

**3. Domestic Abuse Bill 2019 –
First Reading approved**

Miss August-Hanson to move:

That the Domestic Abuse Bill 2019 be read for a first time.

The President: We turn to Item 3, Domestic Abuse Bill for First Reading, Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I am pleased to bring this First Reading of the Domestic Abuse Bill 2019 before my colleagues
445 in Council today. The Domestic Abuse Bill is a very significant piece of legislation, it provides for
the first time the legal basis for protection and support for people in abusive domestic
environments and the bringing to justice of abusers. This Bill not only defines domestic abuse
but also sets out detailed legal measures that may be taken to protect people from abusive
partners or ex-partners.

450 It is not often that you have the opportunity to be part of a process to amend law that aims
to solve mischief that you yourself have personal experience of in your youth, so it has been an
interesting process. My hope is that victims of abuse will have the strength and support to
remove themselves from these situations on the enactment of any such legislation.

455 My mother was a very strong woman but she suffered for five years before she left, it was a
very difficult situation. My hope is that perhaps this might provide the strength from parliament
to some of these individuals that perhaps do not necessarily have that at the moment to fall
back on.

I would also like to just point out that all of the charities that are involved in domestic abuse
have been absolutely brilliant and instrumental in forming this piece of legislation.

460 During its passage through the Keys the Bill was improved by a number of amendments
brought forward by the Department of Home Affairs, following detailed scrutiny and input from
Members. The key amendments include: the insertion of a new Part 4 which is designed to
protect vulnerable parties from abusive cross-examination in domestic and family court
465 proceedings; the inclusion of 'vulnerable adults' as a party to be considered when making
Domestic Abuse Protection Notices (DAPNs) or Domestic Abuse Protection Orders (DAPOs); the
inclusion of adoptive relations within definitions was also added; the removal of an age
restriction of 16 and over in the definition of domestic abuse to recognise that, sadly, children
can be the perpetrators of domestic abuse; and a number of amendments recognise that there
470 are a significant variety of accommodation arrangements and so are designed to ensure that
whatever protective measures may be made by notice or order that the victim's right to reside
in their premises will be paramount.

This Bill sets out the domestic abuse offence and the controlling or coercive behaviour
offence with significant maximum penalties available to the courts and provides that these
475 offences are aggravated where children are in any way involved, or in any other circumstance
that may be specified by the Department in an order.

480 These landmark offences and the protective measures set out in the Bill send a signal to our
community that domestic abuse is a very serious matter and will be addressed. Historically it
may have been the view that this area of intimate relationships was one into which the Police,
and by extension the courts, were not able to intervene. However, this is no longer the case,
times change and the law must change with them ensuring the protection of those who are not
able to protect themselves.

485 The Domestic Abuse Bill 2019 will be taken through our Branch thematically, similarly to the
Westminster fashion of grouping clauses, so I will just make a quick explanation of that. It is a
very efficient tool for Legislative Council and could turn the legislative subject on its axis, which
is the reason why it has been chosen, so that the scrutiny is slightly different from Keys and it is

hoped that this may ensure that the engineering of the Bill is comprehensively considered in its approach. I have consulted with the drafter of the Bill and with the Department, which I have worked alongside. We have identified six key themes; all of the clauses have been placed into those categories accordingly.

490 The plan is to open with clauses 1 and 2, dealing with the title and commencement. I did send out an email to Members yesterday, just outlining how thematically this Bill might be brought, so I am going to do it for the record now, for those that may or may not be listening.

The themes would then follow: definitions and terms, these are very significant because they set the parameters of the Bill as in what is domestic abuse and who is or is not included. The
495 advice would be that I would be speaking in general terms and then detail, but not move clauses 3 to 6 at this point. This is because there may or may not be any changes proposed later on in debate that could materially affect the Part.

Protection and prevention is the next theme: clauses 7 to 11, 14 to 25, 28 to 30 and 32 to 34 deal with the power to give DAPNs and apply for and make DAPOs and provide an opportunity
500 to discuss and debate issues of protection for victims and vulnerable people, such as dependent children and, or vulnerable adults within the domestic setting.

