

**4.2. Sexual Offences and Obscene Publications Bill 2019 –
Consideration of clauses concluded**

Dr Allinson to move.

580 **The Speaker:** We turn then to the Sexual Offences and Obscene Publications Bill 2019, and we resume our consideration at clause 64, new clause 2, amendment 1 on your Order Paper to be moved in detail.

I call on Mrs Barber to move.

585 **Mrs Barber:** Mr Speaker, the principle of new clause 2 was agreed at our sitting on 3rd December. In moving the detail of new clause 2 the effect is to substitute clause 64. The reason is that following the introduction of the Bill, the Department reflected and felt that prohibiting a person under the age of 16 from being in a brothel unless that person was under the age of four, might have made sense in the past, but from today's perspective it makes no sense to say it is okay if the child is under the age of four.

590 The Department considered, on balance, that the age of 16 was too young and therefore judged the prohibition on a responsible person allowing another person to reside in or frequent a brothel should be raised to the internationally recognised definition of a child of under 18. It also recognised a point that was made by the Hon. Member for Ramsey, Mr Hooper, and so the new clause prohibits person A from allowing a vulnerable adult to reside in or frequent a brothel. Accordingly, the new clause makes it an offence for Person A to allow another person, for whom A is responsible, to reside in or to frequent a brothel where that person is either under the age of 18 or is a vulnerable adult.

595 Mr Speaker, I beg to move that the detail of new clause 2 be approved and that new clause 2 do stand part of the Bill:
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Substitution of clause 64

1. Page 88, on lines 33 to 39, omit the existing clause 64 and substitute —

'NC2 Allowing persons under 18 or vulnerable adults to be in brothels

IOM1966/5/3 and drafting

A person (A) commits an offence if —

(a) A allows another person (B) for whom A is responsible, to reside in, or to frequent, a brothel; and

(b) B is —

(i) under the age of 18; or

(ii) a vulnerable adult.

Maximum penalty — (summary) — 12 months' custody or a fine not exceeding level 5 on the standard scale or both.'

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

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The Speaker: Now, we have an amendment to this in the name of Mr Robertshaw, and I call on Mr Robertshaw to move.

Mr Robertshaw: Thank you, Mr Speaker.

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Essentially this revolves around the issue of the grey area when focusing on young people of the age of 16 and 17. I hope that Hon. Members might recall the comments I made when we were discussing this matter at the last session covering this Bill. Specifically, I was saying that a

615 16- or a 17-year-old can get married, enter into sexual relations and vote – effectively in many respects is an adult, but the new clause 2 which my hon. colleague and friend from Douglas East, Mrs Barber, is dealing with today, I support with the exception of that matter of redefining protection for 16- and 17-year-olds.

620 The point is that if we move forward without my amendment effectively it criminalises an issue which should not be criminalised, which is the idea, for example, of a 17-year-old attending a brothel. We have got to be careful when we are bringing this Bill forward that we are not being too judgemental.

625 So the intention of this amendment is to recognise the validity of new clause 2, but actually refine it somewhat in the sense that I am asking with regard to item (i) where it talks about under the age of 16, so effectively it is quite right that somebody under the age of 16 should not attend a brothel. But there is some degree of protection required for 16 and 17-year-olds. So if we remove the judgemental and criminality aspect of it and replace with it Item (ii), which means we must protect those aged 16 or 17:

... in any case where B's ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment or otherwise.

In other words, what we are saying is there have to be rights for a 16- and 17-year-old, but our duty is effectively to protect those who are vulnerable and as described here.

630 Following the discussion we had on this matter at the last session, I am very grateful indeed to the mover of the Bill in the work that he put in to help produce this amendment, which I think clarifies matters and identifies the really sensitive areas and avoids this Hon. House being judgemental and leaving a matter, which cannot be criminal.

With that, Mr Speaker, I beg to move:

Amendment to new clause 2

2. In the new clause 2 moved by Mrs Barber, for paragraph (b)(i) and (ii) substitute –

'(i) under the age of 16 years;

(ii) aged 16 or 17 years, in any case where B's ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment or otherwise; or

(iii) a vulnerable adult.'

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

Mr Perkins: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

640 **The Speaker:** Mr Baker.

Mr Baker: Thank you, Mr Speaker.

645 I would just like to ask the Hon .Member for Douglas East, in terms of the drafting of clause 2, who judges whether B is in a position to protect himself or herself from physical or psychological help or is impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment or otherwise? It seems an extraordinarily broad and judgemental set of criteria, which I would suggest is virtually unenforceable and very difficult for people to know where they stand. I am not going to outline scenarios, but I just think it is a very difficult piece of drafting to actually implement and clearly if something is difficult to implement it is poor legislation.

