

**4.3. Domestic Abuse Bill 2019 –
Consideration of clauses concluded**

Mr Malarkey to move.

1365 **The Speaker:** We turn then to the Domestic Abuse Bill 2019, and I call on Mr Malarkey to move.

Mr Malarkey: Mr Speaker, before moving the Third Reading of the Bill, Mrs Barber has got some clauses to move first, so if we allow her to do that before we move on?

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The Speaker: Indeed. So we turn first to new clause 3 in detail. I call on Mrs Barber to move.

Mrs Barber: Mr Speaker, I am grateful to Hon. Members for agreeing to the principle of new Part 4 and the new clauses 3 and 4 contained within it on [26th November]. The two new clauses effectively do the same thing and serve the same purpose. So I propose to move these in detail together today and to have the new clauses voted on together as well as new Part 4 as a whole, as the part and its constituent new clauses 3 and 4 stand or fall as one.

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Hon. Members will note that new clauses 3 and 4 that form the inserted Part 4 of this Bill are lengthy. This is because legislation has to set out in detail direction, process, enabling powers and clarity that will empower the courts to conduct matters before them – always most importantly in the interests of justice and with the basic principle of fairness and respect to all parties to proceedings.

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Turning to new clause 3, we are looking at the Summary Jurisdiction Act 1989 and in new clause 4 we are looking at the Matrimonial Proceedings Act 2003, where these new clauses do the following.

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New clause 3 inserts seven new sections, 53A through to 53G, into Part 5 of the Summary Jurisdiction Act 1989, which is headed 'Domestic proceedings'. The purpose of the new sections is as follows.

Section 53A ensures references to a witness include a party to proceedings. In effect, section 53B prohibits the cross-examination of a witness by their abuser in family proceedings, where the abuser has been cautioned or convicted of a specified offence, and provides necessary definitions for this section, e.g. 'specified offence', 'caution', 'conviction', 'service disciplinary proceedings'.

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A specified offence is an offence specified in rules of court and one would imagine the courts might wish to include the two domestic abuse offences, offences of violence ranging from common assault through to GBH, certain public order offences and offences under the Protection from Harassment Act, amongst others.

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Section 53C provides that in the case of witnesses who are party to or the subject of an on-notice protective injunction, they may not cross-examine in person another party to that same protective injunction.

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Section 53D makes provision where the party or parties do not fulfil the criteria outlined in sections 53B and 53C, but the court nevertheless finds it necessary to stop a person from cross-examining or from continuing to cross-examine a witness. This applies where the quality of the evidence given by a witness diminishes or is likely to be diminished by a party to the proceedings continuing in abusive manner.

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Section 53E is supplementary.

Section 53F sets out how the court will explore alternatives to any cross-examination in person. It gives the court necessary powers in the event a party to the proceedings against whom direction has been received cannot or will not seek an advocate.

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Section 53G gives the power for the Treasury to make regulations in connection with the cost for a legal representative appointed in these circumstances.

After this insertion of 53A to 53G, a small change to the cross-heading preceding section 54 is made. The reference to 'Division 2, Proceedings under the Matrimonial Proceedings Act 2003' is the link to new clause 4.

1415 Subsection (2) to new clause 4 inserts new Division numbering to Division headings in the Matrimonial Proceedings Act, for the sake of greater clarity in reading that Act. The changes to the Matrimonial Proceedings Act inserted as new sections 114A to 114G are a mirror image of the changes outlined in connection with the Summary Jurisdiction Act 1989 and summarised by me in respect of new clause 3. The only difference is that new section 114B provides for a
1420 specified offence to be specified in regulations, instead of rules of court. That anomaly is to be corrected very shortly.

Mr Speaker, I beg to move that new Part 4, consisting of new clauses 3 and 4 and constituent provisions as printed on the Order Paper be approved and do stand part of the Bill:

Insertion of new Part 4

1. *Page 38, after line 9 insert—*

'PART 4 —PROHIBITION OF CROSS-EXAMINATION IN PERSON

DIVISION 1: PROCEEDINGS IN THE COURTS OF SUMMARY JURISDICTION

NC3 Summary Jurisdiction Act 1989 amended

(1) The Summary Jurisdiction Act 1989 is amended as follows.

