

**4.1. Sexual Offences and Obscene Publications Bill 2019 –
Consideration of clauses commenced**

Dr Allinson to move.

The Speaker: We turn now to the Sexual Offences and Obscene Publications Bill 2019, and I call on Dr Allinson to move clauses 1, 2 and 3.

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Dr Allinson: Thank you very much, Mr Speaker.

If I can start just by saying it is a real honour to commence the clauses stage of this important Bill.

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The Sexual Offences and Obscene Publications Bill updates our legislation in line with the United Kingdom's Sexual Offences Act 2003, but then goes further. This Bill has drawn on experiences from several different jurisdictions and had input from legal experts both on the Island and further afield. It underwent an eight-week public consultation starting in December 2018, which received 211 responses, prior to being finalised and having its First Reading in June this year.

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It is a large, comprehensive Bill with over 230 clauses. You also have before you a number of amendments. The Department of Home Affairs has openly engaged with Members to discuss changes to the Bill and accommodate them where possible. As I stated during the Second Reading, this is a complicated piece of criminal law which deals with very personal aspects of human nature. It is absolutely essential that the laws we pass resonate with our society, and thus refinements and improvements made by you, the representatives of the communities we serve, are valued and are to be encouraged.

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I hope Hon. Members will appreciate that this collegiate method of drafting legislation may be slightly unorthodox, but in the case of the legislation before us it should enable us to pass better laws.

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With the consent of the House, I intend to group clauses together and I would like to start with the opening provisions of clauses 1 to 3. Clauses 1 to 3 provide the title, commencement and interpretation provisions, and, subject to an amendment to clause 3 in the name of Mrs Barber, I beg to move that they do stand part of the Bill.

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The Speaker: Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker, standing hopefully for the last time, as I have your permission to second this Bill from my seat rather than being up and down 230 times. I thank you for that.

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I would just like to reinforce the mover's words with regard to this Bill. It is a large Bill; it has grown over the last two years quite rapidly. It is a very important Bill. I make no apologies for the number of amendments to this Bill. I know there were several comments last week with regard to the Domestic Abuse Bill and the fact that we had amendments, but this, like the Domestic Abuse Bill, is your Bill. These amendments have been put forward by Members in this Hon. House. We have adopted them because we have approved and agreed with the amendments that have been brought forward by Hon. Members, and we have taken them on board as being Government amendments to make it an easier passage through this Hon. House.

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So, with a good wind we will get through this quite well today and I thank you all for the scrutiny you have given this Bill, which is, as I said, very important.

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I beg to second.

The Speaker: Mrs Barber, amendment 1.

Mrs Barber: Thank you, Mr Speaker.

1210 The amendment to clause 3 is proposed on the basis that it will assist the reader of the Act in understanding the precise meaning of terms in relation to the age of any relevant person. The amendment will insert a new subsection, subsection (4), into the interpretation provisions.

Mr Speaker, I beg to move amendment 1 standing in my name:

Amendment to clause 3

1. Page 54, after line 10, insert —

'(4) In this Act, the number in the following expressions means the years of age of the relevant person —

(a) age of 18;

(b) age of 16;

(c) under 18;

(d) under 16;

(e) under 13;

(f) aged under 18;

(g) 18 or over;

(h) aged 18 or over;

(i) 16 or over; and

(j) aged 16 or over.'

The Speaker: Mr Hooper.

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

The Speaker: I put the question first that amendment 1 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1220 Putting then that clauses 1, 2 and 3 as amended stand part of the Bill, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Dr Allinson.

1225 **Dr Allinson:** Mr Speaker, while I do not propose to go through every offence in this Bill clause by clause, I am sure we would all agree that rape is such a damaging crime that it deserves to be singled out for special mention.

1230 Before an amendment to this clause is moved, I would like to outline the details of the offence. Rape, put simply, is the penile penetration of another person without the consent of that other person, or at the very least without having taken reasonable steps to ensure that the other person did freely consent to the act.

Subsection (4) makes it abundantly clear that the mere fact of marriage or a civil partnership having been formed does not itself constitute consent. This is a clear legal statement to draw a line between this Bill and previous legislation which remained silent on sexual abuse within a marriage.

1235 Later clauses deal with the detail as to what constitutes consent.

Mr Speaker, subject to the amendment to be moved by Mrs Barber, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

The Speaker: Mrs Barber.

1245 **Mrs Barber:** Mr Speaker, I rise to move the amendment standing in my name.

The purpose is to omit the subsection dealing with those under the age of 14 as the provision is considered, on review, unnecessary. The following subsections will be renumbered accordingly.

Mr Speaker, I beg to move that my amendment numbered 2 be agreed:

Amendment to clause 4

2. Page 54, lines 23 and 24, omit clause 4(3).

Renumber the subsections accordingly.

1250 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second the amendment.

1255 **The Speaker:** I put the question first that amendment 2 be agreed. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4 as amended stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 5 to 7, Dr Allinson.

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Dr Allinson: Mr Speaker, clauses 5, 6 and 7 deal with assault by penetration, sexual assault and the offence of causing a person to engage in sexual activity without consent.

The offence in clause 5 is committed where the penetration is by a part of A's body, for example a finger, or anything else, for example a bottle, where the penetration is sexual as defined in clause 93, so that it excludes, for example, intimate searches and medical procedures.

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The offence in clause 6 covers a wide range of behaviour including, for example, rubbing up against somebody's private parts through the person's clothes for sexual gratification.

Clause 7 concerns the offence where a person A may cause a person B to engage in sexual activity with A, for example a woman who compels a man to penetrate her; or B himself, for example where one person forces someone else to masturbate himself; or another person, for example where one person makes another person masturbate a third person.

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I am grateful to Mr Hooper for his assistance with the Bill generally and with issues related to this section.

In relation to this particular matter, subsection (4) of clause 7 would apply where there is what could be termed 'forced rape', and the maximum penalty for such an offence is custody for life.

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Mr Speaker, I beg to move that clauses 5, 6 and 7 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

The Speaker: I put the question that clauses 5, 6 and 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clauses 8 to 19.

Dr Allinson: Mr Speaker, clauses 8 to 19 deal with sexual offences against children or by children against other children. In particular, the offences of rape, assault and causing or inciting a child under 13 to engage in sexual activity are set out in clauses 8, 9, 10 and 11. These are very serious offences against the very young. Clearly the weight of the law will fall harder on offenders aged 18 years or over. Nonetheless, there can be no excusal or exemption in these cases in law if it is the case that the perpetrators of such an offence are under the age of 18.

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1295 Clauses 12 to 15 broaden the offence type to distinguish where the offence is committed by a person aged 18 years or over against either a person under the age of 13 or a person under the age of 16. The offences are naturally bound to be aggravated and attract a higher penalty where the child is under the age of 13. The clauses recognise that a person over the age of 13 may not have attained their 16th birthday and yet look and give the defendant reason to believe that they are in fact 16 years or over. The prosecution must prove that the defendant did not reasonably believe that the child was 16 or over.

1300 Clause 16 makes it an offence for a person under the age of 18 to do anything that would be an offence under any of the clauses 12 to 15 if he or she were aged 18 or over. The purpose of this clause is to provide a lower penalty where the offender is under the age of 18.

1305 In practice, decisions on whether persons under 18 should be charged with child sex offences is an operational matter determined by police and the prosecutors in accordance with established guidelines and principles. In deciding whether it is in the public interest to prosecute these offences, where there is enough evidence to provide a realistic prospect of conviction police and prosecutors may take into consideration factors such as the ages of the parties, the emotional maturity of the parties, whether they entered into a sexual relationship willingly, any coercion or corruption by a person, and the previous relationships between the parties and whether there was any existence of a duty of care or breach of trust.

1310 Clauses 17, 18 and 19 concern the arranging or facilitating of a child sex offence, meeting a child following sexual grooming and sexual communications with a child.

Mr Speaker, I move that clauses 8 to 19 do stand part of the Bill.

1315 **The Speaker:** Mr Malarkey.

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

The Speaker: I now turn to Mrs Barber to move amendments 3 to 9.

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Mrs Barber: Mr Speaker, amendments 3 to 9 inclusive simply place into clauses 12 to 18 the same form of words, in relation to an accused person's defence that they 'reasonably believed' the other party was 16 years and over, as apply in the cases of abuse of a position of trust set out in clauses 20 to 23.

1325 I beg to move that amendments 3 to 9 be approved:

Amendment to clause 12

3. Page 57, immediately after line 34 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Renumber the following subsection accordingly.

Amendment to clause 13

4. Page 58, immediately after line 22 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Renumber the following subsection accordingly.

Amendments to clause 14

5. Page 59, line 3, number the existing provision subsection (1).

6. Page 59, immediately after line 15 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Amendments to clause 15

7. Page 59, line 22, number the existing provision subsection (1).

8. Page 59, immediately after line 31 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Amendment to clause 18

9. Page 61, immediately after line 16 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Renumber the following subsection accordingly.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker, I beg to second all those amendments.

1330 Whilst I am on my feet, I just have a comment on clause 18 specifically. The first sections of
these clauses are all covered. If you are over 18 and you commit any of these offences, it is an
1335 offence, and then clause 16 says actually if you are under 18 and you commit any of these
offences it is still an offence. Unfortunately, for some reason, clause 18 seems to be excluded
from this. So, 'Meeting a child following sexual grooming' states a person aged 18 or over
commits an offence if they do any of the following things, which would seem to me to
deliberately exclude people who are 17.

And so the question I have for the hon. mover is why did the Department feel it was
acceptable to criminalise something an 18- or 19-year-old meeting a child following sexual
grooming ... but for some reason a 17-year-old is allowed to do that without it being considered
an offence? Unless there is something else in the Bill that overrides that, which I am not aware
1340 of, I think that does appear to be an oversight. I have raised this with the Department previously
and I am not sure I have got a straightforward response.

So, I am happy to second the amendments; I would just like an answer to that question on
why it was considered that 17-year-olds and 16-year-olds should not be included in that
clause 18.

1345 Thank you.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

1350 To some degree my query for the mover relates to and follows on from the comments made
by the Hon. Member for Ramsey in the sense that I would welcome a little bit more explanation
as to when somebody is a child or not a child as defined in the Schedule. I was left, as I was
reading through this Bill, with a sense of uncertainty about where a 16- or 17-year-old, who can
engage in sex, get married and vote etc., seems in this instance to be a child. Could he give us
1355 some clarity, if he would, please, in his closing remarks?

The Speaker: I turn first to Mrs Barber for any comments on the amendments. No. I call on Dr Allinson to respond to the issues so far and speak to the amendment.

Dr Allinson: Certainly, Mr Speaker.

1360 Speaking to the amendment, this is purely bringing the burden of proof and making it consistent throughout the various clauses. In terms of the individual questions about when is a child not a child and when is a child an adult, I think this is an issue throughout the criminal justice system that has to be dealt with on an individual basis.