650 **The Speaker:** I call on Mr Robertshaw to reply to the amendment.

Mr Robertshaw: Thank you, Mr Speaker.

655 I am grateful to the Hon. Member for Ayre and Michael's comments, but I do not agree with him. Can I just draw his attention to that which is just effectively considered as acceptable, which is in the original format it talks about a vulnerable adult, so how do you describe a vulnerable adult? What this amendment does is it actually goes into more detail so that there is more guidance, should an event occur where concerns arise in relation –

660 **Mr Baker:** Sorry, would he give way? (**Mr Robertshaw:** Yes.) I appreciate your reference to the original drafting referring to vulnerable adults, but your own amendment still refers to a vulnerable adult in subclause (iii).

665 **Mr Robertshaw:** As it should, Mr Speaker, and (ii) is describing a variety of circumstances where it is wholly inappropriate for an adult to take such a person into a brothel environment. I think it is sensible that one would only be able to judge the circumstances as it relates to the Act as it would be at examination of a particular event and for effectively a court to decide accordingly.

670 **The Speaker:** I call on Mrs Barber to reply to the new clause.

675 **Mrs Barber:** Thank you and I would like to thank Mr Robertshaw for his input into this amendment to the amendment. I think that he has taken a lot of time to consider the area that I suppose was the grey area, the 16- and 17-year-olds, where they are allowed to consent to having sex, however, they are obviously potentially also vulnerable in this circumstance and I think this achieves a helpful compromise.

Thank you, Mr Speaker.

680 **The Speaker:** Putting first Mr Robertshaw's amendment, which is number 2 on your Order Paper, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you new clause 2, amendment number 1 on the Order Paper, as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to new clause 3, amendment number 3 on the Order Paper, to be moved in detail, and I call on Mrs Barber to move.

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Mrs Barber: Mr Speaker.

690 Mr Speaker, the principle of new clause 3 was agreed at our last sitting on 3rd December. The detail in this new clause makes it an offence to practise, or offer to practise, conversion therapy. Subsection (2)(b) makes it clear this does not mean a person may not seek services that assist them to explore, develop or affirm their sexual orientation or gender identity. If the detail is agreed now this new clause will be inserted into the Bill and become clause 87 with subsequent clauses and cross-references being adjusted throughout.

Mr Speaker, I beg to move that new clause 3 be approved to be inserted and do stand part of the Bill.

Insertion of new clause 3

3. Page 104, after line 20, before the heading for Division 18, insert the following new clause (as clause 87 of the Bill) –

'NC3 Conversion therapy

(1) It is an offence for any person to practise, or to offer to practise conversion therapy.

(2) In this section, "conversion therapy" –

(a) is any form of therapy which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other and attempts to –

- (i) change a person's sexual orientation or gender identity; or
(ii) suppress a person's expression of sexual orientation or gender identity; but
(b) does not include services which are for the purpose of assisting a person to explore, develop and affirm the person's sexual orientation or gender identity.
(3) The Department may issue guidance about the meanings of expressions used in subsection (2).
(4) Regard must be had to guidance issued under subsection (3) in interpreting references in this section to those expressions.
(5) The Department may revise guidance issued under subsection (3) and a reference to guidance includes a reference to revised guidance.
(6) Guidance issued under subsection (3) or (5) must be laid before Tynwald.
Maximum penalty —
(a) (on information) — 2 years' custody or a fine;
(b) (summary) — 12 months' custody or a fine of level 5 on the standard scale or both.'
Adjust clause numbers and cross references throughout.

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The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

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The Speaker: Now, amendment number 4 in the name of Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

The new clause just approved in detail includes power for the Department to issue guidance. Subsection (5) provided power for that guidance to be revised. My amendment removes subsection (5) and makes appropriate adjustments. The reason for this amendment is that it is now considered the power to issue guidance includes the power to revise the guidance so I am simply cutting out unnecessary words.

705

Mr Speaker, I beg to move.

Amendment to new clause 3

4. In the amendment inserting new clause 3 (Conversion therapy) moved by Mrs Barber —
(a) omit paragraph (5);
(b) re-number paragraph (6) as paragraph (5);
(c) in paragraph (6) (as re-numbered) delete 'or (5)'

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The Speaker: Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker.
I beg to second.

715

The Speaker: Thank you.