The next theme is accommodation. During the clauses stage in the Keys there were some amendments to deal with how DAPNs and DAPOs could be applied in relation to the many and varied permutations of the accommodation arrangement that may be found in our Island, and
505 this includes joint ownership, where the perpetrator owns the premises or the premises the couple live in is in his or her name, even though the mortgage is then paid out of joint funds etc. The UK draft Bill presumed that the perpetrator would be living at the premises at the time of the notice or order, but that is not necessarily so. The other issue is where the tenancy is held in common with others who are not part of the domestic relationship in question. The clauses for
510 this are the same as for the second theme, which is protection and prevention. However, this is just approaching clauses from a slightly different angle.

The next theme is offences. Clauses 12, 13 and the Schedule deal with DAPNs, clauses 26 and 27 deal with the breach of DAPOs, clause 31 with breach of notification requirement. Clauses 35 and 36 deal with the substantive domestic abuse offences. Clauses 37 to 39 with behaviour
515 outside the Island, alternative offence and exception. Clauses 40 to 42 deal with aggravating factors and we can look at those in some detail noting what could be included by order. The issue of abusive cross-examination in court, clauses 43 and 44 deal with this Part, which was inserted in the Keys and is a significant public policy statement in its effect.

The next theme is guidance and consequential or minor amendments. Clauses 45, 46 and 47 deal with regulations, a code of practice and guidance, all issued by the Department in dealing
520 with disclosure of information, the handling of information and data and the fundamental issue of guidance to all parties in how they should exercise their functions under the Act. In other words, these clauses are fundamental to how the Act would be made to work in practice.

525 Clauses 48, 49 and 50 were thought to be connected with domestic abuse, albeit ... tangentially – I always struggle with this word, my apologies! – but could be dealt with through this Bill.

I do want to thank the work of the drafter who has put a great deal of time and effort into many drafts of this Bill before its arrival into this Branch, and that of the DHA's legislative staff who work exceptionally hard on complex and important legislation with a small number of
530 heads in the office.

Mr President, there is much consideration yet to come through the various stages of this Bill, and I now beg to move that the Domestic Abuse Bill 2019 be read for the first time.

The President: Mrs Maska.

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Mrs Maska: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Lord-Brennan.

540 **Mrs Lord-Brennan:** Thank you, Mr President.

I am very happy to see this Bill come forward, I think it was a great step forward to see offences of coercive and controlling behaviour included and also leverage off the developments in other jurisdictions on provisions for domestic abuse, so we see ourselves with a great opportunity to make a real difference to people who are suffering in this regard.

545 Part of that opportunity allows us to identify and evaluate other recent developments elsewhere, so there are just two points that I would like to make that have been under discussion and review, certainly from the UK perspective. Firstly, the age of criminal responsibility, the Bill makes provision, I think, for under 16s to effectively ... they could have an offence brought against them to do with domestic abuse. It has been a matter of some
550 discussion in recent months in the UK, and elsewhere, about the age of criminal responsibility. The UK basis generally – I am not sure specifically to do with domestic abuse – but the UK age for criminal responsibility is actually quite low compared to other places. I am going to look at this aspect further because within the dynamics of a family home the provision of such an offence for somebody who is, I cannot remember whether it is under 16 or under 18, is clearly
555 quite a significant matter, so I would be looking at that.

The second matter that has been brought out recently is probably something that would ultimately be dealt with by guidance. However, because it is related to those responsible for putting enforce the legislation, the practice notes and the guidance that the courts deal with is also important, so I think it is worthwhile to bear this out in terms of future debate and perhaps
560 to flag it now.

It has certainly been the case that over the last few months in the UK there has been examination and a call for evidence over dealing with families and children in the courts in cases of domestic abuse, and this is something which is going beyond the cross-examination which is actually very important, and I am very glad to hear that that is in the Bill.

565 I think it is really important that we ensure that children's voices within these proceedings are heard and that the procedures are working correctly and that the outcomes of the children and victims parents involved in these proceedings are supported and protected. So I just would wish to flag that looking at perhaps some of the guidance available to the courts might be worthwhile since we are looking at all this, because it is being looked at in the UK to understand
570 how the orders and the practice directives that are being applied and their impact to do with the risk of harm. It is perhaps a little bit too much detail to go into now, but I would wish to flag those two points.