1365 One of the essences with this Bill, as I said in the Second Reading, is we have the definition of a child being over 18 but have the age of consent being at 16, and we have the ability of 16-year-olds to enter into marriage if necessary. What the Bill is trying to do is find where there is an offence, where there is harm, where there is victimisation or where there is abuse of a young person, and whether that is done by another young person or done by an older person obviously is up to the courts and the Police to look at in very much an individual way.

1370 In terms of the comments from Mr Hooper in terms of clause 18 and meeting a child following sexual grooming, as stated, a person aged over 18 commits an offence; however, if it were to be a 16- or 17-year old who committed an offence against a younger child or also committed an offence against a child from the age of 16 upwards, that would be covered by further clauses in the Bill which deal with sexual offences against children being under the age of 18.

1375 As I said, with sexual offences we are very much policing human behaviour, and so throughout the Bill we try to make the difference between the ages of 16 and 18 quite apparent so that these nuances can be dealt with by the courts.

Thank you, Mr Speaker.

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The Speaker: I am going to put the question that amendments 3 to 9 be approved. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Amendment 10, in the name of Mrs Barber.

1385 **Mrs Barber:** Mr Speaker, amendment 10 performs a similar function to clauses 12 to 18 but does so in respect of clause 19.

I beg to move that amendment 10 be approved:

Amendment to clause 19

10. Page 62, immediately after line 2 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Renumber the following subsection accordingly.

The Speaker: Mr Hooper.

1390 **Mr Hooper:** Thank you very much, Mr Speaker, I am happy to second this amendment, but again I have a few comments on it.

1395 Much like the previous clause, clause 18, this again deals only with people over the age of 18, so it would seem that it is considered acceptable for a 17-year old or a 16-year old to engage in sexual communication with a child. Again, I think the hon. mover said, in relation to the last clause, there are further provisions in the Bill that deal with this; I am not sure that there are. This is the section of the Bill that deals with sexual communication and grooming of children. I am not sure there is a further provision later on that deals with it, and so I would very much like

this to be looked at as this goes through the process, just to double check are we missing something here.

1400 The only comment I have on the amendment itself is it does exactly the same thing as the previous amendments. It flips the burden of proof on to the alleged offender to make them demonstrate why they had reasonably believed that the person they were communicating with was of age. It is slightly different when you are dealing with communication because this might not be dealing with face-to-face communication, so it could be much more difficult for a person to identify that the person they are talking to on an internet chat room, a forum or on Facebook is really the age they are saying they are.

1405 And so, whilst I support the amendment and I think on balance it makes sense to reverse that burden of proof, I think this is one that needs to be looked at a bit more carefully, just specifically for this clause. The reason I am saying this now is I would like, when it gets up to the Legislative Council, for them to take a step back and say, 'Actually, is this amendment doing what we want it to do?' I personally think it does and I would like to think the Council will support the amendment, but it does need to be further considered, just to be 100% sure that this is definitely the right place and the right thing to do with this particular clause.

1415 **The Speaker:** Mrs Barber to reply.

Mrs Barber: Thank you, Mr Speaker.

I thank the Hon. Member for his comments on this. It is certainly something that we have spent time deliberating over. As he says, when you are talking about the online forums this is an area that can be certainly a challenge.

1420 I take on board his comment that there is a process for us to go back and look again and have that discussion around the workability of it with our colleagues in the Legislative Council as well, and certainly we will commit to doing that.

Thank you.

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The Speaker: Dr Allinson to reply to the overall debate on clauses 8 to 19.

Dr Allinson: Thank you very much, Mr Speaker.

1430 I completely take on board Members' discussion about ages. What we are trying to do here, obviously, is prevent abuse but not criminalise 17-year-olds conversing with each other, and that is quite a fine line sometimes.

1435 Particularly with the advent of modern technology, offences that did not exist 10 or 20 years ago can now be carried out in the playground with a phone in somebody's pocket. So, we will continue to look at the clauses and continue, I hope, to update our legislation, because as society changes, such laws as this have to change to accommodate them.

With your permission, Mr Speaker, I would like to move the clauses.

The Speaker: We turn first, then, to amendment 10. Those in favour, please say aye; against, no. For the purpose of the record, I would like to divide on that particular amendment.

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

FOR

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mrs Caine

AGAINST

Mr Callister
Mr Cregeen
Mr Skelly
Mr Speaker

Mrs Corlett
Miss Costain
Ms Edge
Mr Harmer
Mr Hooper
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Shimmins

1440 **The Speaker:** With 18 for and 4 against, the ayes have it. The ayes have it.
Turning to clauses 8 to 19 as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 20 to 26, Dr Allinson.

1445 **Dr Allinson:** Thank you, Mr Speaker.
Clauses 20 to 26 deal with abuse of positions of trust in relation to persons under the age of 18 and vulnerable adults.

1450 Clauses 20 to 23 provide that it is an offence for a person, A, aged 18 or over intentionally to behave in certain sexual ways in relation to a child aged under 18, where A is in a position of trust, as defined in section 24, in respect of the child. The prohibited behaviour in each of the clauses is identical to that prohibited by the child sex offences in clauses 12, 13, 14 and 15 respectively, except that for the abuse of position of trust offences the child may be 16 or 17, and in a break from the UK legislation upon which it is based, it also includes a breach of a position of trust in relation to vulnerable adults.

1455 Clause 24 sets out what are the positions of trust for the purposes of clauses 20 to 23.
Exemptions exist in clauses 25 and 26. Clause 25 is where A is in a position of trust in relation to B but where B is 16 or over and A and B are married or civil partners of one another. Clause 26 is where, before the position of trust arose, a sexual relationship existed between A and B. The effect of subsection (2) of clause 26 is to limit this exemption to the situation where
1460 the sexual relationship that pre-dated the relationship of trust was lawful, so it would not cover, for example, a relationship with a child of 16.

Mr Speaker, I beg to move that clauses 20 to 26 do stand part of the Bill.

The Speaker: Mr Malarkey.

1465 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: I put the question that clauses 20 to 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
1470 Amendment 11, new clause 1, Mrs Barber.

Mrs Barber: Mr Speaker, the principle of the new clause set out in amendment 11 is to clearly provide a lower penalty for offences committed under clauses 18 to 23 where the offence or offences are committed by a person under the age of 18. Whilst police and prosecutors will bear in mind a person's age when considering whether or not it is in the public
1475 interest to prosecute, justice must be done.

Mr Speaker, I move that the principle of new clause 1 be agreed:

Insertion of new clause 1

11. Page 66, after line 10, before the heading for Division 7, insert the following new clause (as clause 27 of the Bill) —

*'NC1 Offences committed by a child or young person: meeting a child following sexual grooming etc, sexual communications with a child and offences when in a position of trust
A person under 18 (A) commits an offence if A does anything which would be an offence under any of sections 18 to 23, if A were aged 18 or over.*

Maximum penalty —

(a) (on information) — 5 years' custody;

(b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.'

Adjust clause numbers and cross references throughout.

The Speaker: Mr Hooper.

1480 **Mr Hooper:** Thank you, Mr Speaker.

Again, I am happy to second this new clause in principle. It does raise, for me, another question around consent, as Mr Robertshaw has already talked about with regard to age.

1485 Previously the Bill sets out that to be in a position of trust one essentially has to be over 18. However, this is now extending that to under-18s, so you could end up in a situation where two consenting adults, for want of a better phrase, two 17-year-olds, are engaged in a relationship which may become criminalised, but it is okay if they are married, and actually that is a bit of a surreal situation for me. If you have two people in a consenting relationship, the fact that they are legally married or not legally married should not be the defining factor as to whether or not that is okay.

1490 And so, whilst I support the introduction of this clause in principle I think a little bit of work needs to be looked at on the exceptions to some of these offences. If we are going to say that it is okay if you are married, that is an exception, then actually what we are really saying is in some circumstances, where full consent is provided, these actions are acceptable, in which case the defining factor should be has full consent been provided, not has somebody gone to the registry office and got a certificate.

1495 So, I am happy to support this clause in principle but I think a little bit more thought needs to be put into the exceptions, not just here but further in the Bill as well.

Mr Robertshaw: Hear, hear.

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The Speaker: Mrs Barber to reply.

Mrs Barber: Thank you, Mr Speaker.

1505 I take very much on board the Member's comments and, as I think has been articulated by the hon. mover of the Bill, there are these very difficult nuances around 16, 17 and 18, those people who, in other Bills that we have brought through this Hon. House, fall very clearly into the definition of 'child', and yet in this we are allowing them to have that autonomy over consent.

1510 So, I certainly take on board the comments. I think those are things that we have been working with. I think it is an ongoing process. There has certainly been a lot of discussion over the last two and a half years, since we have been in the Department, around this, so these are things that are very much at the front of our minds.

With that, I beg to move that the principle of new clause 1 be agreed.

1515 **The Speaker:** The question is that amendment 11, new clause 1, be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mrs Barber, is it your intention to move in detail today?

Mrs Barber: Yes.

1520 **The Speaker:** In which case ...

Mrs Barber: Mr Speaker, I am grateful for the support of Members to the principle of the amendment, so I now formally move that the detail of new clause 1 be approved and that new clause 1 do stand part of the Bill.

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The Speaker: Dr Allinson.

Dr Allinson: Thank you very much.

1530 Speaking to the motion, what we are trying to do here is look at positions of trust and the abuse of those, and we are defining a position of trust quite widely to encompass what people might initially think about such as scoutmasters or gym teachers, but also driving instructors. Lots of people we have in our community are in a position of trust, and if they abuse that position to commit an offence, that will be dealt with by the law.

1535 In terms of the comments previously about people under the age of 18, we are not trying to criminalise that behaviour but deal with it properly. We are also trying to accept that people under the age of 18 can similarly abuse positions of trust and cause offence.

In terms of the exemptions for spouses and civil partners which are part of this, again that is an exemption not from the offence itself. It is not an exemption from prosecution if an offence has been taking place, but it is to stop perhaps over-criminalisation of those very young relationships.

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With that, Mr Speaker, I very much hope that the House will support the new clause 1.

The Speaker: Mr Hooper.

1545 **Mr Hooper:** Thank you, Mr Speaker.

I would just like to clarify something that my hon. colleague has just said: the exemption is actually exemption from the offences. It specifically states something which would otherwise be an offence is not an offence provided they are married. I think that is the point I am trying to make.

1550 I completely agree with putting the new clause in. It is absolutely right that somebody under the age of 18 is perfectly capable of abusing a position of trust, and any abuse of a position of trust should definitely be an offence – that is absolutely fine; but my concern is more around how you then exempt people from that. If you have two consenting 17-year-olds in a consenting relationship, if they are married it is not an offence to do certain things; if they are not married but it is an enduring, committed relationship, it is an offence. That is where I think the grey area comes in.

1560 I completely appreciate what was being said earlier, that it is not easy, it is complex and it does change as you go through the Bill, and that makes a lot of sense, but it is an issue that I think does crop up a few more times throughout this Bill and that needs to be looked at in a bit more detail because otherwise we are running the risk where we are going to end up criminalising people we do not want to criminalise. We are going to be criminalising young people in consenting adult relationships, which is, I think, not somewhere we want to go.