No comments to make; I shall put first amendment 4 in the name of Mrs Corlett: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Putting new clause 3 that it stand part of the Bill as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Now we scroll forward to clause 98, which was passed over at the last sitting, and I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

725 Clause 98 makes it an offence to possess an extreme pornographic image. An image is pornographic if it is reasonable to assume its production is solely for the purpose of sexual arousal. In defining an image as pornographic or indeed extremely pornographic an important factor in any case is the context.

Mr Speaker, I beg to move that clause 98 do stand part of the Bill.

730 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks, sir.

The Speaker: Now, I have amendments number 5 and 6 in the name of Mrs Barber.

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Mrs Barber: Mr Speaker, the amendment numbered 5 substitutes subsection 10(a), 10(b) and (11) within Clause 98 where both the definition for 'image' is replaced with an updated definition aligning with that added to clause 94 that allows for the inclusion of, for instance, an image which has been encrypted, along with the new subsection (11) that specifically refers to possession of an image which has been streamed or otherwise transmitted.

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Amendment 6 omits subsection (11) where reference was made to prosecution requiring the consent of the Attorney General.

Mr Speaker, I beg to move amendments 5 and 6.

Amendments to clause 98

5. Page 112, lines 34 to 38, for subsection (10) substitute —

'(10) In this section —

(a) an "image" includes —

(i) a moving or still image (produced by any means);

(ii) a three-dimensional image; or

(iii) data (stored, transmitted or received by any means) which is capable of conversion into an image within paragraph (i) or (ii);

(b) "relevant act" means an act within subsection (6)(a) to (c).

(11) In this section references to being in possession of an image include obtaining access to the image by streaming or any other form of transmission.'

6. Page 113, lines 1 and 2, omit subsection (11).

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I beg to second both those amendments and reserve my remarks.

The Speaker: If no other Member wishes to speak I shall put first the amendments 5 and 6 in the name of Mrs Barber be approved: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 98, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn then to clause 150 and schedule 3, Dr Allinson.

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Dr Allinson: Thank you very much, Mr Speaker.

Clause 150 introduces the notification requirements and states that a person becomes subject to those requirements if they are cautioned or found guilty of an offence listed in Schedule 3. Such offences include rape, sexual offences involving children, abuse of a position of trust and possessing indecent images of children.

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Mr Speaker, I beg to move that clause 150 and Schedule 3 do stand part of the Bill.

The Speaker: Mr Malarkey.

765 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: Amendments 14 and 15 to Schedule 3 in the name of Mrs Barber.

770 **Mrs Barber:** Mr Speaker, I wish to take amendments 14 and 15 now as they insert the missing words 'or she' in two places into the Schedule to ensure gender consistency throughout the Bill.

I beg to move that amendments 14 and 15 be approved:

Amendments to Schedule 3

14. Page 243, on line 21, after 'he' insert 'or she'.

15. Page 246, on line 35, after 'he' insert 'or she'.

The Speaker: Mr Hooper.

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

I beg to second that amendment. I do have a question, however, for the hon. mover about ... oh, no, sorry, it is the next clause, not this, I do apologise.

I am happy to second the amendment.

780 **The Speaker:** In which case I shall put first amendments number 14 and 15 in the name of Mrs Barber: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 150 and Schedule 3 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 151, Dr Allinson.

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Dr Allinson: Thank you, Mr Speaker.

Clause 151 makes transitional arrangements for those currently subject to notification requirements under the sexual offences and notification legislation currently in force.

Mr Speaker, I beg to move that clause 151 do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

795 **The Speaker:** Thank you.

Amendment 7, Mrs Barber.

Mrs Barber: Amendment 7 makes a small change in terminology to align with Manx legislation, and I beg to move the amendment standing in my name.

Amendment to clause 151

7. Page 152, on line 18, for 'sentence of imprisonment' substitute 'term of custody'.

800 **The Speaker:** Mr Hooper.

Mr Hooper: I am happy to second that amendment, Mr Speaker.

805 **The Speaker:** I put the question first that amendment 7 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 151 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, clauses 152 to 157, Dr Allinson.

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

Clauses 152 to 157 deal with various matters relevant to notification.

Clause 152 is about the notification periods relevant to any penalty of period of custody.

Clause 153 details the initial notification requirements.

Clause 154 deals with change of address or changes in circumstances.

815 Clause 155 requires periodic notification.

Clause 156 requires notification of any absence from notified residence to last more than three days.

Clause 157 requires a person to notify the Constabulary of any intention to travel off-Island.

