

5. CONSIDERATION OF CLAUSES

**5.1. Domestic Abuse Bill 2019 –
Clauses considered**

Mr Malarkey to move.

945 **The Speaker:** We now turn our attention to the Domestic Abuse Bill 2019 and I call on the Minister for Home Affairs, Mr Malarkey to move.

Mr Malarkey: Thank you, Mr Speaker.

950 Mr Speaker, the Domestic Abuse Bill consists of 47 clauses and a Schedule. All the amendments that are here today are Department amendments. I am grateful for the input of Hon. Members over the last few months to get this Bill right.

955 Mr Speaker, this Bill now will put us hopefully ahead of the UK whose legislation has fallen because of the election. We have gone through this with a fine toothcomb and as I said, Mr Speaker, we are really grateful to all Members who have involved themselves in this Bill today.

I do apologise for the amount of amendments but I think it is right that we get the Bill right this time without having to change anything at a later date. So with your permission I am going to start with clauses 1 and 2.

960 Clauses 1 and 2 give the short title of the Bill and provide that the Act will come into operation by Appointed Day Order.

I beg to move that clauses 1 and 2 do stand part of the Bill.

The Speaker: Mrs Corlett.

965 **Mrs Corlett:** Thank you, Mr Speaker, I beg to second.

The Speaker: I put the question that clauses 1 and 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

970

Mr Malarkey: Mr Speaker, clause 3 deals with the interpretation of terms such as 'family proceedings', 'home address' and 'relative'.

I beg to move that clause 3 do stand part of the Bill.

975 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

980 **The Speaker:** I call on Mrs Barber to move amendments 1 to 4.

Mrs Barber: Thank you, Mr Speaker.

With your permission I rise to move the amendments to clause 3 numbered 1, 2, 3 and 4 on the Order Paper.

985 The first amendment corrects a minor drafting error: the reference should have been to clause 35(1).

The second and fourth amendments provide further definition of 'relatives' for the purpose of this Bill. The amendments clarify that adoptive relatives are included and refer to cohabiting couples.

990 The third amendment defines 'vulnerable adult'. Amendments to later clauses refer to the welfare of children under the age of 18 and to the welfare of vulnerable adults. The definition is therefore important later on in the Bill.

Mr Speaker, I beg to move the amendments 1, 2, 3 and 4 standing in my name.

Amendments to clause 3

1. Page 9, line 17 for '34(1)' substitute «35(1)».

2. Page 10 for lines 19 to 30 substitute—

«**relative** is to be construed in accordance with subsection (2);».

3. Page 10, after line 32 insert—

«**vulnerable adult** means a person aged 18 or over whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or distress, or otherwise; and for that purpose, the reference to being impaired is to being temporarily or indefinitely impaired.»

4. Page 10, after line 32 (and after the preceding amendment if successful) insert—

«(2) In this Act '**relative**', in relation to a person, means—

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner, or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person ('A') who is cohabiting or has cohabited with another person ('B'), any person who would fall within paragraph (a) or (b) if A and B were (or had been) married to each other.

For the purposes of this subsection, treat any person who has been adopted as the legitimate child of his or her adoptive parent and also as the child of his or her natural parents.

Renumber the succeeding subsection of clause 3.

The Speaker: Mr Hooper.

995

Mr Hooper: Thank you very much, Mr Speaker.

I beg second all four of those amendments and reserve my remarks.

The Speaker: If no Member wishes to speak, I put first that amendments 1 to 4 be approved.

1000 Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

I put clause 3, as amended. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 4, Mr Malarkey.

1005 **Mr Malarkey:** Mr Speaker, clause 4 is important as it defines what is meant by 'domestic abuse' for the purposes of the Act.

1010 Subsection (2) states that behaviour by a person ('A') towards another person ('B') is 'domestic abuse' where A and B are personally connected and the behaviour is: physical or sexual abuse; violent or threatening; controlling or coercive; economic abuse; psychological, emotional or other abuse as set out in subsection (3). It does not matter if the behaviour was exhibited in a single incident or as a course of conduct.

Subsection (4) clarifies that violent behaviour includes both sexual and physical violence.

Subsection (5) further defines what is meant by economic abuse.

Subsection (6) sets out possible examples of abuse falling within subsection (3)(e).

1015 Subsection (7) clarifies that B can be abused even if the psychological, emotional or other abuse has not actually caused B to experience any of the effects described in subsection (6).

Subsection (8) provides that domestic abuse is not limited to those behaviours or examples given at subsections (3), (5) or (6).

1020 Subsection (9) clarifies that A's behaviour may be 'towards' B even if it consists of conduct directed at another person – for example, B's child.

Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mrs Corlett.

1025 **Mrs Corlett:** Thank you, Mr Speaker, I beg to second.

The Speaker: I call on Mrs Barber to move amendment number 5.

1030 **Mrs Barber:** Mr Speaker, the amendment numbered 5 removes the age definition of domestic abuse. The effect will be to include adolescent on parent or adult relative abuse and enable the relevant agencies to address such incidents – which are, sadly, perhaps more frequent than we might think – as domestic abuse.

Mr Speaker, I beg to move the amendment numbered 5 standing in my name.

Amendment to clause 4

5. Page 11, line 3 omit 'are each aged 16 or over and'.

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

1035

Mr Hooper: Thank you, Mr Speaker.

I beg to second the amendment and reserve my remarks.

The Speaker: Ms Edge. Not yet? No?

1040 In which case, I put first the question that amendment 5 be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 4, as amended, be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 5, Mr Malarkey.

1045

Mr Malarkey: Mr Speaker, clause 5 defines the key term 'personally connected' and covers a wide variety of relationships that fall within the terms of the Bill.

Subsection (2) defines a 'parental relationship'; and subsection (3) provides further definitions for terms used in this section.

1050 Subsection (4) provides a bridge to clause 6 for further provision around personally connected.

Mr Speaker, I beg to move that clause 5 do stand part of the Bill.

The Speaker: Mrs Corlett.

1055

Mrs Corlett: Mr Speaker, I beg to second and reserve my remarks.

The Speaker: I call on Dr Allinson to move amendment number 6.

1060 **Dr Allinson:** Mr Speaker, the amendment numbered 6 adds to subsection (e) within clause 5 wording to clarify that to be considered to be 'personally connected' which are the particular criteria defined within this clause – in this instance it would mean that two people are, or had

been, in an intimate personal relationship with each other within the last 10 years. The addition of this timescale is to provide further definition here by limiting the period covered.

1065 Mr Speaker, I beg to move the amendment, numbered 6, standing in my name.

Amendment to clause 5

6. Page 12, line 16 at the end add 'within the last 10 years'.

The Speaker: Hon. Member for Douglas North, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1070

The Speaker: I call on the Hon. Member for Onchan, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

1075 I beg to move that debate on this clause is adjourned until the next available sitting. The reasons for this are that the amendment, which I support, from the Hon. Member for Ramsey, Dr Allinson is only actually putting in a 10-year limit under the definition to line 15 under (e).

1080 I do feel that Hon. Members need to consider that this could be appropriate to (a), (b), (c) or (d) and I beg to adjourn this to the next sitting so that Members could know ... If somebody has been in a marriage and it is dissolved for life under these current clauses it can be part of this; whereas we are amending item (e) and I just feel that we need to perhaps consider this further and adjourn it to the next sitting.

1085 **The Speaker:** Is there no seconder to the adjournment motion? I will call on Dr Allinson to respond to the comments made around the amendment and then on Mr Malarkey to reply to the motion.

Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1090 What we are trying to do here is to actually define various forms of relationship which is by its very definition rather hard. What the amendment does is to try to make sure that when we say an intimate personal relationship it is made relevant, it is made contemporaneous so it is within the last 10 years – because we live on a small Island with quite close communities and it is quite often that people have been in a previous relationship which may date back decades.