Mr Robertshaw: Hear, hear.

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The Speaker: I call on Mrs Barber to reply.

Mrs Barber: Thank you, Mr Speaker.

1570 As I said earlier, certainly the Hon. Member has my commitment that we would be happy to sit down and work through the bits where he believes this could be resolved within this, but it is certainly something that we are very much alert to.

Thank you. I beg to move.

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

1575 Clauses 27 to 32, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1580 Clauses 27 to 32 address familial child sex offences. In clause 27, A must know, or be in a position where he or she could reasonably be expected to know, that the child is his or her family member and that, except where the child is under 13, he or she does not reasonably believe that the child is 18 or over.

Clause 28 is about inciting the child family member to engage in sexual activity and similar burdens, and provisions apply to A here as in clause 27.

Clause 29 sets out the various family relationships covered by the provisions.

1585 Clauses 30 and 31 make provision for exemptions where those in the relevant relationship are married or civil partners of one another or are in sexual relationships which pre-date family relationships.

1590 Clause 32 covers sexual relationships that pre-date the coming into operation of sections 27 and 28, where, on the date they come into operation, A and B are living together as partners in an enduring family relationship.

Mr Speaker, I beg to move that clauses 27 and 32 do stand part of the Bill.

The Speaker: Mr Malarkey.

1595 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: I think what I heard the Member say was 'clauses 27 to 32'.

Dr Allinson: You are quite right –

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The Speaker: I thought that is what you said. I put the question, then, that clauses 27, 28, 29, 30, 31 and 32 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 33 to 47, Dr Allinson.

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Dr Allinson: Thank you, Mr Speaker.

1610 Clauses 33 to 47 deal with offences against persons with a mental disorder impeding choice. As well as offences similar to those that I have mentioned in previous clauses in respect of children, there are further offences in clauses 37 to 40 where inducements, threats or deception are employed in order to obtain sexual activity with a person with a mental disorder.

Clauses 41 to 45 deal with sexual offences committed by care workers in relation to persons with a mental disorder.

Clauses 46 and 47 provide exceptions for marriage or civil partnerships and for sexual relationships that pre-date care relationships.

1615 Mr Speaker, I beg to move that clauses 33 to 47 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

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The Speaker: Mr Baker.

Mr Baker: Yes, I would just be grateful if the hon. mover could just clarify the term 'mental disorder'. It is a very broad term and I would just really like to understand that and if he could

1625 explain that a little bit further, because potentially there are either things that might fall within that or might fall outside it. It is important, I think, that this Hon. House understands where the boundaries are around that.

The Speaker: Dr Allinson to reply.

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Dr Allinson: Thank you very much, Mr Speaker, and I thank the Hon. Member for pointing this out.

As I said at the outset, most of this Bill is taken from the United Kingdom 2003 Act where the term 'mental disorder' was used. Unfortunately, in terms of legalese we need to carry on adopting that term, but I hope that as the Department of Health and Social Care advances their mental health legislation, that term could be changed and defined in a much better, more modern way.

1635

Thank you, Mr Speaker.

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The Speaker: I put the question that clauses 33 to 47 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 48 to 52, Dr Allinson.

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Dr Allinson: Mr Speaker, clauses 48 to 52 deal with crimes relating to the sexual exploitation of children.

Clause 48 sets out the offence of paying for the sexual services of a child. In line with our obligations to international conventions, a child, with respect to these offences, is defined as a person under the age of 18.

Subsection (2) is sufficiently wide to include any manner of payment or exchange.

1650

The term 'sexual services' is not defined, as that would only serve to limit its meaning and application; it is essential that the parties involved and those involved in protecting the public and enforcing the law are allowed to deal with such acts on a case-by-case basis.

Clauses 49, 50 and 51 are about causing or inciting, controlling a child or arranging or facilitating the exploitation of a child in any part of the world.

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Clause 52 defines 'sexual exploitation' and 'payment'.

Mr Speaker, I beg to move that clauses 48 to 52 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

The Speaker: Mrs Barber.

1665

Mrs Barber: Mr Speaker, amendments 12 to 18 have the effect of inserting into clauses 48 to 51 the similar form of words, in relation to an accused person's defence that they 'reasonably believed' the other party was, in this case, 18 years and over, as apply in the cases of an abuse of a position of trust set out in clauses 20 to 23 and in previous amendments to earlier clauses.

Mr Speaker, I beg to move that amendments 12 to 18 be approved.

Amendment to clause 48

12. Page 80, immediately after line 26, insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Renumber the following subsections and the cross references throughout.

Amendments to clause 49

13. Page 81, line 23, number the existing provision subsection (1).

14. Page 81, immediately after line 29 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Amendments to clause 50

15. Page 81, line 36, number the existing provision subsection (1).

16. Page 82, immediately after line 6 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

Amendments to clause 51

17. Page 82, line 13, number the existing provision subsection (1). (Mrs Barber)

18. Page 82, immediately after line 19 insert —

'(2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.'

The Speaker: Mr Hooper.

1670

Mr Hooper: Thank you, Mr Speaker.

I am happy to second those amendments. I have a real concern, however, about clause 52 and I will explain why.

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Clause 49 makes it an offence to intentionally sexually exploit somebody else, in this case a person under the age of 18. Fine, that should definitely be an offence. But the term 'sexually exploited' is defined in clause 52 and the definition of sexually exploited simply includes 'an indecent image of B is recorded'. So you end up with a situation where a 17-year-old taking an indecent image of another 17-year-old is immediately a criminal offence under section 49, irrespective of whether or not those two 17-year-olds are in a consenting relationship. Now, again, I am not saying we should be encouraging 17-year-olds to take indecent images of each other; I am just saying we should not lock them up if they choose to do so.

1680

I have raised this with the Department already. The reason I have not tabled an amendment to this section is because I actually cannot. I have not been able to reach a situation where I think actually I have got a way of solving this problem, because there are some circumstances where simply taking an indecent image of a child could be seen as exploitation. There are some circumstances where simply saying consent has been received would not be adequate. What happens if they have been coerced into providing that consent? What happens if they consented to the photo but were not aware of how it was going to be used? This is a much more complex area, I think, than clause 52 allows it to be. Simply stating that the act of recording an image is of itself exploitation without any of that extra context that may be around it runs the risk of again criminalising underage teens, 16-to-17-year-olds, who may be in consenting relationships.

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1690

This has been dealt with in a form in other jurisdictions, including some conditions around the image. So, for example, if the image is of the person themselves and they are in possession of it, that could be an exemption; it could be an exemption where there is not a significant age difference between the two and where they can demonstrate they are in an enduring relationship. I think the term 'enduring relationship' is used elsewhere in the Bill.

1695

1700 Again, this is a really complex area and it needs a lot more thought, I think, than this Bill has already given it. I know a lot of thought has already gone into this clause to try and get it right, but I think it still needs further consideration just to make sure that we do not end up criminalising young people doing whatever it is young people are doing. I think that is a risk we are running here.

1705 So I am more than happy to support these clauses now, along with these amendments, but I really think that the Department needs to take a good, close look at that very specific section of the Bill and of that clause to say, 'Actually, the act of recording an indecent image of itself, is that a criminal act or is it actually when it is used in that context of exploitation?' And if it is to do with exploitation, I think that needs to be a bit more firmly defined in this Bill.

Thank you.

1710 **The Speaker:** Mr Robertshaw.

Mr Robertshaw: Mr Speaker, I cannot be any more eloquent than the Member for Ramsey has been on this particular clause, but I wish to associate myself absolutely with the comments he has made and trust that the Department will address this in great detail.

1715 **The Speaker:** Mrs Barber to reply.

Mrs Barber: I am fine.

1720 **The Speaker:** In which case I put the question that amendments 12 to 18 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Amendment number 19, Mrs Barber.

1725 **Mrs Barber:** Mr Speaker, amendment 19 adds greater definition to the recording of an indecent image by adding after 'record' 'or streamed or otherwise transmitted', and recognises technological developments.

Mr Speaker, I beg to move amendment 19 standing in my name.

Amendment to clause 52

19. Page 82, line 31, after 'record' insert 'or streamed or otherwise transmitted'.

The Speaker: Mr Hooper.

1730 **Mr Hooper:** Thank you very much, Mr Speaker.

Again, I am happy to second this amendment. As it deals with clause 52, I would like to ask that after we have maybe debated this we could perhaps adjourn this clause specifically to come back with the next chunk of clauses that the Hon. Member brings back, to see if it needs further tweaking or further amendment before we send this Bill off to the Legislative Council.

1735 **The Speaker:** So are you seeking to adjourn consideration of clause 52?

Mr Hooper: Yes, following the amendments being improved.

1740 **The Speaker:** Until –?

Mr Hooper: Just until the Hon. Member comes back with his next set of clauses.

The Speaker: So that will be probably two weeks hence.

1745 **Mr Hooper:** Okay.

The Speaker: Mr Robertshaw.

Mr Robertshaw: I beg to second.

1750

The Speaker: Right, we are now into an adjournment debate and I call on Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

1755 I would oppose the adjournment of this, because what we are using here is a clause actually from the UK legislation which was written in 2003 and when we have looked into it this clause has not caused any substantial problems.

1760 I think one of the aspects of such a large Bill is when you take one line out of context you can read all sorts of things into it. So the Hon. Member is quite right, if you just read the line 'an indecent image of B is recorded' under the interpretation of 'exploitation' that seems to make that. However, as we progress through the Bill, particularly clause 73 and Schedule 2, there are a whole range of exclusions there from the offence, including legitimate reasons for having the image and legitimate reasons for recording that image, particularly when there is consent involved. That is what we are talking about here: it is the exploitation of children, the absence of consent and the infliction of an offence and of harm rather than the physical act of taking a photograph.

1765

I also think that Hon. Members need to recognise that what we are doing here through legislation is providing tools for the judiciary and for the Constabulary to enforce the law. We are not stipulating to them and giving them a menu card per se of exactly what they should do. We are allowing them to look at cases on an individual basis to see whether harm and to see whether an offence has been caused rather than the actual physicality of taking an image.

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So from my point of view, to be honest with you, if this clause has existed in the United Kingdom since 2003 without any significant concerns being brought up to it and we are now in 2019, this has worked in the adjacent isle and I am fairly confident that it will continue to work here. However, obviously we will constantly look at revising our legislation if the courts or the Constabulary feel it is either not sufficient or causes problems on its implementation.

1775

But I would ask Hon. Members to progress through this Bill because, to be honest with you, going back to looking at particular wording, changing some of the terminology here when we are changing existing legislation in an adjacent isle can cause then unexpected consequences later on when you are dealing with other issues or different scenarios.

1780

Thank you, Mr Speaker.

The Speaker: Mr Hooper to reply to the adjournment.

Mr Hooper: Yes, thank you, Mr Speaker.