Mr Speaker, I beg to move that clauses 152 to 157 inclusive do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

825 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

830 I have a question for the hon. mover in respect of the table here in clause 152. Clause 150(1)(d), somebody subject to that section, which will be someone cautioned in the Island in respect of an offence listed in Schedule 3, is subject to a two-year notification period.

However, clause 151(1)(d), someone again cautioned in respect of a Schedule 3 offence would not fall under that two years and would be subject to a five-year notification period, a person of any other description. I am wondering if that is intentional on the part of the Department or if that is an oversight and whether or not both of those two should be aligned?

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The Speaker: I call on the mover to reply.

Dr Allinson: Thank you very much, Mr Speaker.

840 I take on board, I think, the comments from the Hon. Member for Ramsey, Mr Hooper. The Department will look again and make absolutely certain that these two parts of the notification requirements are aligned correctly.

The Speaker: But you beg to move?

845 **Dr Allinson:** I beg to move.

The Speaker: I put the question that clauses 152, 153, 154, 155, 156 and 157 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 158, Dr Allinson.

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

Clause 158 deals with the method of notification and related matters.

Mr Speaker, as you will recall, we made some changes to similar notification requirements in clause 29 of the Domestic Abuse Bill during its clauses stage. In light of those changes, we will

855 review the provision and take appropriate measures to ensure that the notification requirements in both Bills are aligned, when this Bill reaches the other Chamber.
I beg to move that clause 158 do stand part of the Bill.

The Speaker: Mr Malarkey.

860 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: Thank you.
Amendment 8, in the name of Mrs Barber.

865 **Mrs Barber:** Mr Speaker, amendment 8 omits subsection (2) of clause 158 as it is unnecessary, and I beg to move that the amendment be approved.

Amendment to clause 158
8. Page 160, lines 14 to 17, omit subsection (2).
Renumber the following subsections accordingly.

The Speaker: Mr Hooper.

870 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second.

The Speaker: Putting first the amendment in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 158 as amended: those in favour, please say aye; against, no. The ayes have it. The
875 ayes have it.
Clauses 159 to 162, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
Clauses 159 and 160 deal with notification requirements in respect of young offenders and
880 apply the requirements to the parents or those with parental responsibility for the young offender and provide for variation of directions applying to the parents.
Clause 161 sets out the offences and penalties in relation to the notification requirements under this part.
Clause 162 establishes provision for the review by the Chief Constable of indefinite
885 notification requirements. This and subsequent clauses in this matter are required to comply with human rights obligations.
Mr Speaker, I beg to move that clauses 159 to 162 do stand part of the Bill.

890 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 159 to 162 inclusive stand part of the Bill. Those
895 in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 163, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
Clause 163 sets out the procedure for applying for a review of an indefinite notification requirement and specifies that if a person was aged 18 years or over when the indefinite

900 notification requirement became applicable then they must wait a minimum of 15 years before seeking a review.

If the person was under the age of 18 when the requirement became applicable then the individual must wait a minimum of eight years. A number of other requirements in this matter are set out in this and subsequent clauses.

905 Mr Speaker, I beg to move that clause 163 do stand part of the Bill.

The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

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The Speaker: Amendment 9 in the name of Mrs Barber.

Mrs Barber: Mr Speaker, amendment 9 corrects terminology in the draft by referring to custody rather than imprisonment, and I beg to move that amendment 9 be approved.

Amendment to clause 163

9. Page 164, on line 18, for 'custodial sentence of imprisonment' substitute 'term of custody'.

915 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.
I beg to second.

920 **The Speaker:** I put the question that amendment 9 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 163 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 164, Dr Allinson.

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Dr Allinson: Mr Speaker, clause 164 sets out the procedure the Chief Constable must follow in determining an application by a person for a review of his or her indefinite notification requirements, and I beg to move that clause 164 do stand part of the Bill.

930 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

935 **The Speaker:** I put the question that clause 164 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 165 and Schedule 4, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

940 Clause 165 sets out a significant number of factors the Chief Constable must take into account when considering whether or not the person should remain subject to the notification requirements and refers to Schedule 4, which deals with other offences for the purposes of the notification requirements.

I beg to move that clause 165 and Schedule 4 do stand part of the Bill.

945 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: Mrs Barber, amendment 10.

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Mrs Barber: Mr Speaker, amendment 10 adds another two matters the Chief Constable must take into account when considering whether or not the person should remain subject to notification requirements.

I beg to move that amendment 10 be approved.

Amendment to clause 165

10. Page 166, line 25, after 'risk of sexual harm', insert 'which may include evidence of —

(i) positive changes in the qualifying relevant offender's lifestyle; and

(ii) any relevant treatment programmes the qualifying relevant offender has undertaken.'