1095 What I would point out to Hon. Members is that none of the definitions here are particularly exclusive. We start off by saying: 'two people are "personally connected" to each other if any of the following applies' – so it is not either/or. What we are trying to say is that if you are in an intimate personal relationship it has to be fairly recent to actually be then taken into account in terms of domestic abuse.

1100 So certainly from the Hon. Member's point of view in terms of people being married to each other, with this addition to the clause I think the courts, and certainly the Attorney General's office, will take that into account and deal very reasonably with trying to see whether that relationship actually means that domestic abuse has taken place.

Thank you, Mr Speaker.

1105 **The Speaker:** I call on Mr Malarkey to reply to the debate on clause 5.

Mr Malarkey: Yes, thank you, Mr Speaker.

I think that the mover of the amendment, Dr Allinson has summed it up very carefully.

1110 I do thank the Hon. Member for approaching us with her concerns with regard to this Bill and we have discussed this within the Department. We feel that it would not help in any way for an adjournment and that the amendment moved today by Dr Allinson is sufficient within this Bill.

1115 **The Speaker:** I put the question first that amendment number 6 be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Ms Edge: No! Can we divide on that one?

The Speaker: You can call divide, you have to do it loudly and quickly, Ms Edge!
Division called, you are voting on amendment 6 in the name of Dr Allinson.

A division was called for and electronic voting resulted as follows:

FOR	AGAINST
Mr Ashford	Ms Edge
Mr Moorhouse	
Dr Allinson	
Mrs Barber	
Mr Boot	
Mrs Caine	
Mr Callister	
Mrs Corlett	
Miss Costain	
Mr Cregeen	
Mr Harmer	
Mr Hooper	
Mr Malarkey	
Mr Peake	
Mr Perkins	
Mr Quayle	
Mr Robertshaw	
Mr Shimmins	
Mr Speaker	
Mr Thomas	

1120 **The Speaker:** There are 20 votes for, 1 against. The ayes have it. The ayes have it.
I put clause 5, as amended. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
Clause 6, Mr Malarkey.

1125 **Mr Malarkey:** Mr Speaker, clause 6 states that if the complaint or the information alleging the offence states that two persons are personally connected, then they are taken to be so connected unless the matter is challenged before a plea is entered or indicated, or unless the court specifically grants permission for a challenge to be made later.
Mr Speaker, I beg to move that clause 6 do stand part of the Bill.

1130 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.
I beg to second.

1135 **The Speaker:** I put the question that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7, Mr Malarkey.

1140 **Mr Malarkey:** Mr Speaker, clause 7 is a key clause because it gives the Constabulary recognised legal backing for whatever appropriate action the officers dealing with an incident or report think is necessary.

Officers are given the power to issue a domestic abuse protection notice (DAPN) to a person, say, 'P' in those cases if various conditions are met that are labelled as conditions A, B and C.

1145 Condition A in subsection (3) specifies that the police officer must have reasonable grounds for believing that P has been abusive towards another person to whom P is personally connected.

1150 Condition B in subsection (4) is that the police officer has reasonable grounds for believing it is necessary to give the notice to P to protect the other person from domestic abuse, or the risk of domestic abuse carried out by P.

Condition C in subsection (5) only has to be fulfilled if the police officer giving the notice is below the rank of sergeant. In that case, a police officer of the rank of constable would first need to obtain the consent of another officer of at least the rank of sergeant prior to giving a protection notice.

1155 Mr Speaker, I beg to move that clause 7 do stand part of the Bill.

The Speaker: Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second and reserve my remarks.

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The Speaker: Mrs Barber, amendment number 7.

Mrs Barber: Mr Speaker, the amendment numbered 7 replaces 'prevention' found within the title of this clause with 'protection'. This is to make a correction to a drafting error where the incorrect word was used.

1165

Mr Speaker, I beg to move the amendment numbered 7 standing in my name.

Amendment to clause 7

7. Page 13, line 15 for 'prevention' substitute «protection».

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1170

I beg to second the amendment.

The Speaker: I call on Dr Allinson to move amendment number 8.

Dr Allinson: Thank you, Mr Speaker.

1175

The amendment numbered 8 substitutes subsection (5) found within this clause with the replacement subsection (5). The purpose of this amendment is to reword the existing clause to provide that the police officer making the DAPN must have obtained the agreement of another officer who is of, or above, the rank of sergeant before doing so. The desired effect is to ensure careful consideration given by the Police before these notices are made, as they could have a notable impact on the person who is the subject of the notice.

1180

Mr Speaker, I beg to move the amendment numbered 8 standing in my name.

Amendment to clause 7

8. Page 13, for lines 30 to 32 substitute—

'(5) Condition C is that the police officer must, before giving the notice, obtain the consent of another police officer who is of, or above, the rank of sergeant.'

The Speaker: Mr Ashford.

1185 **Mr Ashford:** Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Mr Hooper.

1190 **Mr Hooper:** Yes, I just have one comment on this section actually. An earlier amendment removed the age limit from the Bill, so that domestic abuse could apply to people under the age of 15. Subsection (7) of this clause states:

A domestic protection notice may not be given to a person who is under the age of 16.

1195 That seems like it has been left in as an oversight. I would just like to get clarity on that from the hon. mover.

The Speaker: I call on Dr Allinson if you wish to reply to amendment 8.

1200 **Dr Allinson:** In terms of the Hon. Member's comments about subsection (7), I think it is quite obvious that if somebody is under the age of 16 a domestic abuse protection notice does have legal connotations that might be quite difficult to actually apply to that person.

1205 What we were trying to do with the earlier clause was to make sure that actually we open up the definition of domestic abuse to include under-16-year-olds. But if a person under 16 was found to be a victim of domestic abuse or actually the perpetrator of domestic abuse the stipulations for how they would be treated would be very different as to whether they were over 16 and an adult. For instance, making sure that they were no longer able to access the property, making sure that we could find out exactly where their address was and put restrictions on them; and surely this would come more under the safeguarding legislation because of their age, rather than the legal stipulations under the notice.

1210 So whilst I understand the Hon. Member's reservations about whether subsection (7) should be still in the Bill, I think it is important that it is in there to make it quite clear that the domestic abuse notices are not applied to people under the age of 16 and they are dealt with in a different way by the Police Force.

1215 **The Speaker:** Mrs Barber. No?
Mr Malarkey.

1220 **Mr Malarkey:** Once again, speaking just to reinforce what the Hon. Member for Ramsey has said. This discussion was brought up at the presentation we had and was discussed with the Chief Constable at the time, who did tell us that in his opinion he had enough legislation to deal with the situation without having anything written into the Bill, Mr Speaker.

The Speaker: I will put first amendment 8 in the name of Dr Allinson. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1225 Putting amendment 7 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And putting clause 7, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 8 to 10, Mr Malarkey.

1230 **Mr Malarkey:** Mr Speaker, I ask that clauses 8, 9 and 10 are moved together despite the amendments to each clause. This is because my departmental colleague, Mrs Barber, has some

amendments to these clauses that are dependent on each other. These clauses themselves are closely linked in that they all deal with the terms of domestic abuse protection notices.

1235 To turn to the clauses as they currently stand: clause 8 specifies the provisions that may be made by a domestic abuse protection notice. In particular subsection (1) provides that the notice may prohibit P from contacting the person for whose protection the notice is given and may not come within a specified distance of the premises in which that person lives.

1240 Subsection (2) addresses the situation where both P and the person for whose protection the notice is given reside in the same premises. The notice may prevent P from evicting or excluding the other person from the premises; it may prohibit P from entering or require P to leave the premises; and, importantly, may prohibit P from taking any steps which would prevent the person for whose protection the notice is given from occupying the premises.

1245 Clause 9 is about the measures a police officer must have taken reasonable steps to discover and to have considered, before a notice is given. The matters set out in subsection (1) include the welfare of anyone under 18; the opinion of the person for whose protection the notice would be given; any representations by P; the opinion of any other occupant of the premises who is personally connected to the person for whose protection the notice is to be given; or P, if P also lives in the premises.