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It is only this particular clause I am asking that we take some time over. First things first, we are actually setting out what the offences are here, so when asking the question has an offence been committed, the answer would be yes. Someone takes a photo of a 17-year-old – that is an offence, straight up. That is the way the Bill works.

1790

The exemptions that are built into clause 73 deal with the indecent imagery offences. So the Hon. Member is absolutely right, taking an indecent image of a 17-year-old, you could be exempt from that prosecution for an offence under section 73; it does *not* provide you with an exemption under this section, section 49, and that is the one that really concerns me. It is the interaction of these two clauses where this simply states that recording the image *is* sexual exploitation. That is what the law says. That is what will be an offence. And that is my concern, that later on in the Bill dealing with indecent imagery – I think that has been dealt with quite well, I think that has evolved from the provisions in the UK. This provision I do not think has

1795

1800 evolved very well from where it is at in the UK – 2003 was 16, 17 years back. I am not convinced the law has kept up with technology and I would be *very* concerned about having this definition of ‘sexual exploitation’ recorded here in this specific purpose without knowing more about how that is actually going to impact, especially the earlier sections.

1805 So I would urge Hon. Members, let’s just take another week, let’s just be absolutely certain that this is definitely how we want to define ‘sexual exploitation’ and we are definitely okay with this being here in this Bill. This definition is not used, as far as I am aware, further on in the Bill. It is only used in this section. So actually adjourning this particular clause should not impact on anywhere else in the Bill because nowhere else refers back to this section. It refers specifically to sections 49 to 51 which we are about to approve, I would expect; and so if we have approved those sections all we are looking at then is the definition that relates to those sections.

1810 So this clause, I think, can be safely adjourned for a couple of weeks in isolation without having a detrimental impact on the rest of the Bill.

The Speaker: The motion is that clause 52 be adjourned for two weeks. Those in favour, please say aye; against, no.

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

FOR

Mr Moorhouse
Mr Baker
Mrs Caine
Mr Callister
Mrs Corlett
Miss Costain
Mr Hooper
Mr Robertshaw
Mr Shimmins
Mr Speaker

AGAINST

Mr Ashford
Dr Allinson
Mrs Barber
Mr Boot
Mr Cannan
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle

The Speaker: With 10 votes for, 11 against, the noes have it. The noes have it.

1815 The clause is not adjourned and we continue debate on amendment 19, if anyone else wishes to speak to that. (**A Member:** No.)

I put the question then that amendment 19 – unless, Mrs Barber you wish to say anything finally on amendment 19? And Dr Allinson, do you have anything to add about the clauses? Okay. I shall put then that amendment 19 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1820 I put to the House that clauses 48, 49, 50 and 51 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And I put that clause 52, as amended, stand part of the Bill. Those in favour, please say aye; against, no. Division called.

Mr Thomas, if you could just not participate in this vote, please.

1825 The question is that clause 52, as amended, stand part of the Bill.

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

FOR

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot

AGAINST

Mr Callister
Miss Costain
Mr Hooper
Mr Robertshaw
Mr Shimmins

Mrs Caine
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Speaker

The Speaker: With 16 for, and 5 against, the ayes have it. The ayes have it.
We turn now to clauses 53 to 63 and I call on Dr Allinson to move.

1830 **Dr Allinson:** Thank you, Mr Speaker, clauses 53 to 56 deal with offences surrounding the exploitation of prostitution.
Clause 57 provides interpretation.
Clauses 58 to 63 deal with the suppression of brothels.
I beg to move that clauses 53 to 63 do stand part of the Bill.

1835 **The Speaker:** Mr Malarkey.

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

1840 **The Speaker:** Mr Robertshaw.

Mr Robertshaw: Mr Speaker, could I ask you, please, to be kind enough to separate out clause 58 on its own so that we can vote on it separately, as I wish to, as a matter of principle, vote against this?
1845 I just want to read an email I sent to the hon. mover of the Bill yesterday and it explains my position. I may be on my own here but it is an issue that I feel fairly strongly about. This is addressed to Dr Allinson:

Having lived in countries where prostitution is legal, where prostitutes have their health and well-being regularly monitored, and where they pay tax and insurance and save for their pensions in registered and monitored brothels, as opposed to all the many dangerous street prostitution situations, you might understand my discomfort on the way this Bill deals with this particular subject. I notice that New Zealand has also recently taken a more enlightened view on prostitution and sex workers generally. What is it that, as a society, we object to so much? Is it something that we are simply not willing to come to terms with and therefore choose to retain a somewhat Victorian judgemental objection to it? One particular example is: are we against sex therapy for some members of our society who otherwise may find it difficult to fully experience their natural sexual drive through, say, a disability, without the help of a willing sex worker? There is no substitute for a trusting and close sexual relationship between a consenting couple, but this is not always possible. One thing is certain, there will always be sex workers, it is just a matter of how we manage it for the greater good. Is it really a crime? I hope that explains why I am uncomfortable with that particular clause and, to be honest, some of the other elements of the section on brothels and prostitution.

I only intend, however, to vote, on principle, against clause 58.

1850 There are now a number of countries that are taking the view that prostitution is one of the oldest forms of work in humankind's history and that it would be the right and proper thing to recognise it and not to be so judgemental. It is far safer to have a well-constituted, well-managed brothel where sex workers have their health checked regularly than simply dismiss the whole thing and have it on the streets and unregulated and uncontrolled, and under the influence of pimps, etc.

So it is just a matter of principle for me, Mr Speaker, on this particular clause. Thank you.

1855 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

1860 I just wanted to ask about clause 59 actually, and 59, 60, 61 and 63 altogether as a collective, they are pretty much the same question. Is there a difference between premises being used for the purposes of habitual prostitution and the premises being used as a brothel? The reason I ask is because this Bill makes it a criminal offence for a tenant to do either of those things – use it as a brothel or a place of habitual prostitution. But a landlord can only be convicted of allowing the premises to be used as a brothel. So if a landlord is allowing the premises to be used for habitual prostitution that is not an offence.

1865 Also, then, when you look to the rights of a landlord where a tenant is convicted of permitting the use of premises as a brothel, the landlord has some rights set out here. But if the tenant is convicted only of allowing premises to be used for habitual prostitution those rights do not also seem to be replicated in respect of that offence.

1870 I am just curious as to what the Department's view is and what the difference was between those two things.

The Speaker: I call on Dr Allinson to satisfy the Member's curiosity.

Dr Allinson: Thank you very much, Mr Speaker.

1875 To begin with, I would like to thank the Hon. Member, Mr Robertshaw, for what he said. We have conversed and I actually agree with him because when you look at other countries the plight of sex workers can be abysmal. We know that they are more likely to be the victims of sexual assault, more likely to be the victims of abuse and more likely to be the victims of murder. And why is that? It is because they are criminalised, they are driven to the margins of society; they are not looked after by anyone and they fall into the hands of criminals. We call them 'pimps', which is a slightly comedy word. There is nothing funny about the way that pimps operate to subjugate, often women, but sometimes men as well into sex work.

1880 However, as he has also pointed out, prostitution is possibly one of the oldest professions and sex workers should have rights as well. One of those rights should be perhaps to pay National Insurance to the Hon. Treasury Minister and get involved in pensions and childcare, and everything else that we would expect from members of our society.

Why is this part of our legislation? Again, we are following legislation from an adjacent isle, as we often do in these matters because sometimes the offences cross boundaries.

1890 At the early stages of drafting this Bill we talked with the Constabulary in terms of their concerns about prostitution and I would like to reassure the Hon. Member that if the Constabulary were worried that prostitution was a real issue on the Isle of Man then we would have been looking at whether we should legalise brothels in terms of harm reduction and safety. But the issue did not seem to be a problem for the Isle of Man.

1895 Certainly the Constabulary wanted those provisions there about soliciting, about using premises for a brothel, in terms of using premises to be a sex worker, because that can then interact with neighbours and interact with other people in that community. But they did not see really there to be any obvious existence of brothels on the Isle of Man at the moment, and did not want changes in the legislation that might be seen to encourage the establishment of brothels on the Isle of Man.

1900 So, as it is, I am quite happy with the legislation we have got, but I completely agree with the Hon. Member that if we are to advance we need that more holistic and more human response to people who become sex workers for whatever reason, but protect them, particularly when we look at the adjacent isle and other places in Europe and around the world where brothels are now used for women, in particular, who have been trafficked into prostitution, and unless we recognise that problem and deal with it at the source and protect those women, we are not doing our job.

1910 In relation to the comments from the Hon. Member from Ramsey, Mr Hooper in terms of the difference between a tenant and a landlord, I think there is a nuance there in terms of responsibility and the way that the Bill actually looks at both. And that goes on further in terms of closure orders.

So as I said, Mr Speaker, what we have done here is really use the best practice we can find from across, but we will continue to modernise our legislation should our society change.

1915 Certainly one of the aspects about prostitution that I think needs to be borne in mind is that prostitution on the Isle of Man is legal. We are not making sex workers illegal, it is just when they carry out certain offences such as soliciting or such as running a brothel; and particularly in terms of pimps, that it is made illegal, and profiting from prostitutes is made illegal. But prostitutes themselves are not criminalised. Some of the aspects in the Bill in terms of soliciting deal with it, I think, in a very mature way in terms of warnings and actually trying to engage those people who may be having problems, into therapeutic work.

1920 So with that, Mr Speaker, I beg to move the amendment and the motion.

The Speaker: I put first that clauses 53, 54, 55, 56, 57, 59, 60, 61, 62 and 63 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1925 I am putting to you next that clause 58 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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

FOR

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mrs Caine
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Miss Costain
Mr Hooper
Mr Robertshaw

The Speaker: We have 20 votes for, 3 against. The ayes have it. The ayes have it.
We turn then to clause 64, Dr Allinson.

1930 **Dr Allinson:** Mr Speaker, I formally rise to move that clause 64, which is currently about allowing persons under 16 to be in brothels, stand part of the Bill, and give way to the Hon. Member, Mrs Barber, who has an amendment to the entire provision.

The Speaker: Mr Malarkey.

1935 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: Mrs Barber.

1940 **Mrs Barber:** Mr Speaker, the principle of new clause 2, set out in our Order Paper as amendment 20, is that no responsible person should be permitted to allow a person under the age of 18, or a vulnerable adult, to be in a brothel or to frequent a brothel. If the principle is agreed today we will seek to bring the amendment in detail to the sitting of this House on 17th December.

Mr Speaker, I beg to move that the principle of new clause 2 be agreed.

Substitution of clause 64

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

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

IOM1966/5/3 and drafting

A person (A) commits an offence if —

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

(b) B is —

(i) under the age of 18; or

(ii) a vulnerable adult.

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

The Speaker: Mr Hooper.

1945

Mr Hooper: Thank you, Mr Speaker.

1950 I am happy to second this clause in principle. I do think the Department needs to take a closer look at what they mean by ‘a person for whom A is responsible’, and I think they also need to have a good think about what they mean by ‘allowing’ another person to attend, frequent or reside in a brothel. I think any parents in the room might be quite rightly concerned with the thought of being potentially criminally liable for accidentally allowing their child to frequent or attend a brothel.