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The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second.

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The Speaker: Putting first amendment 10 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 165 and Schedule 4 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clauses 166 to 168, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

Clause 166 deals with appeals in relation to notification matters.

Clause 167 enables the Department to issue guidance.

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Clause 168 states that if a court at the time of conviction or any other time certifies that a person is subject to notification requirements, then the certification is conclusive evidence the person is required to notify.

Mr Speaker, I beg to move clauses 166, 167 and 168 do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

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The Speaker: I put the question that clauses 166, 167 and 168 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 169 and 170, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

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Clauses 169 and 170 outline the people from whom the Chief Constable may receive information in connection with the notification requirements and the people he may provide information to for the purposes of the prevention, detection, investigation or prosecution of offences. These also include verifying information given to others in connection with functions relating to social security, child support, employment or training and relating to passports, driving licences or vehicle registration.

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Clause 170 stipulates that the Governor or a Department may supply information to the Chief Constable.

Mr Speaker, I beg to move that clauses 169 and 170 do stand part of the Bill.

The Speaker: Mr Malarkey.

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Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 169 and 170 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1000 Clauses 171 to 179, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1005 Clause 171 empowers the Department to make regulations around the release or transfer of offenders into the custody of another person and the information disclosure responsibilities around this.

Clauses 172 and 173 concern the application of the notification periods mentioned earlier in clause 152 and how they will apply where an offence was committed outside the Island.

Clause 174 outlines the powers of entry and search which can be exercised by the Police in respect of the notification requirements.

1010 Clauses 175 to 179 describe the process by which notification orders and interim notification orders may be made where an off-Island offender comes, or intends to come, to the Island, the effect of these orders, the offences which apply and to which court an appeal may be lodged.

Mr Speaker, I beg to move that clauses 171 to 179 inclusive do stand part of the Bill.

1015 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

1020 **The Speaker:** I put the question that clauses 171 to 179 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 180 to 191, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1025 Clauses 180 to 191 make provision for the protection of the public through Sexual Harm Prevention Orders (SHPOs), which are made by a court when it deals with a defendant.

Clause 180 sets out the application and grounds on which a court may make an order. Essentially, a court must be satisfied an SHPO is necessary to protect the public from sexual harm by the defendant or protecting children or vulnerable adults generally or any particular children or vulnerable adults from sexual harm from the defendant outside the Island.

1030 The Chief Constable may also apply to a court of summary jurisdiction for such an order.

Clause 181 is supplemental.

Clause 182 sets out the effect of such an order.

1035 Clause 183 is important because it enables SHPOs to be varied or discharged by a court prior to a person's release from custody as circumstances may have changed since the court made the original order.

Clause 184 empowers a prohibition to be imposed on travel off-Island for a fixed period of not more than five years.

1040 In clause 185, where a court made an SHPO in respect of a person not sentenced to custody; that person, the Chief Constable or a probation officer, may apply for the SHPO to be varied, renewed or discharged.

Clause 186 provides for interim SHPOs.

Clause 187 means that a person remains subject to notification requirements regardless as long as the SHPO has effect. If the person ceased to be subject to notification requirements, or was not subject to notification requirements, then they become subject to notification requirements the moment a SHPO is made.

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Clause 188 provides for appeals in respect of SHPOs and interim SHPOs.

Clause 189 makes it an offence to breach an SHPO or an interim SHPO.
Clause 190 is about guidance and clause 191 is supplementary.
Mr Speaker, I beg to move that clauses 180 to 191 do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

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The Speaker: Mr Hooper.

Mr Hooper: Yes, a question for the hon. mover, if he could explain the difference between a Sexual Harm Prevention Order and a Sexual Risk Order that comes in later on in the Bill?

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The reason I ask is because there is an amendment tabled to the Sexual Risk Order which would require it to be a court of a particular level or higher in order to make those orders. However, there does not seem to be a similar amendment in respect of Sexual Harm Prevention Orders, so there must be a difference between the two if different courts are being allowed to make different determinations. I would just appreciate some clarity from the hon. mover.

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The Speaker: Mover to reply.

Dr Allinson: Thank you very much, Mr Speaker.

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I thank the Hon. Member for his question about what is quite a complex and technical aspect of protecting the public. In terms of Sexual Harm Prevention Orders, these are imposed by the courts on people who have been found guilty of an offence, have been convicted of that offence, and perhaps have been either imprisoned or cautioned for that offence, whereas when we come on to Sexual Risk Orders the offence has not necessarily led to a conviction and so the two are quite different and therefore the stipulations in terms of how they are applied for have to have that extra security in that justice is done.