A further matter is that I think that I had hoped, given such an extensive consultation – I am talking about the original consultation which was I think in 2019 – the original public
575 consultation was something that a lot of views were put forward to. The Department clearly reacted to that and has brought forward to the other place and to us a much more substantial piece of legislation than I think would have been the case had there not been such public engagement. I do not think that the consultation responses have been published. I would be interested to see those. I am not sure if this has been raised elsewhere, just so that we can use it
580 as a point of reference.

A couple of other general points I would make is that I think part of the basis for this legislation was a domestic abuse strategy. I appreciate that the mover probably cannot answer for that, but perhaps it would be interested to know from the Department where the domestic abuse strategy is. Is that something that is available as a point of reference now or is it coming?

585 I think those are really the main points, but I am very happy to see this coming forward. I know that the mover has put a great deal of work into this and I know that the legislative officers have as well.

In my view, this is a really important opportunity to do the best we can to make sure that the protections for victims are going to work and are going to be to the best level possible,

590 particularly with coercive and controlling behaviour which is said to be the very essence of domestic abuse.

Thank you, Mr President.

The President: Thank you, Mrs Lord-Brennan.

595 Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to echo Mrs Lord-Brennan's comments about what an important piece of legislation this is and how hard I know the hon. mover has worked on this, along with the legislative drafter and officers.

600 I think it is critical that this legislation is coming forward because at last it recognises that this is a serious issue and that there should be legislation making this a criminal offence, and not only abuse involving violence but, as has already been highlighted, coercive and controlling behaviours.

605 I think this recognition is so important to send a very clear message that such behaviours are unacceptable and to help raise public awareness of the immense damage caused to victims, including children, who may witness or otherwise be impacted, and to offer support and a clear message to victims that society stands with them in tackling destructive and abusive behaviours.

610 It is my hope that this legislation will be part of what actually helps victims to feel more empowered to speak out, to seek help, and to receive the much needed support and protection that they so clearly need.

I think critically the other thing that I really welcome in this Bill is the ability to take preventative action to try and stop more serious abuse taking place. I am well aware – as I am sure other Hon. Members of Council may be from speaking to those who have been victims of abusive relationships – how difficult it is for them to be able to speak out and how difficult it has been for the Police to be able to act in the absence of a victim feeling able to speak out for themselves. So I believe this power, this proposal, that there should be the ability to take preventative action is an important power moving forward.

615 I welcome the Bill, so I now have various areas of question and clarification, which I just raise at First Reading now. I understand that there may not be detailed answers today, and I do not expect that, but I wanted to raise them at First Reading in order that we can consider them as the Bill progresses through this Hon. Council.

I think the first one is something that Mrs Lord-Brennan touched upon, which is the fact that the legislation by itself, whilst welcome and very important, is not enough, that a strategy to underpin this legislation is what is required. I recognise that the mover may not be able to speak to all of that and its progress but I think it is important, for the record, that we recognise that this legislation will not be as successful as it might otherwise be without measures including training for our Constabulary, the courts, family welfare and all other parties who may be involved with families and the victims of abuse.

625 I think beyond that the importance of social services in terms of their role supporting victims and families. I think it is important that we consider how best to provide meaningful interventions for perpetrators to try and address their offending behaviour. There are other factors which may be pertinent to a strategy including adequate places of safety for victims. The reality that it is very difficult for victims, even with this legislation, if they are in financial difficulties, and critically as well recognising that unfortunately the impact of domestic abuse on victims and children, even if they are not direct victims themselves, is significant and resourcing proper care and support for those victims is important.

630 In terms of provisions in the Bill, I am very interested and would like to hear more, even if not today, from the hon. mover about how the mechanism of Domestic Abuse Protection Orders will interlink with other proceedings that may take place that will affect victims and their families in practice.

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645 So, for example, clause 17 of the Bill recognises that Domestic Abuse Protection Orders (DAPOs) may be made in the context of any family proceedings. I suppose the question is, these things could arise in a multiple of different ways, it is possible that the abuse will arise first and family proceedings might arise later. And I recognise that clause 32 covers the issue of variation and discharge of DAPOs, but I think the question is to get a clear understanding of how these orders will come into play with other court proceedings and whether it is possible in all cases that a single court might be able to deal with all aspects that may arise, including the variation of a DAPO, so to avoid people having to make multiple applications to different courts if need be.