Subsection (2) defines what is meant by 'relevant occupant'.

1250 Subsection (3) makes a requirement for the police officer considering the notice to take reasonable steps to discover the opinions mentioned in subsection (1).

Subsection (4) makes it clear that the person for whose protection the notice is given does not necessarily have to consent to the notice being given.

1255 Clause 10 gives further requirements relating to notices, the first of which is that they must be given in writing.

1260 Subsection (2) provides that any notice given to P must state the grounds on which the notice is given; that P may be arrested if the notice is breached; that an application for a domestic abuse protection order will be made to a court within 14 days; that the notice remains in effect until the court determines an application for an order or the application is withdrawn; and details of what a court of summary jurisdiction may include in the order.

Subsections (3) and (4) give further detail about the service of the notice.

Mr Speaker, I beg to move that clauses 8, 9 and 10 do stand part of the Bill.

The Speaker: Mrs Corlett.

1265

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

The Speaker: I call on Mrs Barber to move amendments 9 to 14.

1270

1275 **Mrs Barber:** Mr Speaker, the amendment numbered 9 inserts a new subsection (3) in clause 8 which provides for specific wording that would prevent P evicting the victim, where P owns the premises either solely or as a joint tenant or tenant in common in which the other person lives but P does not reside there. It would also prevent P or the other tenants, joint or in common, from taking any other action to prevent the person being protected by the notice from occupying the premises. The existing subsection (3) is then to be renumbered as subsection (4). This will enhance the protection afforded to the recipient of a notice that they will not be further victimised by being made homeless.

1280 The amendment numbered 10 inserts into subsection 1(a) of clause 9 the requirement that the welfare of 'any vulnerable adult' as well as the welfare of any person under 18 be considered. This insertion matters because many people care for vulnerable adults in their own homes and their welfare equally is important.

1285 The amendment numbered 11 inserts into subsection 1(b) of clause 9 wording to cover joint tenants, and/or tenants in common with P, rights to give their opinion prior to a notice being granted. This aligns further with the newly inserted subsection (3) in clause 8 which has been outlined already.

1290 The amendment numbered 12 adjusts the wording of subsection 2(b) of clause 9 to clarify what is meant by this subsection – namely to include and consider the views of occupants of premises who might be impacted by a protection notice, but who are not P or the person for whose protection the notice is being given.

1295 The amendment numbered 13 makes an insertion into the initial wording of subsection (2) of clause 10 so this reads, 'A domestic abuse protection notice given to a person ("P") suspected of domestic abuse must state – '. This amendment recognises that at the point at which a person becomes the subject of a protection notice they may not have been accused or charged let alone tried in court or convicted of a domestic abuse or any other offence. DAPNs are about protection rather than criminal guilt or innocence.

1300 The amendment numbered 14 substitutes the existing subsection (4) of clause 10 and provides new subsections (4), (5) and (6). These are in respect of the provisions in connection with joint tenants, tenants in common – thereafter referred to as 'T' – who were introduced into clause 8 and are consequentially added into clause 10.

Mr Speaker, I beg to move the amendments, numbered 9 to 14 inclusive standing in my name.

Amendment to clause 8

9. Page 14 after line 22 insert—

«(3) If P owns premises in the Island (whether alone or as a joint tenant or a tenant in common with another), and the person for whose protection the notice is given resides in those premises, but P does not, the notice may also contain provision—

(a) prohibiting P (or any other joint tenant or tenant in common) from evicting the person for whose protection the notice is given from the premises;

(b) prohibiting P, or any other joint tenant or tenant in common from entering the premises;

(c) prohibiting P or any other joint or tenant in common from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the premises.».

Amendments to clause 9

10. Page 14, line 28 after 'welfare of' insert «any vulnerable adult and that of».

11. Page 14, line 31 after "the person for whose protection the notice would be given" insert «, and of any person who is a joint tenant or tenant in common with P who would be affected by the notice,».

12. Page 15, for lines 2 to 5 substitute —

«(b) who is personally connected to P or to the person for whose protection the notice would be given.».

Amendments to clause 10

13. Page 15, line 13 after 'person' insert «suspected of domestic abuse».

14. Page 15, for lines 27 to 29 substitute—

«(4) If a domestic abuse protection notice includes provision which relates to a person who is a tenant in common with P, or a joint tenant with P of the relevant premises, (such person being referred to as 'T') and which prohibits T—

(a) from evicting or excluding the person for whose protection the notice was given from the premises;

(b) from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the relevant premises (for example, by surrendering the tenancy of the relevant premises), a copy of the notice must be served personally on T by a police officer.

(5) On serving a notice on P or T, the police officer must ask that person for an address at which that person may be given notice of the hearing of the application for the domestic abuse protection order.

(6) Where a police officer serves a notice on T, the officer must inform T of the effect of section 12 (breach of notice).».

The Speaker: Mr Hooper.

1305 **Mr Hooper:** Thank you, Mr Speaker.
I beg to second amendments 9 to 14 and reserve my remarks.

The Speaker: Now I call on the Hon. Member for Douglas Central, Mrs Corlett.

1310 **Mrs Corlett:** Thank you, Mr Speaker.
I beg to move, with the leave of the House, that an amendment to amendment 9 on the Order Paper, which contains an amendment to clause 8, and which has been circulated, be made.

1315 The reason for this is the word 'tenant' has been omitted from the sentence in clause 8 subsection (c). It should read 'any other joint tenant or tenant in common'.
Thank you. I beg to move.

Amendment to clause 8

Amendment to amendment 9

In paragraph (c) of the inserted subsection (3) after 'joint' insert 'tenant'.

The Speaker: Mr Cregeen.

1320 **Mr Cregeen:** Thank you, Mr Speaker. I beg to second.

The Speaker: Now, Hon. Members, such an amendment to an amendment can be made with the leave of the House. Is that agreed, Hon. Members? I put the question: those in favour, say aye; and against, no. The ayes have it. The ayes have it.

1325 We now have on the table for debate clauses 8, 9 and 10, amendments 9 to 14 and Mrs Corlett's amendment to amendment 9.

It appears that everyone is, thus far, content. Mr Robertshaw.

1330 **Mr Robertshaw:** Mr Speaker, I welcome this Bill and I welcome the fact that the Department is now putting itself in order on the floor of the House with regard to all these amendments and they have picked them up. But in his summation, in his reply, would the Minister explain to us why we appear to be doing work which I would submit perhaps should have been done before this Bill actually arrived? (**Miss Costain:** Hear, hear.) It would have made it simpler for us to consider the matters. We are getting a little bit busy in terms of amendments to amendments and significant amendments to original clauses.

1335 Did they miss a process in putting this Bill together in the first place?

The Speaker: I shall ask Mrs Corlett first: do you wish to add anything to your —?

Mrs Corlett: No, Mr Speaker, that is fine.

1340

The Speaker: Mrs Barber? Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

1345 I totally understand the frustration that Hon. Members may be having with regard to some of these amendments here today.

1350 As I said at the start of presenting these clauses, this is a brand new Bill which we have very carefully had scrutinised and which we did a presentation on. Many of the amendments that will go down as Government amendments were as a result of the consultation that we had. Since the Bill was published, we were approached by several other Members from this Hon. House with other small amendments, and in our efforts to scrutinise everything totally and properly we have actually accepted these amendments as being ... Some of them, I must admit, are administrative and very small corrections, like 'tenancy' being missed off the Bill.

1355 All I can do to this Hon. House is apologise and point out that we are running three very large Bills through our Legislation section at this stage within the Department of Home Affairs, and occasionally these things will occur. But I am hoping by the end of today, once these amendments have all been done, what we will have is a first-class Bill which will lead the way when it comes to domestic abuse, and certainly well ahead of the UK, whose Bill has just totally collapsed.

So, I do apologise again, but we are aware of this, Mr Speaker.