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Thank you, Mr Speaker.

The Speaker: I put the question that clauses 180 to 191 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 192, Dr Allinson.

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Dr Allinson: Mr Speaker, clause 192 provides for Sexual Risk Orders (SROs) to be applied for by the Chief Constable to a court of summary jurisdiction. The condition of the application is that it appears to the Chief Constable that the person has done an act of a sexual nature as a result of which there is reasonable cause to believe it is necessary to make an SRO. This may be done in respect of a resident of the Island or of someone the Chief Constable believes is in the Island or is intending to come to it. The purposes of the SRO are similar to the SHPO; namely to protect the public, children or vulnerable adults from harm from the defendant.

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Mr Speaker, I beg to move that clause 192 do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: I call on Mrs Barber to move amendment 11.

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Mrs Barber: Mr Speaker, amendment 11 inserts provision to ensure that the court of summary jurisdiction that meets to hear an application for an SRO is held by a High Bailiff or a Deputy High Bailiff.

Mr Speaker, I beg to move that amendment 11 be approved:

Amendment to clause 192

11. Page 188, line 27, after 'jurisdiction' insert '(which, for the purposes of this section, must be a court held by a High Bailiff or Deputy High Bailiff)'.

1100 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I am happy to second the amendment.

1105 Again, I have a question about the Sexual Risk Orders and the process here. So, in respect of the Sexual Harm Orders someone is convicted of an offence and then there follows a Harm Order to protect the public. In this instance, however, there has been no conviction so this section of the Bill would give the Police powers to apply to the court to say, actually this person has not been convicted of an offence but we are going to apply for a Sexual Risk Order anyway because we think they are a danger to the public. Now, that is a completely different bar, I
1110 would suggest, a completely different threshold, trying to deal with someone that has not actually been convicted of an offence.

So my question for the hon. mover is how are these disclosed to the wider public? So, for example, if the Risk Order says you cannot work at certain institutions what powers are there to ensure the Police can properly notify those institutions and also to make sure that that
1115 notification process is not abused. How do we know, for example, that this is not going to end up on the front page of Isle of Man Newspapers saying a Sexual Risk Order is being applied to someone who actually has not been convicted of an offence?

I am just a bit concerned that, whilst I fully appreciate the sense behind these clauses and why you want these powers, and they do make a lot of sense, it is just making sure that there is
1120 not that potential for abuse built into the system.

The Speaker: Mrs Barber, do you wish to reply on your amendment?

Dr Allinson to reply to the clause.

1125 **Dr Allinson:** Thank you, Mr Speaker.

I would like, again, to thank the Hon. Member for raising this issue because he is quite right that Sexual Risk Orders are imposed on people who have not necessarily been found guilty of a particular crime. However, they have been in force in England since their introduction in 2014 and have been applied by various police forces in various individual situations where the Chief
1130 Constable felt that the person involved posed a significant risk in terms of sexual harm to other people in the community.

For instance, these might be brought in when a trial is abandoned due to perhaps lack of evidence or intimidation of a witness but there is circumstantial evidence to show that that person may still pose a risk to society. I think he is right to point out the sensitive nature of these, particularly applied to a small jurisdiction like the Isle of Man. But again, with the amendment what we are trying to do is make sure that we give the Constabulary the tools to protect society but try to bring in the safeguards that it goes to the right part of the court system to actually weigh up the pros and cons of imposing such an order and also to make sure that these orders are used sensitively and to the right effect.
1135

1140 With that, Mr Speaker, I beg to move.

The Speaker: I put first amendment 11 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1145 Putting then clause 192 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 193 to 202, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

In relation to SROs clause 193 provides interpretation of the terms 'child', 'harm' and 'public'.

1150 Clause 194 prohibits off-Island travel in a similar manner to SHPOs.

Clause 195 provides for variations, renewals and discharges of SROs.

Clause 196 for interim SROs.

Clause 197 imposes notification requirements on a person in respect of whom a court has made an SRO or an interim SRO.

1155 Clause 198 provides for appeals to the Court of General Gaol Delivery.

Clause 199 makes it an offence to breach an SRO or an interim SRO and clause 200 deals with the effect of a conviction for a breach, which is to remain subject to notification requirements.

Clause 201 provides for guidance in respect of SROs and interim SROs and clause 202 deals with supplementary matters.

1160 Mr Speaker, I beg to move that clauses 193 to 202 inclusive do stand part of the Bill.

The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks, sir.