650 I think the other aspect I would like to hear more about is the decision-making powers of the courts when it comes to variation and discharge of DAPOs, particularly again in the context of family proceedings. So, for example, in family proceedings questions of contacts with children are likely to arise and questions of supervision of that contact are likely to arise. So what is being done to make sure that the way in which orders are made around those aspects of family proceedings link in with DAPOs and practically, if supervision is needed, what facilities do we have to make sure that supervision for contact takes place?

655 Critically as well, and it is a point Mrs Lord-Brennan has raised, how will the voice of the child be heard? The Bill is very clear about what the court must consider before it discharges or varies a DAPO. Unless I am mistaken, the voice of the child is not explicitly included at the moment in the Bill, and I think that is critical, that the voice of the child and the impact on the child is heard. And so I would like to hear a little more about that.

660 In terms of the offences, one thing I would like to understand – and I know it is something that I think was raised in response to the initial consultation in 2018 – is the interlink between the fact that very often domestic abuse is a pattern of behaviour, it is not a one-off incident. So the Bill as currently drafted obviously allows for domestic abuse and coercive controlling behaviour to be considered as an offence. The evidence, certainly from third-sector organisations who support victims of abuse, is that on average the offence that gets reported and tried is the 51st, there may have been 50 examples before that triable offence, so my question would be in practice will the past history, the pattern of offending come forward in these proceedings as evidence that is pertinent to the question of whether an offence has been committed and/or will it come into play when it comes to sentencing? Obviously there are now higher maximum penalties on conviction, and my question is whether the pattern of offending will weave into that sentencing decision making?

675 A further question is obviously there are new provisions that were inserted in another place to prevent abusive cross-examination. And I must say, like Mrs Lord-Brennan, I wholly support this provision being included. My question here really is about what consultation took place and what input was received to make sure that these provisions are fully workable? So it is not disagreeing at all with the principle, it is just to understand the extent of consultation and making sure that the provisions in the Bill actually will work as best as possible in practice.

680 And just another point finally on consultation, I recognise that there have been in effect two consultations on this Bill, the first in 2018, on what was quite a different Bill and, as Mrs Lord-Brennan alluded to, the Department responded robustly to that consultation by redoing the Bill and making it the Bill that then proceeded towards the House of Keys. My understanding is that there was a second consultation issued by letter from the Department on 25th July 2019. It would be very helpful, if possible, to understand what the responses were to that consultation, just again to inform us as we consider the detailed provisions of the Bill.

685 But I welcome the Bill and I thank the mover and all officers involved for their extensive work to date in bringing this legislation forward.

690 Thank you, Mr President.

The President: Thank you, Hon. Member.

Does any other Hon. Member wish to speak at this stage? Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

695 As political lead for Children and Families, I would like to voice my concern regarding the age of criminal responsibility, and this is something I am looking at in detail with regard to this Bill. If children and young people have witnessed domestic abuse all their lives, is it fair to criminalise them if they copy such behaviour?

700 It is interesting to note that the general age of criminal responsibility in England and Wales is 10 and that there is no minimum age for offences of homicide. So at future sittings I wonder if the Hon. Member could explain in detail the Department's reasoning behind the age of criminality in this Bill, taking into account information regarding age of criminality in the UK and whether the Isle of Man should be thinking about an Isle of Man version, really.

Thank you, Mr President.

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The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

710 Like my colleagues, I welcome this important legislation or the Bill coming forward; it seeks to address absence of remedies available in the past. I am aware that domestic abuse may have been happening in families and victims may not have been actually aware that the abuse was actually happening to them and to their children. I think this Bill, as it comes forward in its amended form, however it might end up, will hopefully raise the level of awareness to enable the victims to stand up and be counted and take the step forward that has been absent in the past.

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I know again, having spoken to the Constabulary in the past, that they have felt their hands were tied when they have witnessed what they would deem to be domestic abuse, but so often the victim would not feel able to give evidence such that the perpetrator could be prosecuted and be brought to justice. And, as colleagues have said, it is so difficult when a pattern starts to emerge. I know in the public consultation that was held some of the remarks that came in from the public at large felt that the pattern that builds up is just the beginning, and as that pattern becomes embedded then domestic abuse is accepted, and that is a terrible thing.