1360

The Speaker: Sensing the mood of the House on this, I will put, firstly, the amendment to amendment 9, in the name of Mrs Corlett, that Members have in front of them. Those in favour of that, please say aye; against, no. The ayes have it. The ayes have it.

1365 I now put amendments 9 to 14 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put it to you that clauses 8, 9 and 10 stand part of the Bill, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn to clauses 11, 12 and 13, Mr Malarkey.

1370 **Mr Malarkey:** Thank you, Mr Speaker. I will try not to get my papers mixed up here.

I will move clauses 11 through to 13, if I may, as this will conclude the clauses as they relate to the administration of DAPNs.

1375 Clause 11 provides that the notice lasts until one of the following occurs: either a police officer notifies a court that an application for an order – that is a Domestic Abuse Protection Order (DAPO) — will not be made; a court makes an order; a court dismisses an order; or 14 days have elapsed since the notice was given, unless a court has adjourned an application for an order.

1380 Clause 12 provides that it is an offence to breach the terms of a notice and gives the offence the maximum penalty of 12 months' custody, or a level 5 fine, or both. The clause also sets out the process around arrest for breach of a notice and its associated timelines.

Clause 13 provides that a person may be remanded in custody or on bail following arrest for breach of a notice and sets out associated conditions around this remand, including those to allow for medical reports, custody timeframes, bail timeframes and mental health.

Mr Speaker, I beg to move that clauses 11, 12 and 13 do stand part of the Bill.

1385

The Speaker: Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second.

1390 **The Speaker:** I call on Mrs Barber to move amendments 15 and 16.

Mrs Barber: Mr Speaker, the amendment numbered 15 amends clause 12 by omitting from subsection 3(b) 'against the person', so that subsection now reads 'if earlier, at the hearing of the application for a domestic abuse protection order' and tidies the language in the clause.

1395 The amendment numbered 16 amends clause 13 by inserting into subsection (1) 'or a copy of such notice' at the end of that subsection. This in effect recognises that these notices may be provided in copy to those who are not the immediate subject of the notice if the notice contains requirements with which they must comply. An example would be the tenant in common or joint tenant as outlined in previous amendments.

1400 Mr Speaker, I beg to move the amendments numbered 15 and 16 standing in my name.

Amendment to clause 12

15. Page 16, line 26 omit 'against the person'.

Amendment to clause 13

16. Page 16, line 37 at the end add «or a copy of such a notice».

The Speaker: Mr Hooper.

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

1405

The Speaker: I put the question that amendments 15 and 16 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put to you clauses 11, 12 and 13 as amended. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

1410 Clauses 14 to 19, Mr Malarkey.

Mr Malarkey: Mr Speaker, I propose to move clauses 14 through to 19, if I may, as these are the initial clauses relating to domestic abuse protection orders.

1415 Clause 14 provides that a court may make an order in respect of a person ('P') if the person against whom P is alleged to have committed domestic abuse is aged 16 or over.

As subsection (1) says, an order may prohibit P from doing certain things or require P to do certain other things.

Subsection (2) states that an order may be made on application or in the course of certain proceedings as set out in clause 17.

1420 Subsection (3) makes reference to the conditions for making a protection order as are found in clause 18.

Clause 15 deals with orders made on application to a court where clause 18 is satisfied.

Subsection (2) sets out the persons who may make an application for an order.

1425 Subsection (3) states that where a person was given a notice under clause 7, a police officer must apply for an order. The officer may only do so if authorised in writing by an officer of the rank of inspector or above.

Subsection (4) provides that an application must be made to a court of summary jurisdiction unless subsection (5) applies.

1430 Subsection (5) says that where P and the person for whose protection the order is sought are parties to any civil or family proceedings, and where the court would have the power under clause 17 to make an order without an application being made, then an application for an order under this clause may be made by the person for whose protection the order is sought.

Clause 16 provides detail about applications for an order where a notice has been given by a police officer.

1435 Subsection (2) provides that the application must be heard within 14 days of the notice being given.

Subsections (3), (4) and (5) are to ensure that P is informed about the proceedings and deal with those situations where either an address was not given when requested by a police officer, or was given and a notice of the hearing was left at that address.

1440 The various other subsections (6) to (9) detail the administrative matters relating to the order process such as court adjournment notifications, the breach of protection notices and the impact of that on associated remand on a breach of that notice.

1445 Clause 17 deals with orders made against P otherwise than on application, such as any family proceedings to which P and the person for whose protection the order would be made are parties when clause 18 is satisfied.

Subsection (2) provides the power in relation to making protection orders as part of family proceedings.

Subsections (3), (4) and (5) provide variously that an order may be made where P is convicted of an offence, acquitted of an offence or has an appeal against conviction allowed.

1450 Subsections (6) to (8) relate to High Court proceedings, interests of justice and the meaning of 'relevant proceedings'.

1455 Clause 18 sets out the conditions for making an order. These are set out in subsections (2) and (3) as conditions A and B. Condition A is that the court is satisfied P has been abusive towards a person aged 16 or over to whom P is personally connected; and condition B is that the order is necessary and proportionate to protect the person from domestic abuse, or the risk of domestic abuse, carried out by P.

Subsection (4) makes it clear that it does not matter whether the abusive behaviour took place in the Island or elsewhere or occurred before the section came into operation.

1460 Subsection (5) specifies that a protection order may not be made against a person who is under 16 years of age.

Clause 19 sets out matters that are to be considered before a court makes an order.

1465 Subsection (3) states that it is not necessary for the person for whose benefit the protection order is being made to consent to the making of the order. The victim's views are most important and in most cases absolutely conclusive. However, there may be some extreme circumstances where it is clear to the court that the victim is so traumatised and the circumstances are such that failure to make an order in the terms drafted could result in very serious consequences for the victim or previous victims.

Mr Speaker, I beg to move that clauses 14 to 19 inclusive stand part of the Bill.

1470 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1475 **The Speaker:** I call on Mrs Barber to move amendments 17 to 26.

1480 **Mrs Barber:** Mr Speaker, the amendment numbered 17 is purely a stylistic change within clause 14(1) to allow that after the initial instance 'a person' be then 'referred to in this Part as "P"'. There has been a slight error as the reference should have been to 'Division' and I am grateful to my hon. colleague Mrs Corlett, who will move a very small amendment to this amendment.

The amendment numbered 18 inserts a new subsection (2) into clause 14, adding there those provisions around joint tenants/tenant in common so as to align them with such previous revisions moved earlier in this session.

1485 The amendment numbered 19 is a small stylistic change to 'against P'.

The amendments numbered 20 to 25 amend clause 16 within subsection (1); clause 17 at subsections (2), (3) and (6); clause 18 at subsection (1); and clause 19 at subsection (1) respectively – all with this same stylistic amendment with regard to the reference to 'P'.

1490 The amendment numbered 26 inserts into clause 19 wording within subsection (1)(a) to include any vulnerable adult, which aligns with the spirit of the amendment made in clause 9 of the views of the individuals to be considered, in this case prior to making a protection order or DAPO.

Mr Speaker, I beg to move the amendments numbered 17 to 26 inclusive standing in my name, subject to the further slight amendment to be proposed by Mrs Corlett.

1495

Amendments to clause 14

17. Page 17, line 25 after 'a person (' insert «referred to in this Part as».

18. Page 17, after line 28 insert—

«(2) A domestic abuse protection order may also contain provision—

(a) prohibiting a person who is P's tenant in common or a joint tenant with P (such person being referred to in this Part as 'T') from doing either of the things mentioned in section 21(5)(a); or

(b) prohibiting T from acting as mentioned in section 21(5)(d), if the conditions in section [NC1] are satisfied.».