1165

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

1170 Again, another hopefully quite straightforward question for the hon. mover; inside clause 195 it states that in order to vary, renew or discharge one of the Sexual Risk Orders either party, the defendant or the Chief Constable can apply, that makes sense. However, subsection (5) states:

The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Chief Constable.

1175 So in the instance where the Chief Constable applies to the court, the court says yes, we will make a Sexual Risk Order, that is fine, maybe six months or eight months down the line the defendant appeals, goes back to the court and says I would like you to discharge this Sexual Risk Order please, presents a wealth of evidence to show why that individual is no longer a risk to society. The court is actually unable to exercise its functions, it is unable to discharge that order without the Chief Constable's consent so where is the safeguard here?

1180 As soon as the order is made, unless the Chief Constable can be convinced the individual is no longer a risk, actually the court is not being given the flexibility to do its job, and I would just like some clarity from the hon. mover on exactly why that subsection (5) has been included in this clause.

The Speaker: Mover to reply.

1185 **Dr Allinson:** Thank you very much, Mr Speaker.

1190 Clause 195, subsection (5) deals with discharging an order completely and it is trying to work with the defendant itself, with the Chief Constable and with the courts, again with the sole aim of protecting the public or any particular members of the public from harm from the defendant. So if it is the case that the court was happy that the order could be discharged then there would be consent from the defendant and the Chief Constable.

I think in practical terms it would be extremely unusual for the Chief Constable to have evidence which went against the court's decision to discharge an order. However, what we have in this section is the ability of the Department to vary the conditions for these orders, and so

1195 should this become a problem in the future, the Department would look at perhaps working with the Chief Constable and the court system to refine the legislation further.

But, as I have said previously, Mr Speaker, this has been in operation in the United Kingdom since 2014 and has not caused any significant issues in terms of the carriage of justice.

Thank you, Mr Speaker, with that I beg to move.

1200 **The Speaker:** Now, before I put the question I would just seek from Mr Hooper as to whether he wishes to put clause 195 separately?

Mr Hooper: No.

1205 **The Speaker:** I which case I put the motion that clauses 193 to 202 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 203, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1210 Clause 203 provides power for the Department to amend Schedules 3 and 4 by order. I beg to move that clause 203 do stand part of the Bill.

The Speaker: Mr Malarkey.

1215 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: I put the question that clause 203 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 204, Dr Allinson.

1220

Dr Allinson: Thank you, Mr Speaker.

Clause 204 applies the provisions of this Part relating to notification requirements, SHPOs and SROs to young offenders, and I beg to move that clause 204 do form part of the Bill.

1225 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: Now, amendments 12 and 13 in the name of Mrs Barber.

1230

Mrs Barber: Mr Speaker, amendments 12 and 13 rationalise terms so they refer to 'custody' rather than 'imprisonment' and I beg to move that these amendments be approved.

Amendments to clause 204

12. Page 196, on line 19, for 'sentence of imprisonment' substitute 'sentence to a term of custody'.

13. Page 196, on line 20, for 'imprisonment' substitute 'custody'.

The Speaker: Mr Hooper.

1235 **Mr Hooper:** Thank you, Mr Speaker. I beg to second.

1240 **The Speaker:** I put the question that amendments 12 and 13 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 204, as amended to stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 205 to 209, Dr Allinson.

1245 **Dr Allinson:** Thank you, Mr Speaker.
Clauses 205 to 209 deal with various supplementary matters including offences with thresholds, disapplication of time limits for complaints, general interpretation for Part 10 of the Bill, conditional discharges and probation orders as they apply to Part 10 and the interpretation as it applies to mentally disordered offenders.
Mr Speaker, I beg to move that clauses 205 to 209 inclusive do stand part of the Bill.

1250 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

1255 **The Speaker:** I put the question that clauses 205 to 209 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 210 to 224, Dr Allinson.

1260 **Dr Allinson:** Thank you, Mr Speaker.
Mr Speaker, clauses 201 to 224 form Part 11 of the Bill and address the very important matter of pardons and disregards for certain historical sexual offences.
Clause 210 provides interpretation. I will quote it in full:

The purpose of this Part is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences by —

- (a) pardoning persons who have been convicted of those offences; and
- (b) providing for a process for convictions for those offences to be disregarded.

Clause 212 defines historic sexual offences.

Clause 213 pardons people convicted of certain historic sexual offences in these terms, again I quote:

A person who has been convicted of a historical sexual offence is pardoned for the offence if the conduct constituting the offence, if occurring in the same circumstances, would not be an offence on the day on which this section comes into operation.