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I feel that that the Bill, as amended in another place now, is much better able to address the gaps in our ability to meaningfully address domestic abuse.

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I also feel that the mover's initiative to take forward the draft Bill in a thematic way is both interesting and I think quite valuable in terms of that it will enable, almost like a cross-referencing, and a drilling deeper into the scrutiny process. So I welcome that, and I think it will be interesting as well, not just for us as a Council, but for the public maybe to understand better what we are trying to do as we bring this forward in a clearer manner.

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I also feel that whilst this is the enabling and primary legislation, it will be so important to ensure that the necessary resources are available to support both victims and perpetrators. I know again, through personal experience, that the necessary support for children who maybe have witnessed, and the victims who have undergone traumatic abuse, the support has not been readily available at the time it has been needed, it has taken far too long when the damage carries on unnoticed and unaddressed. So it will be vital that the resources are available to assist victims and perpetrators, no matter what their needs might be.

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As colleagues as well have remarked upon, I do welcome the possibility to identify psychological harm and controlling or coercive behaviour. And again, these will be victims possibly who have not had any inkling or recognise that they are victims in that regard. And so the Bill has been improved in another place, I would like to think that with our scrutiny and our process that we can yet fine tune it.

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So today I am very pleased and proud to second the Bill, and thank you to the hon. mover for inviting me to do that.

Thank you, Mr President.

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The President: Does any other Member wish to speak before I call the mover to reply?
Miss August-Hanson to reply.

Miss August-Hanson: Thank you, Mr President.

750 I would just like to thank Members who have contributed thus far and those who have asked questions as well before bringing the Bill to this place.

Mrs Lord-Brennan, in relation to coercive and controlling abuse, no, it just has not been sufficiently dealt with before so this is a real opportunity for us to do so now.

755 I would like to thank Mrs Lord-Brennan as well, and I appreciate her comments and her support in bringing this piece of legislation to this place. We have had a number of conversations over the course of the last couple of years on this matter and actually they have been quite helpful in forming some of my ideas and feeding that in scrutiny back through to the Department, while I was a member of that Department.

760 In terms of the legislation that has been compiled, following consultation the first time around in 2018, it was to follow the Scottish model, the 2018 model, and the UK Bill, the England and Wales Bill came out in the form of a report in January 2019 and changed things quite dramatically, the difference between the way that the Scottish legislate, in a very sort of commonsensical, interpreted fashion, and the way that Westminster perhaps do it is in a very prescriptive fashion. I suppose in the way of interpreting we follow more in a prescriptive model
765 in terms of our statute, so it made most sense to follow the way that England or Westminster have compiled their Bill. They also place some level of concentration on the economic and financial abuse as well and defined that quite a bit better than perhaps the Scottish model had done. And so, yes, it is important to look at legislation from elsewhere and incorporate that, perhaps ideas and best practice into the legislation that we look at in drafting.

770 The age of criminal responsibility that was raised by my colleague, Mrs Lord-Brennan and also by my colleague to the left of me, Mrs Sharpe, is something that perhaps is a very controversial matter. But it is definitely worth bearing out down the line, I think, and it is worth airing. The removal of the age restriction of 16 and over was, as I said in my speech, to recognise that quite upsettingly children can be the perpetrators of abuse as well, it is worth the debate and the
775 discussion.

In terms of enforcement in the courts, guidance and training, it is planned that there will be guidance that will be drafted quickly, as soon as the legislative manager has the time to do so, for the courts, for the Police, and a number of other providers and organisations. We do need to learn from the UK approach to enforcement as well, I think that is quite important.

780 Consultation was in 2018. There were 58 responses, from recollection, in the first consultation. The legislative team over at the Department of Home Affairs did take all of the information from that consultation, from the responses, and then added it into the way that the Bill was drafted before it was sent out to a second consultation, but that second consultation was very much just with the charities and the organisations that were involved. Then there was
785 this consultation document that went out as well, so I am hoping that perhaps the Department of Home Affairs might assist me in providing the Legislative Council with some more information on how those responses were then collated and who responded, if they are not anonymised, and also what information was then collated so I can provide that to my colleagues on Council, I would be very grateful for that.