1955 I would like to think the Department has put some thought into this and will make sure they come back when they move the clause in detail with a good explanation of exactly what they mean by some of these terms.

The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

1960 We are back into this area about defining what a 16- or 17-year-old is. Going back into the mists of history when I was a much younger man, 50 years ago, and being in an area where there were licensed, clean brothels, and young soldiers serving as such, 17 years old – perhaps a virgin, maybe, who was encouraged by somebody else to, as it were, relieve that particular position: are we making that person’s visit to a brothel in those circumstances a crime? I think we are by this clause 64, so I cannot support it, Mr Speaker.

1965

The Speaker: Dr Allinson.

Dr Allinson: Thank you very much, Mr Speaker.

1970 Speaking to the amendment, the clause that was drafted basically says a person commits an offence if the person has responsibility for a child or a young person of between four and 16 years and allows that child to reside in or to frequent a brothel. What the original clause was trying to deal with was obviously perhaps the child of the sex worker who is allowed to reside or frequent, so to be in the brothel several times, rather than necessarily a customer coming to the brothel for sexual activity.

1975

1980 What the amendment tries to do is deal with the issue of somebody between birth and four years old, because certainly in other countries we know that those children who are exposed to what happens in brothels can be traumatised by it and then involved further in prostitution as they grow older, from paedophiles. So I think changing that, in response to Hon. Members who have questioned that, is right.

However, there are some nuances about the use of the words such as 'frequent' and such as 'responsibility' and the age in terms of 18 or 16, which I think would benefit from further debate at a later stage.

Thank you, Mr Speaker.

1985

The Speaker: I call on Mrs Barber to reply.

Mrs Barber: Thank you, Mr Speaker.

1990 I think, as Dr Allinson has outlined, we have had a number of conversations with Members about this clause and we felt that it would be prudent to allow that period of time before we moved the clause in detail, so that is why today we are moving that in principle.

I beg to move.

1995 **The Speaker:** Dr Allinson, do you wish to add anything to clause 64? No, in which case I put the question that amendment 20, new clause 2, be approved in principle. Those in favour, please say aye; against, no.

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

FOR

Mr Ashford
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mrs Caine
Mr Callister
Mr Cannan
Mrs Corlett
Miss Costain
Mr Cregeen
Ms Edge
Mr Harmer
Mr Hooper
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

AGAINST

Mr Robertshaw

The Speaker: We have 22 for, 1 against. The ayes have it. The ayes have it.

2000 I understand, Mrs Barber, that it is your intention to move that in detail at the sitting on 17th December, so that would mean that any amendments to that clause would need to be lodged by five o'clock this next Monday.

We turn our attentions then to clauses 65 to 67 and I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

2005 Clauses 65, 66 and 67 are termed preparatory offences. Where clause 65 makes it an offence to administer a substance with intent, clause 66 is where an offence is committed in order to commit a sexual offence, and clause 67 is the serious offence of trespass with intent to commit a sexual offence.

Mr Speaker, I beg to move that clauses 65, 66 and 67 do stand part of the Bill.

2010 **The Speaker:** Mr Malarkey.

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

2015 **The Speaker:** I put the question that clauses 65, 66 and 67 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 68 and 69, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2020 Clauses 68 and 69 are designed to address the situation whereby a person aged 16 years or over has sex with a relative aged 18 years or older. In clause 68, A commits the offence by taking the sexual action; whereas in clause 69, A consents to B taking the sexual action. The penalties for such offences are different to similar acts carried out by an adult.

Mr Speaker, I beg to move that clauses 68 and 69 do stand part of the Bill.

2025 **The Speaker:** Mrs Barber to move amendments 21 and 22.

Mrs Barber: Mr Speaker, I move the very minor and identical amendments 21 and 22 to clauses 68 and 69 standing in my name.

2030 By way of explanation, notwithstanding proofing checks, the words 'or she' in each case were missed when the Bill was introduced.

With that, Mr Speaker, I beg to move the amendments 21 and 22 to clauses 68 and 69:

Amendment to clause 68

21. Page 90, on line 20, after 'he' insert 'or she'.

Amendment to clause 69

22. Page 91, on line 23, after 'he' insert 'or she'.

The Speaker: Mr Hooper.

2035 **Mr Hooper:** I beg to second those amendments, Mr Speaker.

Mr Malarkey: I had better second clauses 68 and 69, sir.

The Speaker: Indeed, you should.

2040 **Mr Malarkey:** And reserve my remarks.

The Speaker: Everything being proposed and seconded, I will put first amendments 21 and 22 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2045 Clauses 68 and 69 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 70, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2050 Clause 70 makes it an offence to possess, take or permit to be taken, distribute, share or publish any indecent photographs or pseudo-photographs of children.
I beg to move that clause 70 do stand part of the Bill.

The Speaker: Mr Malarkey.

2055

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

The Speaker: Amendment 23, Mrs Barber.

2060 **Mrs Barber:** Mr Speaker, the effect of amendment 23 will be to remove the definition of distributing an indecent photograph or pseudo-photograph and renumber the following subsections accordingly. The reason is so it can be relocated more appropriately in a later amendment to clause 80.

Mr Speaker, I beg to move amendment 23 to clause 70 standing in my name:

Amendment to clause 70

23. Page 92, lines 33 to 38, omit subsections (2) and (3).

Renumber the following subsections accordingly.

2065 **Mr Hooper:** Thank you, Mr Speaker.

I beg to second the amendment.

The Speaker: I put the question that amendment 23 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2070 Clause 70 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 71, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2075 Clause 71 makes it an offence to possess, take or permit to be taken, distribute, share or publish any prohibited images of children.
I beg to move that clause 71 do stand part of the Bill.

The Speaker: Mr Malarkey.

2080

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

The Speaker: Amendment 24 in the name of Mrs Barber.

2085 **Mrs Barber:** Mr Speaker, the effect of amendment 24 is to remove the requirement for the consent of the Attorney General to prosecutions. This is because only the Attorney General's Chambers conducts criminal proceedings.

Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 71

24. Page 95, lines 4 and 5, omit subsection (8).

The Speaker: Mr Hooper.

2090 **Mr Hooper:** Thank you very much, Mr Speaker.
I beg to second the removal of that subsection. Thank you.

The Speaker: I put the question first that amendment 24 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2095 I put to you clause 71 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 72 to 79 and Schedules 1 and 2, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2100 Clause 72 provides an exclusion to the offence in clause 71 for classified films.

Clause 73 provides an exemption for photographs, pseudo-photographs, images or prohibited images taken of and between spouses and civil partners and those living together as partners in an enduring family relationship. The photographs and images must have been taken with consent and not shared with anyone outside the relationship and applies where either or both in the marriage, civil partnership or enduring family relationship are aged 16 years or over.

2105 Clause 74 makes an exception for criminal proceedings and investigations where this is necessary for investigating or prosecuting alleged offences or to enable a person to provide his or her defence.

2110 Clause 75 deals with defences generally, such as legitimate reasons where the person had not seen the image, or received an unsolicited image and did not keep it for an unreasonable time.

Clause 76 provides that an image is taken to have been of a person under the age of 18 if it appears from that evidence taken as a whole that the person is indeed under 18 at the material time.

Clause 77 provides powers of entry, search and seizure.

2115 Clause 78 refers to Schedule 1 and makes special rules relating to information society providers.

Clause 79 introduces Schedule 2 about forfeiture provisions.

For the purposes of these clauses, a child is a person under the age of 18.

2120 Mr Speaker, I beg to move that clauses 72 to 79 with Schedules 1 and 2 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

2125 **The Speaker:** I put the question that clauses 72 to 79 inclusive and Schedules 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 80, Dr Allinson.

2130 **Dr Allinson:** Thank you, Mr Speaker.

Clause 80 provides interpretation to clauses 70 to 79.

I beg to move that clause 80 do stand part of the Bill.

The Speaker: Thank you.

2135 Mr Malarkey.

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

The Speaker: Amendments 25, 26 and 27, Mrs Barber.

2140 **Mrs Barber:** Mr Speaker, I rise to propose the three amendments to this clause standing in my name.

Amendment 25, on line 26, makes the definition of 'prohibited image' subsection (11).

Amendment 26, on line 27, deletes existing subsection (11). This is a bit of tidying of the draft.

2145 Amendment 27, on page 100 and immediately after line 40, inserts a definition as subsection (15) in relation to the distribution of an indecent photograph, or a pseudo-photograph or a prohibited image that applies to both clauses 70 and 71. The further subsection (16) includes accessing an image by streaming or any other form of transmission.

Mr Speaker, I beg to move amendments 25, 26 and 27 to clause 80 standing in my name:

Amendments to clause 80

25. *Page 100, on line 26, make the definition of 'Prohibited image' subsection (11).*

26. *Page 100, on line 27, delete existing subsection (11).*

27. *Page 100, immediately after line 40, insert —*

'(15)References to distribution of an indecent photograph or pseudo-photograph or a prohibited image mean parting with possession of, exposing or offering for acquisition the photograph, pseudo-photograph or image by a person to another person.

(16) References to being in possession of an image include obtaining access to the image by streaming or by any other form of transmission.'

2150 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

I beg to second those amendments and would just like to say I am really glad the Department has taken on board concerns around streaming and possession.

2155

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2160 If I can speak to the amendment, I would like to thank several Members who pointed this out. When the original Obscene Publications Bill was published we were dealing with photographs or film, and then we developed into video; now we are dealing with digital images, and the idea of possessing a digital image when it is streamed is very problematic in terms of an offence, particularly when people get unsolicited emails or things coming on to their phones. So, what the Department has tried to do is encompass things like streaming into the legislation, again to give the tools the judiciary and the Constabulary need to deal with child pornography, to deal with indecent images, but without criminalising those people who may be victims of cybercrime. So, as our society develops and as technology develops we do need to be quite careful that our legislation is kept up to date to protect the public.

2165

Thank you, Mr Speaker.

2170

The Speaker: Mrs Barber, any final comments?

Mrs Barber: No.

2175 **The Speaker:** Dr Allinson? No, in which case I put that amendments 25, 26 and 27 in the name of Mrs Barber be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 80 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2180

Clause 81, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

Mr Speaker, clause 81 makes it an offence for a person intentionally to expose their genitals where they intend that somebody else will see them and be caused alarm or distress.

I beg to move that clause 80 do stand part of the Bill.

2185

The Speaker: Clause 81.

Dr Allinson: I beg your pardon, clause 81.

2190

The Speaker: Mr Malarkey.

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

2195

The Speaker: I put the question that clause 81 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 82, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2200

This part of the Bill, although it has been called 'Other offences', deals with some quite old offences that have gone through the criminal justice system for centuries.

Clause 82 makes it an offence to have intercourse with a living animal.

I beg to move that clause 82 do stand part of the Bill.

2205

The Speaker: Mr Malarkey.

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

The Speaker: Mrs Barber.

