to my feet to ask the Minister for Home Affairs if he agrees with me that it is a bit dispiriting for Members in this House and the people upstairs to hear this Government described as having a social policy deficit, (**Mr Skelly:** Hear, hear.) because this House is the one that has brought you the Equality Act, it has brought you the Safeguarding Act, it is now bringing you the Domestic Abuse and the Sexual Offences Acts; forthcoming are adoption and mental capacity and on the Order Paper before us today we have got historic child abuse. In terms of other aspects of social policy, we are tackling earnings, we are tackling the quality of jobs, we are tackling children and family services and we are transforming the healthcare service, developing pathways around all these pieces of legislation.

1040 With that, Mr Speaker, I just want to ask the Minister for Home Affairs if he agrees with me that this is part of a five- or six-year campaign almost inside the Department of Home Affairs to address some serious deficit in terms of legislation around so many social issues, and finally this House – your Department, Minister – has actually risen to substantial challenges?

1045 **The Speaker:** Mover to reply.

Mr Malarkey: Thank you, Mr Speaker.

1050 I take on board all the comments with regard to housing. Before I even started with this Bill it was my number-one major concern that when you remove somebody from a property, what do you do with them? You do not want them to be put in a cell; it may not actually be the person who is causing the problem who is removed, it might be the family, for safe keeping, that is being removed and you cannot go and put them in a cell. So this was my number-one priority as this Bill was being drafted.

1055 With that in mind, my Department has three properties available that I am looking at for this very purpose. One of the properties, subject planning permission for usage being changed, will be ready and open by the time this Bill completes its course through the two Houses – I am planning to have it done by next May – so I do not feel that there is any need to put anything in the Bill; this is being covered by my Department. We already have liaison officers who are quite capable of dealing with the situation. We have also sat around a table with the third sector
1060 about running the place, about what help will be available and who will come and see the people to help them get back on track.

What the Bill does is if somebody is removed from their property it gives them 14 days in a safe house – which will be one of our own properties – for the likes of Social Services or anybody else involved to come and talk to them and find out ... Particular people might have a 14-day
1065 order on them, so if things cannot be sorted out, the aggravation is still there and they cannot go home, they might well end up back in the courts for an extension to the order.

This has been well covered, Mr Speaker, in all different directions, so that we are not just going to have the Police putting them either in cells or out on the street. Properties will be available and hopefully – well, I do know because of property swaps which I think we have just
1070 got permission for – in the next 18 months I will have two additional properties ready to be brought in, if necessary. I do hope that the situation is not that bad that we need to have three properties on the go and we have got people having to get safe houses all at once – only the future will tell us that – but from the point of view of housing people, yes, I have got that well and truly covered and we have been having meetings with the third sector about running the place and making sure there is clean bedding in the place etc. We are also in discussion with
1075 other third parties to make sure this will happen, so please be reassured of that.

I think from Mr Cannan's point of view, yes, you are right, it is not really up to us to ... Where would we end up every time there was a fight in the house, having to go out and house somebody? Hopefully the way we are going to do this is to sort the problem out and help to get
1080 the people back in their own house or give them time to find alternative accommodation so that it does not fall upon the ratepayer.

It is part of our social policies, Mr Thomas. I think this administration is doing everything it can with this type of Bill, the Sexual Offences Bill and all the other Bills on the horizon, to make this Island a much safer and better place to live for the future.

1085 Coming on to Mr Shimmins, the point is there will be a 14-day notice and they will be put into a safe house, and then the correct people will go and talk to these people to either get them back in their home and resolve the situation; or, if it is that bad, as I said, Social Services and the Police and whoever else needs to be involved, Housing Matters or whoever, to try and rehouse these people. It gives them that break and that time period to go ahead and do that.

1090 Mrs Corlett talked about some of the other things that we have not put in the Bill, like strangulation. This is an enabling Bill and we will be able to bring stuff to it in Tynwald once we know what the Bill looks like when it comes out the other end after some amendments have been done and anything else in the two Houses. So, yes, we will be adding things like that. We also have the Administration of Justice Bill which will cover things like strangulation as well, so
1095 our Department is working on several different Bills at the moment and things like strangulation will be covered by that.

I have covered the time limit for Mr Hooper and of course I have covered the housing, so I think I have covered most concerns that Hon. Members have. If you find you have any other concerns, please feel free to come in and talk to us.

1100 I thank Mr Hooper for the time he spent going through the Bill and for what he sent off to our legislation. Unfortunately the legislator in the Attorney General's office is on holiday this week, so the clauses stage will now be held up for a couple of weeks until they come back and we go through Mr Hooper's 19 – I think it was 19 – different comments he made about the various parts of the Bill.

1105 With that, Mr Speaker, I beg to move that the Domestic Abuse Bill 2019 be read for the second time.

The Speaker: I put the question that the Domestic Abuse Bill 2019 be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.