(2) For the italic cross-heading preceding section 48 substitute—

<<DIVISION 1: DOMESTIC PROCEEDINGS>>.

(3) After section 53 insert—

<<DIVISION 2: THE PROHIBITION ON CROSS-EXAMINATION

53A Prohibition of cross-examination in person: introductory

In this Division "witness", in relation to any proceedings, includes a party to the proceedings.

53B Prohibition of cross-examination in person: victims of offences

(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of, or given a caution for, or is charged with, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 2001 unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(5) In this section—

"caution" means—

(a) a caution given by a police officer on the Island in respect of an offence which, at the time the caution is given, the person to whom it is given has admitted;

(b) a conditional caution given under section 22 of the Criminal Justice Act 2003 (of Parliament);

(c) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998 (of Parliament);

(d) any other caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time the caution is given, that person has admitted;

(e) anything corresponding to a caution falling within paragraph (a), (b), (c) or (d) (however described) which is given to a person in respect of an offence under the law of Scotland;

"conviction" means—

- (a) a conviction before a court in the Island;
- (b) a conviction before a court in England and Wales, Scotland or Northern Ireland;
- (c) a conviction in service disciplinary proceedings (in the Island or elsewhere);
- (d) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and "convicted" is to be read accordingly;

"service disciplinary proceedings" means—

(a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (of Parliament) (except proceedings before a civilian court within the meaning of that Act);

(b) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 (of Parliament);

"specified offence" means an offence which is specified, or of a description specified, in rules of court.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) section 6 of the Criminal Justice Act 1963;

(b) section 14 of the Powers of Criminal Courts (Sentencing) Act 2003 (of Parliament);

(b) section 187 of the Armed Forces Act 2006 (of Parliament); or any corresponding earlier Manx or Parliamentary enactment.

(7) For the purposes of this section "offence" includes an offence under a law that is no longer in force.

53C Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section "protective injunction" means an order or injunction specified, or of a description specified, in rules of court.

(5) For the purposes of this section, a protective injunction is an "on-notice" protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

53D Direction for prohibition of cross-examination in person: other cases

(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

(a) neither section 53B nor section 53C operates to prevent the party from cross-examining the witness, and

- (b) *it appears to the court that—*
- (i) *the quality condition or the significant distress condition is met, and*
 - (ii) *it would not be contrary to the interests of justice to give the direction.*
- (2) *The “quality condition” is met if the quality of evidence given by the witness on cross-examination—*
- (a) *is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and*
 - (b) *would be likely to be improved if a direction were given under this section.*
- (3) *The “significant distress condition” is met if—*
- (a) *the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and*
 - (b) *that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.*
- (4) *A direction under this section may be made by the court—*
- (a) *on an application made by a party to the proceedings, or*
 - (b) *of its own motion.*
- (5) *In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—*
- (a) *any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;*
 - (b) *any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;*
 - (c) *the nature of the questions likely to be asked, having regard to the issues in the proceedings;*
 - (d) *any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;*
 - (e) *any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;*
 - (f) *any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;*
 - (g) *any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;*
 - (h) *any relationship (of whatever nature) between the witness and the party.*
- (6) *Any reference in this section to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy.*
- (7) *For this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which—*
- (a) *address the questions put to the witness, and*
 - (b) *can be understood, both individually and collectively.*
- 53E Directions under section 53D: supplementary*
- (1) *A direction under section 53D has binding effect from the time it is made until the witness in relation to whom it applies is discharged.*
- (2) *But the court may revoke a direction under section 53D before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—*
- (a) *on an application made by a party to the proceedings, or*
 - (b) *of its own motion.*
- (3) *The court may revoke a direction under section 53D on an application made by a party to the proceedings only if there has been a material change of circumstances since—*
- (a) *the direction was given, or*

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

(a) giving a direction under section 53D;

(b) refusing an application for a direction under section 53D;

(c) revoking a direction under section 53D;

(d) refusing an application for the revocation of a direction under section 53D

53F Alternatives to cross-examination in person

(1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of section 53B, 53C or 53D.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

(a) invite the party to the proceedings to arrange for an advocate to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether an advocate is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

(a) the party has notified the court that no advocate is to act for the party for the purpose of cross-examining the witness, or

(b) no notification has been received by the court and it appears to the court that no advocate is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the party.