2210

Mrs Barber: Mr Speaker, the two amendments numbered 28 and 29 to this clause simply substitute, in lines 16 and 22, the words 'an animal' for 'a living animal'.

The effect of my amendments will be to outlaw intercourse with an animal whether alive or dead.

I beg to move amendments 28 and 29:

Amendments to clause 82

28. *Page 101, line 16, for 'a living animal' substitute 'an animal'.*

29. *Page 101, line 22, for 'a living animal' substitute 'an animal'.*

2215

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

2220

I am more than happy to second these amendments. I just wonder if they actually do what the Hon. Member thinks they do. I appreciate what is being attempted here, but a dead animal ... There are other references here to 'a corpse', so I would have thought that similar language would have been used. A 'carcase' I think is used elsewhere in the Bill, so I would have thought if we were going to be intentionally referring to a dead animal we would be calling it a carcase rather than simply an animal.

2225

I am happy to second; I would just appreciate some clarity on will this actually make the offence the thing the Member is thinking it is going to make an offence.

The Speaker: Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2230 Speaking to the amendment, this came up again from several Members who were concerned about the use of the word 'animal' and whether this meant dead or alive or both. I think what we are dealing with here is offence and if we have legislation that encompasses a range of different crimes, that gives scope for the Constabulary and the judiciary to deal with those crimes.

2235 Theoretically, if somebody were to have intercourse with a dead animal and nobody else knew about it, then no offence has been caused, no harm necessarily has been caused, although as a society we may say that that revolts us.

I think the addition of the amendments does give that extra clarity, but at the end of the day it is very much up to the Constabulary and the Attorney General's office to bring a case to the court in the public interest, and I think this gives their ability to do that.

2240 Thank you, Mr Speaker.

The Speaker: Mrs Barber to reply.

Mrs Barber: Thank you, Mr Speaker.

2245 Again, this was a clause that elicited quite a large amount of debate, also exploring the various terminologies and what would be most effective to portray exactly what we wanted to achieve through this clause. The drafters were content that 'an animal' was far more descriptive for the purposes of this to achieve the outcome we were seeking, which was that this was not only restricted to a living animal. However, as with all these things, this is something that is an ongoing process, and should we become aware that that would not be satisfactory, then we would be open to looking to amend in the future.

2250 Thank you. I beg to move.

The Speaker: I put the question that amendments 28 and 29 in the name of Mrs Barber be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 82 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 83, Dr Allinson.

2260 **Dr Allinson:** Thank you very much, Mr Speaker.

All of this follows on from the other clauses. I think most people would agree that necrophilia is really quite an extreme offence. Clause 83 prohibits sexual activity with a corpse, and I beg to move that it do stand part of the Bill.

2265 **The Speaker:** Mr Malarkey.

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

2270 **The Speaker:** I put the question that clause 83 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 84, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2275 Clause 84 recognises that it is possible to cause a person harassment, annoyance, alarm or distress by engaging in sexual activity in a place to which the public, or a section of the public, have access. It is a defence for the accused to prove that he or she had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, annoyance, alarm or distress.

I beg to move that clause 84 do stand part of the Bill.

2280 **The Speaker:** Mr Malarkey.

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

The Speaker: I call on Mrs Barber to move amendment 30.

2285

Mrs Barber: Mr Speaker, amendment 30 substitutes subsection (1) with new subsections (1) and (2). The purpose is to clarify that a person who is likely to be caused harassment, annoyance, alarm or distress does not include a constable on duty. This will remove any possibility of targeting a particular person or group of people, or perception of that, who are consenting adults engaging in sexual activity and bothering nobody.

2290

The following subsections are renumbered accordingly.

Mr Speaker, I beg to move amendment 30 standing in my name:

Amendment to clause 84

30. Page 102, on lines 8 to 13, for subsection (1), substitute —

'(1) A person (A) commits an offence if A engages in a sexual activity in a place to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise, within the hearing or sight of a person likely to be caused harassment, annoyance, alarm or distress thereby.

(2) For the purpose of subsection (1) a person who is likely to be caused harassment, annoyance, alarm or distress does not include a constable on duty.'

Renumber the following subsections accordingly.

The Speaker: Mr Hooper.

2295

Mr Hooper: Thank you very much, Mr Speaker.

I am more than happy to second this amendment, which looks to remove the free pass that was potentially being given to constables on duty.

Thank you very much.

2300

The Speaker: I put first amendment 30 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 84 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2305

The Speaker: Clause 85, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

Clause 85 makes it an offence for a person to take away or detain another person against that person's will by force with the intention of committing a sexual offence.

2310

I beg to move that clause 85 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

2315

The Speaker: I put the question that clause 85 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 86, Dr Allinson.

2320

Dr Allinson: Thank you, Mr Speaker.

Clause 86 places a duty on people who work in a regulated profession or work with children in a regulated activity to notify police of possible victims of child sexual abuse. A 'regulated profession' includes healthcare professionals, teachers, social care workers; and a 'regulated activity' means any activity prescribed by order by the Department.

2325 Subsection (5) clarifies that the duty does not apply where the person making the notification has reason to believe another person in a regulated profession has previously made a child sexual abuse notification in connection with the same act of sexual abuse, or that person complies with a safeguarding policy prescribed for the purposes of this section in regulations made by the Department.

2330 In other words, disclose direct to the police or comply with the relevant organisation's safeguarding policy in order to protect our children from sexual abuse.

Mr Speaker, I beg to move that clause 86 do stand part of the Bill.

The Speaker: Mr Malarkey.

2335

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

The Speaker: I put the question that clause 86 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2340 Now, amendment number 31, new clause 3, in the name of Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

2345 The principle of this proposed new clause, numbered 3, at amendment 31, is that it is wrong for people to presume that a person's particular sexual orientation or gender identity is somehow abnormal and must therefore be changed by means of therapy.

This is a very important amendment considering the well-documented damage that conversion therapy can do to an individual. The amendment does not prevent people seeking advice or support when exploring and understanding their own sexual orientation or gender identity.

2350 Mr Speaker, I beg to move that the principle of this new clause be agreed; and, if the House is in agreement, we will then seek to move the detail at the sitting on 17th December.

Insertion of new clause 3

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

'NC3 Conversion therapy

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

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

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

(i) change a person's sexual orientation or gender identity; or

(ii) suppress a person's expression of sexual orientation or gender identity; but

(b) does not include services which are for the purpose of assisting a person to explore, develop and affirm the person's sexual orientation or gender identity.

(3) The Department may issue guidance about the meanings of expressions used in subsection (2).

(4) Regard must be had to guidance issued under subsection (3) in interpreting references in this section to those expressions.

(5) The Department may revise guidance issued under subsection (3) and a reference to guidance includes a reference to revised guidance.

(6) Guidance issued under subsection (3) or (5) must be laid before Tynwald.

Maximum penalty —

- (a) *(on information) — 2 years' custody or a fine;*
(b) *(summary) — 12 months' custody or a fine of level 5 on the standard scale or both.'*
Adjust clause numbers and cross references throughout.

The Speaker: I just need a seconder of that new clause. Mr Hooper.

Mr Hooper: I am happy to second that new clause in principle, Mr Speaker.

2355

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

As per Mrs Barber's wishes, that will be moved in detail on 17th December and amendments would need to be lodged by Monday at five o'clock.

2360

Clause 87, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

Clause 87 makes it possible to prosecute offences committed outside the Island by persons ordinarily resident on the Island.

2365

I beg to move that clause 87 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

2370

The Speaker: I put the question that clause 87 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 88, Dr Allinson.

2375

Dr Allinson: Thank you, Mr Speaker.

Clause 88 provides that a person is not guilty of aiding, abetting or counselling offences against a child if he or she acts to protect the child, to prevent the child from becoming pregnant, or to promote the child's emotional well-being by the giving of advice.

I beg to move clause 88 do stand part of the Bill.

2380

The Speaker: Mr Malarkey.

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

2385

The Speaker: I put the question that clause 88 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 89 to 92, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2390

Clauses 89 to 92, inclusive, deal with the key matter of consent.

Clause 89 defines the meaning of 'consent' where it is relevant in this part of the Bill. A person consents if he or she agrees by choice, and has the freedom and capacity to make that choice. Consent has to be explicit.

2395

Clause 90 sets out the evidential presumptions about consent. In the event that the three propositions in subsection (1) are proven, the complainant is taken by definition not to have consented to the relevant act. These propositions are that the defendant did the relevant act, that any of the circumstances in subsection (2) existed and that the defendant knew they existed.

2400 Subsection (2) sets out seven sets of circumstances including the threat of, fear of or use of violence, unlawful detention and the administration or taking of a stupefying substance, such as drugs or alcohol.

Clause 91 provides conclusive presumptions about consent, which include deceiving the complainant as to the nature or purpose of the relevant act or inducing the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

2405 Clause 92 defines the meanings of 'relevant act' and 'complainant' in the offences to which clauses 90 and 91 apply.

Mr Speaker, I beg to move that clauses 89 to 92 do stand part of the Bill.

The Speaker: Mr Malarkey.

2410

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

The Speaker: Mr Robertshaw.

2415 **Mr Robertshaw:** Just the definition of 'capacity'. I may be having a senior moment. I think our capacity law is still deficient, isn't it? So could the mover just describe how we, in the intermediary period, deal with that omission on our part?

The Speaker: Mr Hooper.

2420

Mr Hooper: Thank you, Mr Speaker.

These seem to be some of the most important parts of the Bill to me and I think there is actually a gap here in the way that we deal with these evidential presumptions.

2425 So clause 89 makes it quite clear that something has to be agreed by choice with someone with freedom and capacity to do something. That is fine. But then the evidential presumption is flipped if certain conditions are met.

2430 So they are saying, 'We are going to say there is automatically no consent if you are in fear of violence being used'. So in the circumstance where somebody says, 'You will commit a sexual act or I am going to hurt you', immediately there is no consent in those circumstances. If someone were to say, 'You will commit a sexual act or I will send this picture I have of you to your friends', there is no automatic, no consent in that circumstance because the requirement is that the threat must be the threat of using violence, immediate violence, fear of violence. I think this comes back to conversations we were having around the Domestic Abuse Bill where actually violence is not the only type of threat that can seriously impact people and can have an effect on their ability to consent.

2435

2440 So I think that again whilst these clauses are quite strong there is a gap here in respect of threats that do not include violence; there is a gap here in respect of coercive control. I appreciate that provided the prosecution can prove these situations exist then clause 89 kicks in; if you can prove coercive control exists then actually there is no freedom and capacity. That is fine. But my concern actually is it should not be on the prosecution to prove these things exist, it should be on the defendant – if actually someone did threaten me with blackmail, that should be enough. It should be exactly the same as with a threat of violence, that it should be on the defendant to prove such a circumstance did not exist, which is exactly how we treat violence or unconsciousness or having taken a substance.

2445

2450 It just seems like there is that small gap here, where really this law is based on a 2003 law from the UK. Actually, we have moved on a lot since then, we have moved on a great deal in understanding more about consent and understanding more about domestic abuse and about sexual violence. I think that as this particular clause goes through the process, the Department needs to take a second look at whether or not the evidential presumptions around consent need to be amended in respect of non-violent threats of that nature.