Amendment to clause 15

19. Page 17, line 37, for 'against a person ("P")' substitute «against P».

Amendment to clause 16

20. Page 18, line 37, for 'a person ("P")' substitute «P».

Amendments to clause 17

21. Page 19, line 35 for 'a person ("P")' substitute «P».

22. Page 20, line 1 for 'a person ("P")' substitute «P».

23. Page 20, lines 9 and 10 for 'a person ("P")' substitute «P».

Amendment to clause 18

24. Page 20, line 22 for 'a person ("P")' substitute «P»

Amendments to clause 19

25. Page 20, line 37 for 'a person ("P")' substitute «<P>».

26. Page 21, line 1 after 'welfare of' insert «<any vulnerable adult and that of>».

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

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

1500

The Speaker: Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

I beg, with the leave of the House, to move a small amendment to amendment 17. It currently states 'referred to in this Part as' ... The amendment I propose substitutes the word

1505 'Division' for 'Part'. The reason for this is that the specific reference is in context to the making of a domestic abuse protection order and the clause is under a Division, not a Part.

Thank you.

Amendment to clause 14

Amendment to Amendment 17

'For "this Part" substitute "this Division".'

The Speaker: Mr Cregeen.

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

1510

The Speaker: So, just to clarify we are talking about amendment 17 to clause 14, which should say 'Division' instead of 'Part'.

Mr Hooper.

1515

Mr Hooper: Thank you.

I just want to raise again this issue of the under-16-year-olds being excluded from the orders in section 18 of the Bill. It specifically says that a domestic abuse protection order may not be made against a person under the age of 16, but the very first amendment that was tabled in this session was to make sure that someone under the age of 16 could be treated as domestically abusing, say, a parent or an older sibling, if that was going on.

1520

It seems a little bit incongruous then that the tools we are trying to give the Police, the notice and the order, to try and help separate the domestic abuser from their victim, actually cannot be used in these circumstances and that the only recourse – if you do have, say, a 15- or 16-year-old who is committing domestic abuse against, say, a parent – would be to charge them with an offence of domestic abuse. You can charge someone, by the looks of things, under 16 with the offence but you cannot for some reason apply these two lesser penalties, these two tools that we are trying to give the Police and the courts to help deal with the issue of domestic abuse in a much more immediate manner.

1525

I would urge the Department to go away and think about specifically clause 18(5) and the previous clause 7(7) that we talked about to say, actually, should we be able to issue a protection notice or a protection order against a person under 16 where that is considered appropriate by the Police or by the courts?

1530

The Speaker: I call on Dr Allinson.

1535

Dr Allinson: Thank you, Mr Speaker.

I would like to thank the Hon. Member for his comments about this and certainly we will take these back to the Attorney General's office.

The initial amendment to clause 4 removed the 'aged 16 or over' in terms of the perpetrator of domestic abuse so that adolescent on adult abuse could be recognised as such and dealt with as such by the Police. However, when consulting with the Attorney General's office the application of a domestic abuse protection notice, or a domestic abuse protection order was seen as problematic in children, i.e. people under the age of 16. It was very much the opinion that they should be dealt with really in terms of care proceedings because they are classed as beyond the control of parents and that criminalisation of them should be restricted.

1540

1545

So certainly we consider that domestic abuse by adolescents on adults is a serious issue, it is something that needs to be dealt with, but it needs to be dealt with in a slightly different way when those people who are perpetrating the crime are actually children themselves, and should really be handled more in terms of the care proceedings under the Department of Health and Social Care.

1550

But we will certainly revisit this issue again given the Hon. Member's comments.

The Speaker: I shall call on Mrs Corlett, if she wishes to reply about her amendment to the amendment?

1555

Mrs Corlett: No, thank you, Mr Speaker.

The Speaker: Mrs Barber. No?
Mr Malarkey.

1560

Mr Malarkey: Thank you, Mr Speaker.

Dr Allinson again has summed it up extremely well. This is something that has been debated several times within the Department and I think Dr Allinson was right, we will actually take this back, as you have all had the email this morning that we will be coming back on 17th December which does give us a little bit of time to review – although we have looked at this, Mr Speaker, in great detail, not just with the Attorney General's office but also with the Chief Constable. He was quite satisfied in respect of criminalising under-16s which is not something we wanted to do. He felt that he had enough powers that he could deal with this without making it part of the Bill.

1565

But I am happy to say that we will revisit it and we could talk to the Hon. Members – and in fact there are two Hon. Members here today who I know have these concerns – and certainly come back on 17th December when we do the Third Reading and hopefully finish off the clauses stage and decide whether we should do any changes, Mr Speaker.

1570

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

1575

The amendments, as amended, in the name of Mrs Barber: those in favour, please say aye; against, no. The ayes have it. The ayes have it. I put clauses 14 to 19, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Turning now to New Clause 1, I call on Mrs Barber to move.

1580

Mrs Barber: Mr Speaker, I rise to introduce a new clause and invite Hon. Members to consider and agree in principle that the new clause be included in the Bill.

The purpose of this new clause is to ensure that the impact on tenants in common, joint tenants, of any protection order is considered before the order is made containing requirements and/or restrictions affecting those who are referred to as 'T' therein; and to give certain rights of representation to court for the party or these parties.

1585

As Hon. Members will appreciate, the addition of these third parties by the various preceding amendments to the Bill does also require that he, or she, or they are considered adequately within this most vital part of the Bill in respect of protection notices.

1590

Mr Speaker, I beg to move that the New Clause, numbered 1, and showing as amendment 27 on the Order Paper be approved in principle.

Insertion of New Clause 1

27. Page 21 after line 20 insert the following Clause—

«NC1 Matters to be considered before making an order against T

Before making a domestic abuse protection order which contains provision obliging T to do, or refrain from doing, something the court must, among other things, consider the things specified in section 19(1) and, in addition—

(a) the effect on T of the proposed order so far as it applies to T;

(b) whether the proposed provision (so far as it relates to T) is proportionate in all the circumstances; and

(c) any representations made to the court by T.».

The Speaker: I call on Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1595 I beg to second and reserve my remarks.

The Speaker: I put the question that New Clause 1, amendment number 27 be agreed in principle. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Mrs Barber, do you wish to move it in detail?

1600

Mrs Barber: Mr Speaker, I am grateful to Hon. Members for agreeing to the principle of this new clause and now formally move that the detail of New Clause 1 be approved and inserted into the Bill.

1605 **The Speaker:** Mr Hooper.

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

1610 **The Speaker:** I put the question that New Clause 1 be agreed in detail. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

For the sake of clarity, I put the question that New Clause 1 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I turn now to clauses 20 to 25 and I call on Mr Malarkey to move.

1615 **Mr Malarkey:** Thank you, Mr Speaker.

For our consideration of the clauses I will continue to refer to the clause numbers as in the green copies in front of us, accordingly.

1620 I propose to move clause 20, from the green copy of the Bill, through to clause 25 if I may. These are the clauses relating to requirements of and monitoring of domestic abuse protection orders, their duration and matters relating to the breach of an order; and then once more, if you will permit my departmental colleague, Mrs Barber, to move some amendments to these clauses?

1625 Clause 20 makes provision about orders where they are to be made against P without prior notice. Subsection (3) provides that the court must have regard to all the circumstances, including any risk that if the order is not made immediately P will cause significant harm to the person for whose protection the order would be made.

1630 Clause 21 deals with provision that may be made by a court for protecting a person from domestic abuse or the risk of domestic abuse in all its different forms, and subsections (4) to (6) contain examples of the type of provision that may be made. These subsections do not, however, limit the type of provision that may otherwise be made.

1635 Clause 22 makes further provision about the requirements that may be imposed by orders. These include standard requirements to ensure the order does not interfere with a person's normal work or educational requirements or any other court order or injunction to which the person may be subject, or conflict with their religious beliefs. Other provisions in the section ensure the order is clear about who is responsible for ensuring the compliance of P with any of the relevant requirements specified within an order, and any failure to comply.

Clause 23 makes further provision about electronic monitoring requirements and how this may be done.

Clause 24 details the duration and geographical application of orders.