(7) An advocate appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section a reference to cross-examination includes (in a case where a direction is given under section 53D after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination;

53G Costs of legal representatives appointed under section 53F

(1) The Treasury may by regulations make provision for the payment out of the General Revenue of the Island of sums in respect of—

(a) fees or costs properly incurred by an advocate appointed under section 53F, and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.

(3) The regulations may provide for the amounts paid to be calculated in accordance with—

(a) a rate or scale specified in the regulations, or

(b) other provision made by or under the regulations.

Tynwald procedure for regulations under this section — approval required.>>.

(4) For the italic cross-heading preceding section 54 substitute—

<<DIVISION 3: ORDERS IN DOMESTIC PROCEEDINGS>>.

DIVISION 2: PROCEEDINGS UNDER THE MATRIMONIAL PROCEEDINGS ACT 2003

NC4 Matrimonial Proceedings Act 2003 amended

(1) The Matrimonial Proceedings Act 2003 is amended as follows.

(2) For the italic cross-heading in Part 5 before the section specified in column 1 of the table below, substitute the Division heading specified in column 2—

Section	New Division heading
91	Division 1: Jurisdiction
92	Division 2: Rights to occupy matrimonial or civil partnership home
95	Division 3: Occupation orders
104	Division 4: Non-molestation orders
105	Division 5: Further provision as to molestation orders
115	Division 7: Supplemental.

(3) Before section 106 insert—

<<Division 6: Miscellaneous>>.

(4) After section 114 (but before the Division heading preceding section 115) insert—

«DIVISION 6A: FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

114A Prohibition of cross-examination in person: introductory

In this Division —

“the court” means the High Court;

“witness”, in relation to any proceedings, includes a party to the proceedings.

Note: This Division applies only for the purposes of proceedings under this Act in the High Court. For corresponding provisions in the courts of summary jurisdiction see Division 2 of Part 5 of the Summary Jurisdiction Act 1989

114B Prohibition of cross-examination in person: victims of offences

(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 2001, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(5) In this section—

“caution” means—

(a) a caution given in the Island by a constable or other authorised person to a person who, at the time it is given, has admitted the offence for which it is given;

(b) a conditional caution given under section 22 of the Criminal Justice Act 2003 (of Parliament);

(c) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998 (of Parliament);

(d) any other caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time the caution is given, that person has admitted;

(e) anything corresponding to a caution falling within paragraph (a), (b), (c) or (d) (however described) which is given to a person in respect of an offence under the law of Scotland;

“conviction” means—

- (a) a conviction before a court in the Island;*
- (b) a conviction before a court in England and Wales, Scotland or Northern Ireland;*
- (c) a conviction in service disciplinary proceedings (in the Island or elsewhere);*
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;*

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (of Parliament) (except proceedings before a civilian court within the meaning of that Act);*
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (each an Act of Parliament) (whether before a court-martial or before any other court or person authorised under any of those Acts of Parliament to award a punishment in respect of an offence);*
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 (of Parliament);*

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Department after consulting the Deemsters.

Tynwald procedure for regulations under this subsection — approval required.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

- (a) section 6 of the Criminal Justice Act 1963;*
- (b) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (of Parliament);*
- (c) section 187 of the Armed Forces Act 2006 (of Parliament); or any corresponding earlier Manx or Parliamentary enactment.*

(7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

114C Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section “protective injunction” means an order or injunction specified, or of a description specified, in rules made by the Deemsters.