The Speaker: Mover to reply.

Dr Allinson: Thank you very much, Mr Speaker.

2455 I would like to thank both Members for pointing out issues about this, which is key to the whole Bill, this small part, because it is about consent and how we judge consent after an act has happened, and how the court judges that consent. So I thank both of them for that.

In relation to the questions from Mr Robertshaw, the capacity here is very much more physical capacity than mental capacity because that should be dealt with under the previous sections in terms of mental illness and issues around that.

2460 He is quite right that, as yet, we are still waiting for a Capacity Act on the Island that hopefully should be able to delineate that a lot better and will help both with this Bill but also other Bills in terms of power of attorney and in terms of making wills, and in terms a whole range of other legal aspects. But this is very much on the physical capacity in terms of if somebody is unable to verbalise anything or actually give their consent.

2465 In terms of the Hon. Member for Ramsey, Mr Hooper, I can completely see where he is coming from in terms of consent and making that explicit, and also dealing with controlling and coercive behaviour, which we have done through the Domestic Abuse Bill. Again, with that Bill we are looking at behaviour. This is dealing with a criminal act. And so one of the essences is that controlling or coercive behaviour does not necessarily lead to a rapist, but somebody can be controlling in a relationship and that would not necessarily lead to a criminal offence of rape or sexual assault.

2470 What I can say is obviously if an offence has taken place then the circumstances around that and that coercive and controlling behaviour may be used in a criminal proceedings in terms of the aggravation of it and will be borne in mind. Also, in terms of section 7 of the Criminal Evidence Act 2019 it enables the evidence of the defendant's bad character to be introduced where there is evidence of or a disposition towards misconduct on the defendant's part. So obviously coercive or controlling behaviour running up to an offence could therefore be admitted in proceedings under that Bill, once enacted, and brought into a criminal prosecution in terms of the sexual offence.

2480 By defining control and coercion within a relationship relating to sexuality it would be quite difficult to then actually say what is consensual and what is not. And again what we have done here is used the specifications and clarifications from the 2003 UK Act, but we will continue to let that evolve as our society changes and as the circumstances about consent do change.

2485 One of the interesting things in clause 91 is presumptive consent and impersonation and also the actual relevant act, and that should hopefully deal with a whole range of activities and offences that particularly affect women.

With that, Mr Speaker, I beg to move.

2490 **The Speaker:** I put the question that clauses 89, 90, 91 and 92 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Just with regard to the Hon. Member for Ramsey's comments, he might also want to cross-reference them to section 23 of the Theft Act 1981 regarding blackmail.

Clause 93, Dr Allinson.

2495 **Dr Allinson:** Thank you, Mr Speaker.

Clause 93 defines 'sexual' for the purposes of this Part.

I beg to move that clause 93 do stand part of the Bill.

The Speaker: Mr Malarkey.

2500

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

The Speaker: I put the question that clause 93 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2505 Clause 94, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
Clause 94 provides general interpretations for Part 2.
I beg to move that this clause do stand part of the Bill.

2510

The Speaker: Mr Malarkey.

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

2515

The Speaker: Now, we turn to amendment number 32 in the name of Mrs Barber.

Mrs Barber: Mr Speaker, the amendment numbered 32 substitutes subsection (4) in clause 94 where the definition for 'image' is replaced with an updated definition that allows for the inclusion of, for instance, an image which has been encrypted.

2520 Mr Speaker, I beg to move the amendment standing in my name.

Amendment to clause 94

32. Page 108, on line 16, for subsection (4) "image" substitute —

'(4) "Image" includes —

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

(b) a three-dimensional image; or

(c) data (stored, transmitted or received by any means) which is capable of conversion into an image within paragraph (a) or (b).'

The Speaker: Mr Hooper.

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

2525

The Speaker: I put the question first that amendment 32 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 94, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2530 Clauses 95 to 97, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I suggest moving clauses 95 to 97 together as they relate to indecent displays.

2535 Clause 95 defines the offence of publicly displaying indecent material and that the person making the display and, subject to some exceptions set out in the clause, any person causing or permitting the display commits an offence. The maximum penalty for the offence is given as two years' custody, a fine, or both, on information; or a level 5 fine on summary conviction.

Clause 96 provides a constable with powers of arrest, seizure and entry.

2540 Clause 97 empowers the Department to make a code of conduct about the display of material that it considers may be offensive, including adult titles and so-called lifestyle magazines.

Mr Speaker, I beg to move that clauses 95 to 97 inclusive are approved and do stand part of the Bill.

2545

The Speaker: Mr Malarkey.

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

The Speaker: Mr Hooper.

2550 **Mr Hooper:** Thank you, Mr Speaker.

I just have what I hope is quite a straightforward question for the hon. mover in respect of clause 95. It talks about a 'public place'. Obviously a public place generally refers to a physical location. I just want some clarity on whether or not some of these clauses also refer to websites.

2555 We are talking about indecent displays and making them an offence, where people have access to. I just want to make sure that actually is this also going to cover the digital space as well as the physical space? And, if not, what legislation is there, or is he proposing, that will cover that digital space?

The Speaker: Mover to reply.

2560

Dr Allinson: Thank you, Mr Speaker.

I think the Hon. Member makes a very good comment. Again, as society changes and technology changes 'displays', instead of being a shopfront, turn into an LCD screen or even somebody's mobile phone screen. That is one of the issues with us constantly trying to police something that can become very pervasive.

2565

In terms of his specific question, when we asked the drafters whether cyberspace is a public place the answer was yes. However, certain spaces on the internet obviously have restrictions to them and may be seen as more private places because you have to pay or register to access them. But certainly in terms of cyberspace it would be included in the definition of public place in relation to indecent displays.

2570

Thank you, Mr Speaker.

The Speaker: The question is that clauses 95, 96 and 97 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2575

I understand clause 98 is not to be moved today. We turn then to clause 99. Dr Allinson.

Dr Allinson: Mr Speaker, clause 99 states that an offence is not committed under clause 98 if it is an 'excluded image', which is defined in subsection (2) as 'all or part of a classified work'.

Subsections (3) and (4) explain where an image is not an excluded image.

2580

Subsection (5) defines terms used in this clause, for example, 'classified work'.

Mr Speaker, I beg to move that clause 99 do stand part of the Bill.

The Speaker: Mr Malarkey.

2585

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

The Speaker: I put the question that clause 99 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 100, Dr Allinson.

2590

Dr Allinson: Thank you very much, Mr Speaker.

Clause 100 sets out defence to – and clause 101 applies Schedule 1, that itself makes special rules relating to providers of information society services – offences in connection with clause 98.

2595

I beg to move clause 100 do stand.

The Speaker: Mr Malarkey.

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

2600 **The Speaker:** Thank you.
Mrs Barber to move amendment number 35.

Mrs Barber: Mr Speaker, amendment 35 is the small change in phraseology in subsection (1) of clause 100 by substituting the word 'or' for 'and'.
2605 I beg to move amendment 35 standing in my name.

Amendment to clause 100
35. Page 114, line 20 for 'and' substitute 'or'.

The Speaker: Mr Hooper.

Mr Hooper: Thank you, Mr Speaker, I am happy to second.

2610 **The Speaker:** I put the question that amendment 35 be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.
And that clause 100 as amended stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 101, Dr Allinson.

2615 **Dr Allinson:** Thank you, Mr Speaker.
Clause 101 introduces Schedule 1, which makes special provision in connection with the operation of clause 98 in relation to persons providing information society services within the meaning of that Schedule.

2620 Mr Speaker, I beg to move that clause 101 and Schedule 1 do form part of the Bill.

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

2625 **The Speaker:** Thank you, Mr Malarkey, but Schedules 1 and 2 have already been dealt with.

Dr Allinson: I beg your pardon, Mr Speaker.

The Speaker: So, just clause 101. Nice try to throw me off the scent!
I put the question that clause 101 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
2630 Clauses 102 and 103, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker, and I apologise for my previous inclusion of Schedule 1 yet again.

2635 Clause 102 sets out the test of obscenity where an article is likely to deprave or corrupt persons who are likely to read, see or hear the matter contained or embodied in it.

Clause 103 applies to anything intended to be used for the reproduction or manufacture of obscene articles.

Mr Speaker, I beg to move that clauses 102 and 103 do stand part of the Bill.

2640 **The Speaker:** Mr Malarkey.

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

2645 **The Speaker:** I put the question that clauses 102 and 103 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 104, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.
2650 Clause 104 makes it an offence to publish obscene material or to have such matter in the person's ownership, possession or control for publication, whether for gain or not.
Subsections (2) to (7) give further details concerning the offence.
Mr Speaker, I beg to move that clause 104 do stand part of the Bill.

2655 **The Speaker:** Mr Malarkey.

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

The Speaker: Mrs Barber to move amendment number 36.
2660

Mrs Barber: Mr Speaker, amendment 36 omits subsection (4) from clause 104, where previously this subsection outlined the offence with reference to 16 mm moving picture film, which is felt to be unnecessary and covered by existing provisions.
The following subsections are then renumbered.
2665 Mr Speaker, I beg to move that amendment 36 be approved.

Amendment to clause 104
36. Page 117, lines 7 to 21, omit subsection (4).
Renumber the following subsections accordingly.

The Speaker: Mr Hooper.

Mr Hooper: I beg to second, Mr Speaker.

2670 **The Speaker:** I put the question that amendment 36 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 104, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 105 to 107, Dr Allinson.

2675 **Dr Allinson:** Thank you, Mr Speaker.
Clause 105 provides the defence of public good. The opinion of experts as to the literary, artistic, scientific or other merits of the article in question may be admitted to the proceedings to confirm, or otherwise, the validity of the defence
2680 Clause 106 sets out the maximum penalties for printing, selling or keeping indecent or obscene publications
Clause 107 describes what a classified video recording is.
Mr Speaker, I beg to move that clauses 105, 106 and 107 do stand part of the Bill.

2685 **The Speaker:** Mr Malarkey.

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

The Speaker: Mr Hooper.

2690 **Mr Hooper:** Just on clause 106 I seek clarification, really. There is a lot of talk in that clause of printing and manufacturing. I just want to check, again, does this include digital production? So if it was an e-book, for example, is that also covered by this? I just want to make sure again the law is keeping up with technology.

2695 **The Speaker:** Mover to reply.

Dr Allinson: Thank you very much, Mr Speaker.

2700 Again, when we have discussed this with the drafters, I think the Hon. Member is quite right that printing tends to conjure up images of a printing press. However, it is looking at publication more in general, so it would actually also include digital reproduction on the internet, or other such products.

Thank you very much, Mr Speaker.

2705 **The Speaker:** I put the question that clauses 105, 106 and 107 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 108, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2710 Clause 108 provides powers of search and seizure of obscene articles within premises. I beg to move that clause 108 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

2715

The Speaker: Mrs Barber to move amendment number 37.