1640 Clause 25 states that it is an offence, without reasonable excuse, to breach any requirement of an order and that breach may attract a maximum penalty of 12 months custody or a level 5 fine, or both, on summary conviction; or seven years custody on information.

Mr Speaker, I move that clauses 20 to 25 inclusive do stand as part of the Bill.

1645 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1650 **The Speaker:** Mrs Barber to move amendments 28 to 34.

Mrs Barber: Thank you, Mr Speaker.

I stand to move amendments numbered 28 to 34 together, with the will of this House.

1655 The amendment numbered 28 is purely a stylistic change removing the reference to a 'person against whom a domestic abuse protection order is made' at clause 21(4) and alternate with that of a reference to P – as per previous amendments and as was initially defined in the amendment to clause 14.

The amendment numbered 29 adds a new subsection (5)(d) within clause 21 to prevent P making any effort to stop the person protected by the order from occupying the premises.

1660 The amendments numbered 30 to 34 make small stylistic changes within clause 22 that bring in the use of T in addition to P and ensure that this clause agrees with terminology, again as adjusted by previous amendments to provisions in relation to tenant in common/joint tenant.

Mr Speaker, I beg to move the amendments affecting clauses 21 and 22, numbered 28 to 34 inclusive, standing in my name.

1665

Amendments to clause 21

28. Page 22 for lines 25 and 26 substitute—

<<(4) A domestic abuse protection order may provide that P—>>.

29. Page 22 after line 36 insert—

<<(d) prohibiting P from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the premises.>>.

Amendments to clause 22

30. Page 23, line 15, for 'on a person ("P")' substitute <<on P or T>>.

31. Page 23, line 26, for 'P's compliance with the relevant requirements;' substitute

<<compliance with the relevant requirements on the part of P or T (as the case requires);>>.

32. Page 23, line 28, 29 and 32 for 'P' substitute <<P or T>>.

33. Page 23, for lines 35 and 36 substitute—

<<(6) If P or T is subject to a requirement imposed by a domestic abuse protection order, then P or T>>.

34. Page 24, lines 1 and 3 for 'P' substitute <<P or T>>.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second those amendments and reserve my remarks.

1670

The Speaker: I put the question that amendments 28 to 34 in the name of Mrs Barber be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put clauses 20 to 25 inclusive as amended to stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1675

Clause 26 and the Schedule, Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

Clause 26 relates to arrest for breach of a protection order and the process around this, and in its current form makes reference only to the High Court.

1680

Subsection (6) introduces the Schedule that makes further provision about remand under this clause.

Mr Speaker, I beg to move that clause 26 and the Schedule do stand part of the Bill.

The Speaker: Mrs Corlett.

1685

Mrs Corlett: Mr Speaker, I beg to second.

The Speaker: Now I call on Mrs Barber to move amendment 35, new clause 2.

1690

Mrs Barber: Mr Speaker, I would like to introduce the second of the new clauses that I would ask that Hon. Members consider for their agreement in principle to include by way of substitution within the Bill. The purpose of this new clause, which is a straight substitution of clause 26, is to ensure that a person arrested for breach of a protection order is brought before the relevant court that made the order rather than specifically the High Court. In making the substitution, the replacement or new clause includes references to the arrest of P or T where T has failed to comply with the terms of the order. The Schedule is introduced by subsection (7) of the substituted clause.

1695

Mr Speaker, I beg to move that the new clause numbered 2 and showing as amendment 35 on the Order Paper be approved in principle:

Substitution of clause 26

35. For clause 26 (page 26, lines 11 to 39) substitute the following New Clause—

«NC2 Arrest for breach of order

HC Bill 2019-20/2/37 and drafting

(1) This section applies where a relevant court has made a domestic abuse protection order.

(2) In this section—

‘relevant court’ means—

(a) the High Court,

(b) a Court of General Gaol Delivery, or

(c) a court of summary jurisdiction; and

‘the relevant judge’ means—

(a) where the order was made by the High Court, a judge of that court;

(b) where the order was made by a Court of General Gaol Delivery, a Deemster; or

(c) where the order was made by a court of summary jurisdiction, the High Bailiff or a justice of the peace.

(3) A person mentioned in subsection (4) may apply to the relevant judge for the issue of a warrant for the arrest of P or T if the person considers that P or T (as the case requires) has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(4) The persons referred to in subsection (3) are—

(a) the person for whose protection the order was made;

(b) where the order was made under section 15, the person who applied for the order (if different);

(c) any other person with the leave of the relevant judge.

(5) The relevant judge may issue a warrant on an application under subsection (3) only if—

(a) the application is substantiated on oath, and

(b) the relevant judge has reasonable grounds for believing that P or T (as the case requires) has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) A relevant court may remand P or T if—

(a) that person is brought before a relevant court as a result of a warrant issued under this section, and

(b) the court does not immediately dispose of the matter.

(7) The Schedule contains further provision about remand under this section.

In the Schedule 'the relevant person' means P or T as the case requires.

(8) For the power of a constable to arrest P or T without warrant for breach of a domestic abuse protection order, see section 27 of the Police Powers and Procedures Act 1998.».

1700 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1705 **The Speaker:** I put the question that new clause 2, amendment 35, be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Mrs Barber to move new clause 2 in detail.

1710 **Mrs Barber:** Mr Speaker, having agreed in principle that clause 26 be substituted, I beg to move that new clause 2 be approved in detail and that the revised clause and the Schedule do stand part of the Bill.

The Speaker: Mr Hooper.

1715 **Mr Hooper:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: I put the question that new clause 2 be approved in detail. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1720 Now, having dealt with clause 26 and the replacement Schedule, we now turn to the amendments to the Schedule, numbered 41 to 50, in the name of Mrs Barber.

1725 **Mrs Barber:** Mr Speaker, the amendments numbered 41 to 50 consist of a number of stylistic changes that replace or add various minor adjustments to words, phrases or letters within the Schedule and ensure that these provisions are in alignment with the rest of the Bill.

Within paragraph 1 the wording 'P' is instead replaced with 'referred to below in this Schedule as "the relevant person"' and this definition is harmonised within all other paragraphs, and in one instance within Paragraph 6(1) P is just omitted.

1730 Within paragraph 3 further harmonisation is made by way of an amendment where the wording 'that person's' or 'his or her' takes the place of any use of P's or P.

A minor but important amendment is made at paragraph 5(5) to adjust to 'a Court of General Gaol Delivery', and in that same paragraph subsection 'that section' is replaced with 'that Schedule', adjusting a referencing error.

1735 Mr Speaker, I beg to move the amendments to the Schedule, numbered 41 to 50, standing in my name:

Amendment of the Schedule

41. Page 41 line 5, for '(“P”)' substitute <<(referred to below in this Schedule as 'the relevant person')>>.

42. Page 41, lines 8, 9, 13, 14, 18, 20, 21, 29 and 32, and page 42, lines 2, 5 (in both places) 29, 35 and 37 for 'P' substitute <<the relevant person>>.

43. Page 41, line 23 for 'P', where it first occurs, substitute <<the relevant person>>.

44. Page 41, line 23 for 'P's' substitute <<that person's>>

45. Page 41, line 24 'P's' substitute <<his or her>>.

46. Page 41, line 28 for 'P's' substitute <<the relevant person's>>.

47. Page 42, lines 23 and 24 for 'the Court of General Gaol Delivery' substitute <<a Court of General Gaol Delivery>>.

48. Page 42 line 24 for 'that section' substitute <<that Schedule>>.

49. Page 42, line 27 omit '(“P”)’.

50. Page 42, lines 30, 36 (in both places) and 38 for 'P's' substitute <<the relevant person's>>.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1740

The Speaker: I put the question that amendments 41 to 50 in the name of Mrs Barber be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now putting that revised clause 26 and the Schedule as amended stand part of the Bill, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1745

Clauses 27 to 30, Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker. With your consent, I will formally move clauses 27 through to clause 30 from the Green Bill. These are clauses relating to the notification requirements linked to domestic abuse protection orders.