1265 Clause 214 is supplementary.

Clauses 215 to 218 are about the procedure for applying for past convictions or cautions to be disregarded and make provision for appeals.

Clause 219 describes the effect of a disregard and clause 220 deals with the removal of disregarded convictions from official records.

1270 Clause 221 empowers the Department to appoint people to advise or assist it in making determinations on applications for disregards.

Clause 222 says nothing in this Part affects the prerogative of mercy.

Clause 223 relates to any conduct constituting a historical sexual offence in respect of which an alternative to prosecution has been given.

1275 Clause 224 empowers the Department to make such regulations as may be necessary to give full effect to the pardoning and disregard of historic sexual offences.

Mr Speaker, I beg to move that clauses 210 to 224 do stand part of the Bill.

1280 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 210 to 224 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1285 Clause 225, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1290 Clause 225 amends section 4 of the Organised and International Crime Act 2010 with provisions designed to empower a court to order the forfeiture of a land vehicle, ship or aircraft used or intended to be used in connection with the trafficking of persons. Whilst the Organised and International Crime Act has wider application it is sadly the case that a lot of people are trafficked by criminals for sexual purposes and sexual slavery. It is appropriate therefore to use this Bill to supplement our laws so that anything used to facilitate this abusive line of business may be forfeited.

1295 Mr Speaker, I beg to move that clause 225 do stand part of the Bill.

The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

1300

The Speaker: I put the question that clause 225 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 226, Dr Allinson.

1305 **Dr Allinson:** Mr Speaker, clause 226 introduces a number of provisions to augment the Prohibition of Female Genital Mutilation Act 2010.

New section 6A imposes a duty on persons in regulated professions to notify the Police if, in the course of their work, they discover an act of female genital mutilation appears to have been carried out.

1310 New section 6B introduces a Schedule into the Act after section 7 to provide for the making of Female Genital Mutilation Protection Orders and new section 6C extends sections 4, 6 and 6A to any act done outside the Island by a United Kingdom national or Manx resident.

Mr Speaker, I am sure you would agree it is right to bring our law in this matter up to date with the United Kingdom and more in line with other jurisdictions.

1315 I beg to move that clause 226 do stand part of the Bill.

The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

1320

The Speaker: I put the question that clause 226 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, we have clauses 227 to 233 and Schedule 5 and Schedule 6, Dr Allinson.

1325 **Dr Allinson:** Thank you very much, Mr Speaker.

Clause 227 applies to courts of the armed services.

Clause 228 empowers the Department to apply UK sentencing guidelines to the Island by order and it is proposed initially to apply guidelines in connection with offences against children.

1330 Clause 229 sets out the respective Tynwald procedures for orders and regulations made under this Act.

Clause 230 introduces Schedule 5 which makes consequential and minor amendments.

Clause 231 introduces Schedule 6 that sets out the repeals.

1335 Clause 232 makes transitional and saving provisions to take account of the transition from the current law relating to sexual offences, indecent and obscene publications and the law introduced by this Bill.

Clause 233 confirms the extent of the application of this Bill.

Mr Speaker, I beg to move that clauses 227 to 233 and Schedules 5 and 6 do stand part of the Bill.

1340 **The Speaker:** Mr Malarkey.

Mr Malarkey: I beg to second and reserve my remarks.

The Speaker: Now, Mrs Barber to move amendment 16.

1345

Mrs Barber: Mr Speaker, amendment 16 adds an additional repeal to Schedule 6. It repeals section 3 of the Children and Young Persons Act 1966.

1350 Clause 64 of the Bill makes it an offence for a person having responsibility for a child under the age of 16 to allow that child to reside in or frequent a brothel. Consequently, it is not necessary to have the same provision in the Children and Young Persons Act.

Mr Speaker, I beg to move amendment 16 standing in my name.

Amendment to schedule 6

*16. Page 260, on line 11, after 'soliciting' insert —
'is repealed.*

(4) Section 3 of the Children and Young Persons Act 1966 (allowing persons under 16 to be in brothels) is repealed'.

The Speaker: Mr Hooper.

1355 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second.

1360 **The Speaker:** I put the question that amendment 16 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Putting the question then that, as amended, clauses 227 to 233 and Schedules 5 and 6 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, that has been a big Bill which we have dealt with very expeditiously, but I am also very aware that it belies an awful lot of work by an awful lot of Members behind the scenes. But that is the conclusion, we have come to a swift passage of that Bill, and I appreciate that.