Tynwald procedure — negative

(0) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

114D Direction for prohibition of cross-examination in person: other cases

- (1) *In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—*
- (a) *neither section 114B nor section 114C operates to prevent the party from cross-examining the witness, and*
 - (b) *it appears to the court that—*
 - (i) *the quality condition or the significant distress condition is met, and*
 - (ii) *it would not be contrary to the interests of justice to give the direction.*
- (2) *The “quality condition” is met if the quality of evidence given by the witness on cross-examination—*
- (a) *is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and*
 - (b) *would be likely to be improved if a direction were given under this section.*
- (3) *The “significant distress condition” is met if—*
- (a) *the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and*
 - (b) *that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.*
- (4) *A direction under this section may be made by the court—*
- (a) *on an application made by a party to the proceedings, or*
 - (b) *of its own motion.*
- (5) *In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—*
- (a) *any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;*
 - (b) *any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;*
 - (c) *the nature of the questions likely to be asked, having regard to the issues in the proceedings;*
 - (d) *any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;*
 - (e) *any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;*
 - (f) *any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;*
 - (g) *any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;*
 - (h) *any relationship (of whatever nature) between the witness and the party.*
- (6) *Any reference in this section to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy.*
- (7) *For this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which—*
- (a) *address the questions put to the witness, and*
 - (b) *can be understood, both individually and collectively.*
- 114E Directions under section 114D: supplementary*
- (1) *A direction under section 114D has binding effect from the time it is made until the witness in relation to whom it applies is discharged.*
- (2) *But the court may revoke a direction under section 114D before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—*
- (a) *on an application made by a party to the proceedings, or*
 - (b) *of its own motion.*

(3) *The court may revoke a direction under section 114D on an application made by a party to the proceedings only if there has been a material change of circumstances since—*

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

(a) giving a direction under section 114D

(b) refusing an application for a direction under section 114D;

(c) revoking a direction under section 114D;

(d) refusing an application for the revocation of a direction under section 114D.

114F Alternatives to cross-examination in person

(1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of section 114B, 114C or 114D.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

(a) invite the party to the proceedings to arrange for an advocate to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether an advocate is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

(a) the party has notified the court that no advocate is to act for the party for the purpose of cross-examining the witness, or

(b) no notification has been received by the court and it appears to the court that no advocate is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the party.

(7) An advocate appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section a reference to cross-examination includes (in a case where a direction is given under section 114D after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination.

114G Costs of advocates appointed under section 114F

(1) After consulting the Deemsters, The Treasury may by regulations make provision for the payment out of the General Revenue of sums in respect of—

(a) fees or costs properly incurred by an advocate appointed under 114F, and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.

(3) The regulations may provide for the amounts paid to be calculated in accordance with—

(a) a rate or scale specified in the regulations, or

(b) other provision made by or under the regulations. Tynwald procedure — approval required.>>

Renumber the following Part and subsequent Clauses and adjust cross-references accordingly.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you, Mr Speaker.

I am happy to second those that have been moved by Mrs Barber.

1430

I just have a query in respect of the sections G – 53G and 114G – and actually it is not a question for the hon. mover; it is more a question for the Treasury. Those sections state that the cost of legal representatives that are appointed to cross-examine witnesses, where cross-examination is prohibited, will be dealt with by regulations by Treasury and it says, 'Treasury *may* by regulations make provision for the payment out of the general revenue for these sums'. I would just like some kind of confirmation from Treasury, either now or subsequently, that they will be making these regulations, otherwise we could end up in a situation where the courts come to a standstill because they cannot pay for an advocate and the person cannot cross-examine themselves.

1435

Thank you.

The Speaker: We then have amendment number 2 in the name of Mrs Corlett.

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Mr Robertshaw: Mr Speaker –

The Speaker: If you can allow me to get the amendments on the table, then I will open the whole package up for debate, Mr Robertshaw, if that is okay.

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Mrs Corlett to move amendment number 2 on the Order Paper.

Mrs Corlett: Thank you, Mr Speaker.

The amendment to inserted new clause 4 amends inserted new section 114B(5), so that the procedure for specifying an offence for the purpose of the Act is the same as for new clause 3. This change simply means that in domestic matrimonial proceedings new clause 3 and clause 4 do the same thing in the same way.

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Mr Speaker, I beg to move:

Amendment to New Clause 4 above

2. In inserted New Clause 4(4) moved by Mrs Barber (which amends the Matrimonial Proceedings Act 2003), in the inserted section 114B(5), for the definition of 'specified offence' substitute –

“‘specified offence’ means an offence which is specified, or of a description specified in rules of court’.