790 In terms of the strategy Mrs Lord-Brennan made mention of, there is a domestic abuse pathway that is being constructed at the moment. I believe it is one of the Chief Minister's Committees in the Cabinet Office, and the Council of Ministers are very much involved in that. It is something that has been talked about and has been discussed within the Department of Home Affairs, and was being talked about when I did leave; in I think it was April last year. It is
795 something that is being refined. At last I checked, a couple of weeks ago, they were still working on it. It would be extraordinarily helpful if that pathway did fall in line with the Appointed Day Order for this piece of legislation, should it make it through the Tynwald Branches, but I am sure

that perhaps the Department of Home Affairs might be able to provide us with some information on where that is at at present. No? Okay.

800 I am hoping that it will fall in line with the legislation, it makes sense to do so, and I can imagine that they would be taking a common-sense approach there. But thank you very much to my hon. colleague of Council, Mrs Lord-Brennan, for her support there.

805 Mrs Poole-Wilson, it is an extraordinarily serious issue and making it a criminal offence is incredibly important. Obviously this is the first time that it is being done and it does give the judicial system some teeth in actually dealing with perpetrators of domestic abuse.

The economic and financial alongside the coercive and controlling abuse I think is very important, but the coercive and controlling I think is a very difficult matter to be dealt with and I think that the Bill does deal with it in a very sensible fashion, mainly following that UK approach, with some Scottish influence.

810 In terms of children, I myself was in that situation from the age of nought to five. So I am very much aware, and I am sure the Department is as well, that these children do know what is going on and they do deserve to be heard. So I think it is definitely worth the debate in this place. It is important that people feel empowered to do so and those people do include children that are in those situations.

815 I will endeavour to try to answer some of your questions, I cannot answer all of them presently and I will have that information circulated to Members and hopefully we might be able to have those discussions and debates in this place as well. I think it would be extraordinarily helpful to do so and I think you have outlined some really interesting points for debate as well, so thank you to Mrs Poole-Wilson for that; I do appreciate that a great deal. And anything that I can do to help and assist in your research I am more than happy to take any questions and field them, and that goes for every Member of Council.

820 I would just like to thank my seconder, Mrs Maska. She has already done quite a bit of work and scrutiny behind the scenes as well in questioning the Department on this piece of legislation, her experiences and accommodation has been already quite invaluable in terms of scrutiny.

825 The Constabulary, she is quite right, have previously had their hands tied, so it is very important that they are given the ability to actually deal with some of these situations. Having been out with the Constabulary myself in the Department, trying to learn as to how some of the legislation is actually being enacted, it has been quite illuminating. The times that I have spent out with the Constabulary, they have dealt with numerous domestic abuse incidents in one night, and it is quite difficult and harrowing for them to not have the teeth to deal with some of this so it is extraordinarily important to the Constabulary that we that we get this right.

830 Her concern for victims and for perpetrators alike ... Just going back to my own personal experience of this situation, my father had post-traumatic stress disorder and depression. Some of these situations are very unique, from one, to the next, and the next, but it is important that you concentrate on the perpetrator as well because, of course, the perpetrator if you do not deal with that situation and any mental health issues that might follow then that perpetrator will then create more victims. So it is very important that both sides of those are dealt with and dealt with them efficiently and effectively. So I hope that the Department will take that forward in guidance down the line.

840 I know that there has been some work in terms of intervention for perpetrators regarding cognitive behavioural therapy in prison and the probation service. I know that the Department is already working to try and make this situation a little bit better in terms of mental health and creating a far better pathway to dealing with some of the perpetrators in various different situations already.

I believe I have already answered your question, Mrs Sharpe, in relation to the age of criminal responsibility, but I do think it is very important that we do talk about in this place so thank you for raising that.

And with that, Mr President, I beg to move.

850 **The President:** The motion is that the Domestic Abuse Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that brings us to the conclusion of our Order Paper this morning.

I wish to remind Members there will be a briefing with legislative officers five minutes after the adjournment of this formal session, and that will take place in this Chamber in five minutes' time.

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