1750

Clause 27 makes provision where the terms of an order require P to notify the Police, and the requirements are similar to those in respect of sex offenders. Indeed, the requirements specified here do not apply in any case where P has already become subject to notification requirements in the case that P is also a sex offender.

1755

Clause 28 permits the Department to make regulations requiring P to notify the Police of any intention to travel outside the Island and give such further details about P's travel arrangements as may be required by those regulations.

Clause 29 makes further provision about specific notification requirements under clauses 27 or 28 – for example, how and where a notification must be given and acknowledged.

1760 Subsection (3) requires P, when requested to do so, to allow the Police to take fingerprints and/or photograph or produce an image of P. As subsection (4) makes clear, this is for the purposes of verifying P's identity.

Clause 30 provides that it is an offence should P fail to comply with any particular notification requirement, and this will attract a maximum penalty of 12 months' custody or a level 5 fine or both on summary conviction, or five years' custody on information.

1765 Mr Speaker, I beg to move that clauses 27 to 30 inclusive do stand as part of the Bill.

The Speaker: Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second and reserve my remarks.

1770

The Speaker: I call on Dr Allinson to move amendments 36 and 37.

Dr Allinson: Thank you very much, Mr Speaker.

I would like, if I may, to outline the amendments numbered 36 and 37.

1775

Amendment 36 makes a substitution within clause 29 whereby subsection (1)(a) and (b), which in the previous version of this clause set out the reporting requirements for notification being given under the associated sections, was defined as to Police HQ or at a police station, and instead these reporting requirements will be defined by the Department in regulations which this revised section will empower subject to the approval of Tynwald. Furthermore, reference will be made under these regulations to the possibility of making such notification via an electronic communication of the type outlined in the Electronic Communications Act 2000.

1780

Amendment 37 transfers the requirement to report, on the request of the person to whom notification has been made, to a police station specified by that person, as this requirement is clearly important to retain within the clause should it prove to be necessary to verify any matter face to face.

1785

The essence of these amendments is to remove the particular requirement to present information in person to the Police HQ, and instead give some flexibility for that to be done electronically.

1790

Mr Speaker, I beg leave to move the amendments to clause 29, numbered 36 and 37, standing in my name:

Amendments to clause 29

36. Page 28, for lines 26 to 30 substitute —

'by giving a notification to such person and in such manner as the Department may prescribe by regulations.

The regulations must prescribe, in addition to other means, a means of electronic communication (within the meaning of the Electronic Transactions Act 2000).

Tynwald procedure — approval required.'

37. Page 28, line 36 after 'given' insert 'attend at a police station specified by that person and'.

The Speaker: Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1795

The Speaker: I put the question that amendments 36 and 37 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put it to the House that clauses 27, 28, 29 and 30 as amended stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1800 Clauses 31 to 33, Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

I propose to move clauses 31 to 33 in the Green Bill together, as these conclude those clauses relating to protection orders.

1805 Clause 31 provides for the variation or discharge of protection orders and the court process around this, including within subsection (3) those persons who can request this variation, which includes the person for whose protection the order was made and the person against whom the order was made.

1810 Subsection (4) sets out those persons the court must hear from prior to any variation or discharge.

Subsections (5) and (6) set out similar provisions to those required for making of the initial order as regards things to consider before making orders and making orders without notice.

Subsections (7) to (12) set out the particulars of any variation or discharge of any order which a court may determine.

1815 Clause 32 makes further supplementary provision in respect of the variation or discharge of orders.

Clause 33 makes provision for appeals in relation to protection orders.

Mr Speaker, I beg to move that clauses 31 to 33 inclusive do stand as part of the Bill.

1820 **The Speaker:** Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second.

The Speaker: Dr Allinson.

1825

Dr Allinson: Thank you, Mr Speaker.

1830 The amendment numbered 38 inserts a new subsection (3)(e) within clause 31, effectively adding a person who the court agrees is responsible for looking after the interests of an affected child to the list of those who may apply to have a DAPO varied or discharged, and it would seem only right that the child has a voice in this, albeit via an adult representative.

Mr Speaker, I beg to move the amendment to clause 31, numbered 38, standing in my name:

Amendment to clause 31

38. Page 29, after line 29 insert—

'(e) a person acting on behalf of a child for whom either the person for whose protection the order was made or P has parental responsibility, but only with the leave of the court.'

The Speaker: Mr Ashford.

Mr Ashford: I beg to second and reserve my remarks, Mr Speaker.

1835

The Speaker: I put the question that amendment 38 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And that clauses 31 to 33 as amended stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1840 Clauses 34 to 41, Mr Malarkey.

Mr Malarkey: Mr Speaker, I propose to move the clauses contained in Part 3 and consisting of clauses 34 to 41 in the Green Bill together, as they all deal with the abusive behaviour offences.

1845 Clauses 34 and 35 are the substantial offences of domestic abuse and controlling and coercive behaviour that form Division 1 of this Part. I think we all agree that domestic abuse in its various forms is a serious matter, and not just in our society but the world over. In preparing this Bill for our community, the view was taken that for the offences set out in clauses 34 and 35 the courts should have the option of imposing substantial custodial sentences.

1850 Clause 34 sets out the components of what is called 'the domestic abuse offence'.

Subsection (1) states that a person referred to from this point as 'A' commits the offence if A engages in behaviour that is abusive of another person referred to as 'B', when A and B are personally connected at the time and the conditions in subsection (2) are met. The conditions are that a reasonable person would consider the behaviour to be likely to cause B to suffer physical or psychological harm, and that A either intends that harm to be caused or is reckless or does not care whether B is caused to suffer such harm.

1855 Subsection (4) states that the offence may be committed whether or not A's behaviour actually causes B to suffer any physical or psychological harm. This does not prevent any evidence being brought forward and offered to the proceedings about any harm actually suffered by B as a result of the behaviour.

1860 Subsections (5) and (6) speak about the defences to the offence. The maximum penalty for the offence is 12 months' custody, a level 5 fine or both on summary conviction, or 14 years' custody on information.

Clause 35 sets out the offence of controlling or coercive behaviour.

1865 Subsection (1) declares that A commits an offence where A repeatedly or continuously engages in behaviour towards B that is controlling or coercive. In this way it differs from clause 34. This offence is about repeating behaviour. The other elements of the offence are that A and B are personally connected, the behaviour has a serious effect on B, and that A knows, or ought to know, that the behaviour will have a serious effect on B.

1870 Subsection (2) defines 'serious effect' as causing B to fear on at least two occasions that violence will be used against B, or that it causes B serious alarm or distress which is such as to have a substantial adverse effect on B's usual day-to-day activities.

Subsections (4) and (5) concern the defence to the offence.

1875 Subsection (6) states that the defence in subsection (4) is not available to A where the behaviour causes B to fear that violence will be used against B. The maximum penalty for the offence is 12 months' custody, a level 5 fine or both on summary conviction, or 14 years' custody or a fine on information.

Moving on, clauses 36 to 38 form Division 2 and make procedural provisions.

1880 Clause 36 provides provision in the case of an offence under clauses 34 or 35 where A's behaviour consists of, or includes, behaviour occurring in a country outside the Island. In these instances where the behaviour would constitute an offence if it occurred in the Island and A is either a UK national present in the Island or is habitually resident in the Island, then the offence is committed.

1885 Subsection (2) adds that if the behaviour occurs wholly outside the Island and earlier provision above applies, then proceedings may be taken in the Island and the offence may be treated for practical purposes as if it had been committed in the Island.

Clause 37 makes an exception to the offences under clauses 34 and 35 where A has responsibility for B and B is under the age of 16.

1890 Clause 38 provides that in proceedings for an offence under clauses 34 or 35, A may be convicted of an alternative offence if the facts proved against A do not amount to the offence with which A is charged but do amount to an offence under other Acts as stated in the clause.