The Speaker: Mr Shimmins.

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Mr Shimmins: Thank you, Mr Speaker.

Perhaps if I could just answer Mr Hooper's –

The Speaker: I would like a seconder for the amendment. Mr Moorhouse.

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Mr Moorhouse: I beg to second.

The Speaker: Thank you very much.

Now, Mr Shimmins, please continue.

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Mr Shimmins: No problem. Just Mr Hooper's enquiry: I can confirm that Treasury has considered the proposal. It is not considered to be a common occurrence, but generally Treasury is supportive as proposed. Thank you.

The Speaker: Mr Robertshaw.

1470 **Mr Robertshaw:** Thank you, Mr Speaker.

To a great extent my commentary very much follows the Hon. Member for Ramsey with regard to this matter. I fully support Part 4 – its non-appearance in the Bill would be a very serious omission indeed.

1475 But in 53F, where it talks about the court must consider – and here we are talking about litigants in person – that a satisfactory alternative needs to be found. Could I ask the mover of this amendment are there any other alternatives that would stand in the stead of appointing an advocate paid for by the state, by Treasury? Because I cannot think of one.

1480 I think the whole idea of having a litigant in person in such a serious and sensitive area as domestic abuse is worrying in itself and the growth of ... I take the comments from the Hon. Member for Middle, Mr Shimmins that it is rare, but litigant in person issues are growing and it is a worry.

1485 One has to have that reassurance that the funding will be there and in place, should the court decide that it is appropriate and necessary to actually appoint an advocate to make representation on the part of the litigant in person in the first instance. So if I could have a commentary from the mover of the amendment with regard to: are there any other alternatives, I will be grateful, Mr Speaker.

The Speaker: Dr Allison.

1490 **Dr Allinson:** Thank you, Mr Speaker.

1495 I would like to thank the Hon. Members who have raised questions regarding this, because it is a fundamental right of people to represent themselves in court. However, it is when they abuse that right to intimidate and harass people in that court – which is rare but can happen – and unfortunately the court system, as it stands at the moment, is powerless to interfere with that, and obviously it puts people off actually carrying on with the prosecution. We have seen that particularly in domestic abuse, but also sexual offences as well, that cases have collapsed because the actual trauma of going through the court process is sometimes as bad as the initial offence.

1500 In terms of Treasury concurrence, that was sought and was granted and that is one of the reasons why this part of the Bill is a little bit later than the others because the Treasury had to look into that and rightfully so. But I thank the Hon. Member for his commitment to that.

1505 In terms of other methods of cross-examination, different jurisdictions have experimented with video cross-examination so the two people are not in the same court building – they are not face to face physically. There are various ways you can organise a court system, but certainly for the Isle of Man, that would be cumbersome, given the small number of cases that are coming through. So it was certainly the Department's decision that by having the ability to have an independent counsel to represent you, that would be paid by the state, was a better way of dealing with this; but obviously as technology progresses and as the criminal justice system matures, particularly putting the victim first through all these court proceedings, videoing cross-examination early on and using that in court as evidence has been tried by other jurisdictions and would be a way forward perhaps in the future, if this Hon. House felt so.

1510 Thank you, Mr Speaker.

1515 **The Speaker:** Okay, an opportunity to sum up, Mrs Corlett, on your amendment. No? Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

1520 I would like to echo the comments of my hon. colleague and thank Treasury for their work in achieving the concurrence on this. It was very important that we got this right and I think that is very clear from comments from other Members in the Hon. House.

1525 As Dr Allinson has also answered Mr Robertshaw's comments in respect of those satisfactory alternatives, certainly the key one that was considered was around having a legal representative and that would involve, potentially, the issue around Treasury concurrence, because there may be a legal aid implication, hence the delay to some aspects of that Bill. We are very grateful to Hon. Members for their understanding in allowing us to move this detail at this sitting to enable this to be considered properly and thoroughly.

With that, I beg to move.

1530 **The Speaker:** I put first that new clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting next, in relation to new clause 4, the amendment in the name of Mrs Corlett: those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

New clause 4 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.