Clauses 39 to 41 form Division 3 and relate to aggravation of the offences of domestic abuse or controlling and coercive behaviour.

1895 Clauses 39, 40 and 41 make provision for the offences under clauses 34 or 35 to be aggravated where the victim is under the age of 18, where a child is otherwise involved, or where the Department provides by order for other factors to constitute aggravation of the offences.

1900 The Department believes offences committed towards a woman during or after pregnancy, actions or offences where an element includes strangulation or where actual action or threatened action is made against pets should be included in an Order subject to Tynwald approval — procedure as per clause 41 — as soon as the Bill becomes operational as an Act. We have not put those three matters in the Bill as clauses because we want the Act to be flexible and able to reflect and adapt quickly to peoples' priorities and concerns in relation to aggravating factors in domestic abuse. Doing things by Tynwald Order gives us that flexibility and the ability to act swiftly.

1905 Mr Speaker, I beg to move that clauses 34 to 41 inclusive do stand as part of the Bill.

The Speaker: Mrs Corlett.

1910 **Mrs Corlett:** Mr Speaker, I beg to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

1915 I think the Minister has made it quite clear that this section of the Bill deals with the offence and the offence does not require that harm is actually committed. I think that subsection is really important. It is about the intention of the individual; that is what really matters. I would like to thank the Department for engaging with me quite a bit over this section of the Bill.

1920 The only real question I have for the Department, funnily enough, does not really relate to the Domestic Abuse Bill. In clauses 40 and 41 an aggravating factor is whether a child is involved, which makes a lot of sense, and the penalties obviously for domestic abuse are quite severe – up to 14 years' imprisonment, I think it states in the Bill. Unfortunately, when it comes to the actual abuse of a child, the ill-treatment of a child, the criminal penalty for that is only up to two years in the appropriate Act, obviously not dealt with here. And so I would just like the Department to consider, as they are going through their reform of criminal law in this space – they have obviously clearly identified that where a child is involved, that is a more serious issue – whether they would also consider looking at some of the other provisions that exist around child protection and child welfare, to make sure that those penalties are up to date as well.

1930 **The Speaker:** Mover to reply.

Mr Malarkey: Mr Speaker, firstly, can I thank the hon. seconder today for the input he has had into this Bill, and I am grateful for his intervention there with regard to the two years.

1935 Yes, I am happy that we are going to go back and look at the whole juvenile issue on this Bill at this time, but, if my memory serves me right, this will be covered by another Bill, which we are hoping to bring to this Hon. House within the next month or two. I will double-check that, so when I come back in December I will be able to clarify that for the Hon. Member.

1940 **The Speaker:** I put the question that clauses 34 to 41 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Turning now to new clause 3 and new clause 4 in principle, I call on Mrs Barber to move.

Mrs Barber: Mr Speaker, I rise to move in principle that a new Part 4, consisting of new clause 3 and new clause 4, be inserted into the Bill.

1945 The purpose of new Part 4 and the associated new clauses 3 and 4 quite simply is to empower the courts to stop a party to proceedings from carrying on or otherwise engaging in the abuse of another party by misusing the ancient and fundamental right to cross-examine witnesses in court. That is the principle, and that principle of stopping or preventing abuse is fundamental to the Bill as a whole.

1950 The Department has worked with the Treasury, along with the Law Society and the Legal Aid Committee, all of whom we thank, in ensuring that we were able to bring before you this new Part that through new clause 3 inserts provisions within the Summary Jurisdiction Act 1989 and new clause 4 inserts broadly similar provisions within the Matrimonial Proceedings Act 2003. We are particularly grateful to the Minister for the Treasury and his political Members for their support.

1955 These amendments are intended to empower the court, where a family or a domestic matter is before it, to intervene where a person representing themselves is using their right to cross-examine the other party in such a way as to effectively abuse them further. The provisions of new Part 4 also further empower the relevant court to require the perceived abuser to desist and either obtain their own legal representation, or to impose, in effect, on that person an advocate who would take over the cross-examination function in the interests of justice and to make any appropriate consequential provision in respect of legal aid.

1960 I have emphasised the support of the Treasury because the provisions could potentially involve a cost element. I say potentially because it is not possible to know how often, if at all, these provisions will have to be invoked by the courts. As a matter of public policy, and as a signal to potential abusers on the one hand that they cannot abuse victims or the courts, and as a signal to victims that the courts will protect them and they will be heard fairly in any relevant court proceedings, I commend this matter as worthy of consideration by this Hon. House.

1965 Mr Speaker, as indicated to you and to Hon. Members in an email earlier today, if the principle is accepted today, I do not propose to move the adoption of the new Part and proposed new clauses 3 and 4 today, so as to give Members the opportunity to consider the detail further and the matter may be discussed in detail at the sitting of the Keys on 17th December.

1970 Mr Speaker, I beg to move that the new Part 4, consisting of new clauses numbered 3 and 4 and showing as amendment 39 on the Order Paper, be approved in principle:

Insertion of new Part 4

39. 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);*

(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 (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.>>.

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

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

1980

The Speaker: I put the question that amendment 39, new clauses 3 and 4, be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

In accordance with Member's wishes, we will defer consideration of the detail of that to 17th December.

1985

I call on Mr Malarkey to move clauses 42 to 47.

Mr Malarkey: Mr Speaker, I propose to move clauses 42 to 47 contained in Part 4 as it is found in the Green Bill.

1990

The remaining clauses of the Bill are those which allow for the creation of regulations and guidance to be made by the Department, along with a few small amendments to other legislation.

1995

Clause 42 empowers the Department to make regulations about the disclosure of information by the Constabulary. It is envisaged these regulations may include what is colloquially known as 'Clare's Law', and the sharing of information with other bodies for the purposes of safeguarding and promoting the welfare of children and protecting vulnerable adults, not least in relation to domestic abuse.

Clause 43 requires the Department to issue a code of practice relating to the processing of data gathered in connection with the electronic monitoring requirement.

2000

Clause 44 empowers the Department from time to time to issue, revise and replace guidance relating to the exercise of functions under or by virtue of this Act. Any person must have regard to the guidance when exercising a function to which the guidance relates.

2005 Clause 45 makes a few amendments to subsection (1) of the Children and Young Persons Act 1966: after the word 'wilfully' is inserted 'or recklessly'; and after 'ill-treats' is inserted '(whether physically or otherwise)'. These amendments are to clarify matters in court proceedings. Subsection (2)(e) is a clarification and refers to a fine by its modern term – 'level 5 fine'.

2010 Clauses 46 and 47 make consequential and minor amendments to the Land Registration Act 1982 and repeal an amendment contained in the Central Registry Act 2018. These amendments relate to the requirement to keep private the details of the property and address details an individual would wish to remain hidden from their abusive partner, and would otherwise find that this information was held within the public domain as a matter of Land Registry record.

Mr Speaker, I beg to move that clauses 42 to 47 inclusive do stand as part of the Bill.

2015 **The Speaker:** Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second and reserve my remarks.

The Speaker: Mrs Barber, amendment number 40.

2020 **Mrs Barber:** Mr Speaker, the amendment numbered 40 is purely a stylistic change that replaces the Division 1 title header 'GUIDANCE' found in Part 4 with 'REGULATIONS ETC.'

Mr Speaker, I beg to move the amendment, numbered 40, standing in my name.

Amendment of Part 4

*40. Page 38, line 11, for the heading to Division 1 substitute —
DIVISION 1 — REGULATIONS ETC.».*

The Speaker: Mr Hooper.

2025 **Mr Hooper:** Thank you, Mr Speaker, I beg to second.

The Speaker: I put first the amendment numbered 40 in the name of Mrs Barber. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

2030 Clauses 42 to 47 inclusive, as amended, stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

I would like to thank all of those Members and officers responsible for this Bill (**A Member:** Hear, hear.) for their co-operation in making it a procedurally smooth process – it is much appreciated from the Chair's perspective.