Mrs Barber: Thank you, Mr. Speaker.

2720 Amendment 37 omits subsection (6) in clause 108 where once again reference was made to the consent of the Attorney General.

Mr Speaker, I beg to move amendment 37.

Amendment to clause 108

37. Page 120, lines 4 to 10, omit subsection (6).

Renumber the following subsections accordingly and the cross references throughout.

The Speaker: Mr Hooper.

Mr Hooper: I beg to second.

2725

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

Clause 108, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2730 Clauses 109 and 110, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

We now move on to Part 6 of the Bill, which deals with voyeurism and image-based sexual abuse.

2735 Clauses 109 and 110 set out the offence of voyeurism, which is committed by observing another person doing a private act for the purpose of sexual gratification, whilst knowing the other person does not consent to such observation.

Clause 110 provides further interpretation.

Mr Speaker, I beg to move that clauses 109 and 110 do stand part of the Bill.

2740

The Speaker: Mr Malarkey.

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

2745

The Speaker: Now, to move amendments 38, 39 and 40, Mrs Barber.

Mrs Barber: Mr Speaker, there are three amendments to clause 109, which I propose to move together.

Amendment 38 numbers the existing provision as subsection (1).

2750

Amendment 39 makes a stylistic change within what is then (1)(a) so that the wording that previously read 'doing a private act' now reads 'engaged in a private act' as, on reflection, this is a clearer use of language.

The final amendment, numbered 40, inserts a new subsection (2) that sets out the offence of enabling voyeurism by operating equipment to enable another person to engage in voyeurism.

2755

Mr Speaker, I beg to move amendments 38, 39 and 40 standing in my name.

Amendments to clause 109

38. Page 121, line 20, number the existing provision subsection (1).

39. Page 121, line 22, for 'doing', substitute 'engaged in'.

40. Page 121, immediately after line 24, insert —

'(2) A person (A) commits an offence if —

(a) A operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person (B) engaged in a private act; and

(b) A knows that B does not consent to A operating equipment with that intention.'

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

I am happy to second those amendments.

2760

I must have missed this. I just want to double check clause 110 is not being moved. Is that correct?

The Speaker: Clause 110 has been moved.

2765

Dr Allinson: Yes.

Mr Hooper: Right, sorry, I have made a note here that this was not being moved, and I thought that was a good thing, so I should probably comment on that now while we are here.

2770

I was a bit concerned actually about a difference in definitions here. The definition of voyeurism is very specific here in section 110, relating to the expectation of privacy and where the private act involves the 'genitals, buttocks or breasts exposed or being covered only with underwear'. However, when you look a little bit further through the Act, in the definition section 117 there are definitions of 'engaged in a private act' that actually are much broader than this.

2775

So it seems that for the specific voyeurism offence under section 109 there is a very narrow definition of what constitutes 'a private act', which is very clearly set out here in section 110. But

2780 then if you look at some of the other offences around recording an intimate image, 'engaged in a private act', intimate image is much broader here and so actually you could end up in a situation where someone is engaged in what is considered to be a private act but actually you cannot prosecute them for voyeurism because the definition of voyeurism itself is very narrow. But if they had taken a photo of you engaged in that act, it would have been an offence.

2785 That seems a little bit daft, to have two completely separate definitions when actually the broader definition set out in section 117 seems to cover everything you wanted to cover for the voyeurism offence. So, actually, I do not think clause 110 is necessary at all because it is dealt with further on in the Bill. So I would just like to really suggest to Hon. Members, do not vote for clause 110 because it just is not necessary and it is far too narrow a definition.

The Speaker: I call on Mrs Barber to reply to the amendments. No.
Dr Allinson.

2790

Dr Allinson: Thank you very much, Mr Speaker.

As we have said previously, some of the offences in this Act are very, very old and voyeurism has a particular definition to it, well known to judges and the judiciary. So I think differentiating from that at this stage might be a little bit counterproductive.

2795

What Part 6 does is introduce the definition of image-based sexual abuse. Voyeurism is very different to image-based sexual abuse. Voyeurism is sexual gratification from watching somebody take part in a private act. Image-based sexual abuse, when we get to the further clauses, is using images of an intimate nature or a personal nature, whether they be sexual or not, to exert control and instil fear in the person whose images they are, when they are used against their control.

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So I do think the two are different. I think the definitions of the two are different and I think voyeurism, because of its historical basis, should remain as it is in this current Bill.

Thank you, Mr Speaker.

2805

The Speaker: I put the question that amendments 38, 39 and 40 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 109 and 110, as amended: those in favour –

Mr Hooper: Mr Speaker, can we take –?

2810

The Speaker: Do you want to take those separately? Certainly. I put first the question that clause 109 stand part of the Bill, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2815

I put that clause 110 stand part of the Bill, as amended. Those in favour, please say aye; against, no. The ayes have it.

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

FOR

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mrs Caine
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen

AGAINST

Miss Costain
Mr Hooper

Ms Edge
Mr Harmer
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: With 22 for and 2 against, the ayes have it. The ayes have it.
Clauses 111, 112 and 113, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2820 Clauses 111, 112 and 113 outline the respective offences committed by recording an intimate image without consent, or enabling the recording of an intimate image without consent; distributing an intimate image and/or threatening to record or distribute an intimate image.

2825 These address the practices sometimes referred to by the press as ‘up-skirting’ and ‘revenge porn’ but which are better described as image-based sexual abuse due to their potential effect on the victims.

Mr Speaker, I beg to move that clauses 111, 112 and 113 do stand part of the Bill.

The Speaker: Mr Malarkey.

2830 **Mr Malarkey:** I beg to second and reserve my remarks.

The Speaker: Now, Mrs Barber to move amendments 41, 42 and 43.

2835 **Mrs Barber:** Mr Speaker, the amendments numbered 41 through to 43 remove the reference to prosecution requiring the consent of the Attorney General – this omission is again as per the amendments outlined at clause 70 – and are made by omitting subsections (3), (3) and (6) respectively within clauses 111, 112 and 113.

Mr Speaker, I beg to move that amendments 41, 42 and 43 be approved:

Amendment to clause 111

41. Page 122, lines 13 and 14, omit subsection (3).

Amendment to clause 112

42. Page 122, lines 28 and 29, omit subsection (3).

Amendment to clause 113

43. Page 123, lines 14 and 15, omit subsection (6).

The Speaker: Mr Hooper.

2840

Mr Hooper: I beg to second, Mr Speaker.

The Speaker: I put the question that amendments 41, 42 and 43 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2845 And that clauses 111, 112 and 113 as amended stand part of the Bill: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 114, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2850 Clause 114 provides that where a person is convicted of an offence under sections 111 or 112, the court may order the person to take reasonable actions to remove, retract, recover, delete or destroy any intimate image they recorded or distributed, and to do so within a time period set by the court.

Mr Speaker, I beg to move that clause 114 do stand part of the Bill.

2855 **The Speaker:** Mr Malarkey.

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

2860 **The Speaker:** Mrs Barber to move amendment 44.

Mrs Barber: Mr Speaker, amendment 44 inserts a new subsection making it explicit that the court may require a person found guilty of an offence to remove, delete or destroy any intimate image within the period specified by the court.

2865 This is, of course, of great significance to those who have been the victim of such an offence and will naturally want to know that any image is no longer in existence.

The following subsection is then renumbered accordingly.

Mr Speaker, I beg to move that amendment 44 be approved:

Amendment to clause 114

44. Page 123, immediately after line 26 insert —

(2) A court that finds a person guilty of an offence under section 113 may order the person to take reasonable actions to remove, delete or destroy any intimate image in the possession of the person, in respect of which the person had threatened to record or distribute, within a period specified by the court.

Renumber the following subsection accordingly.

The Speaker: Mr Hooper.

2870 **Mr Hooper:** I am happy to second, Mr Speaker.

The Speaker: I put the question that amendment 44 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2875 Clause 114 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 115, 116 and 117, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

2880 Clause 115 provides exceptions where the alleged conduct was done for genuine medical or scientific purposes, law enforcement or legal proceedings, or where a reasonable person would consider the conduct acceptable given the factors set out in subsection (1)(d).

Clause 116 defines the meaning of consent in relation to intimate image cases.

Clause 117 provides interpretation of terms relating to clauses 109 to 116, for example 'distribute' and 'image'.

2885 Mr Speaker, I beg to move that clauses 115, 116 and 117 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

2890 **The Speaker:** I put the question that clauses 115, 116 and 117 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 118 to 136, Dr Allinson.

Dr Allinson: Thank you very much, Mr Speaker.

2895 I propose to move clauses 118 to 136 together, as they deal with closure orders in relation to prostitution offences within Part 7 of the Bill.

Clause 118 gives the meaning of specific offences in relation to prostitution, pornography and child sexual offences and gives the relevant citation as to where the offence is set out in the Bill.

2900 Clause 119 empowers a police officer of the rank of inspector or above to authorise the issue of a closure notice to a premises where activities relating to prostitution or pornography are suspected.

Clause 120 does likewise in respect of premises where activities related to child sexual offences are suspected.

2905 Clause 121 sets out the information that must be contained within a closure notice and how it is served on premises.

Where a closure notice has been issued, clause 122 requires a constable to apply to a court of summary jurisdiction for power to make a closure order and describes the process.

Clause 123 makes supplementary provision.

Clause 124 provides for the enforcement of closure orders on premises.

2910 Clause 125 provides the penalties for the offences of remaining on, or entering, premises in contravention of a closure notice or order, or the obstruction of a constable or a person approved by the Chief Constable.

2915 Clauses 126 and 127 deal with the processes around applications to extend a closure order. Closure orders may be extended by three months but the total period for which a closure order has effect may not exceed six months.

Clause 128 provides for the ending of a closure order.

Clause 129 provides for appeals.

2920 Clause 130 makes provision for a person to apply for access to premises. This is relevant where another person occupies or has an interest in any part of the building or structure in which the closed premises are situated but in respect of which the closure order does not have effect.

Clause 131 provides for the reimbursement of costs where the Constabulary have incurred expenditure while clearing, securing, repairing or maintaining closed premises.

2925 Clause 132 relieves the Constabulary from liability for certain damages. However, subsection (5) states the exemptions from liability in subsections (1) to (4) cease to apply if the act or omission is shown to have been in bad faith or to prevent an award of damages made in respect of an act or omission that was unlawful by virtue of section 6(1) of the Human Rights Act 2001.

2930 Clause 133 makes provision for a person who claims to have incurred financial loss as a result of a closure notice or a closure order to apply for compensation.

Clause 134 empowers the Department to issue guidance relating to the discharge of functions under this Part.

Clause 135 empowers the Department by order to extend the power to authorise the issue of a closure notice to persons other than members of the Constabulary.

2935 Clause 136 provides interpretation of terms used in this part, such as 'closure notice' and 'closure order'.

Mr Speaker, I beg to move that clauses 118 to 136 inclusive do stand part of the Bill.

The Speaker: Mr Malarkey.

2940

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

The Speaker: I put the question that clauses 118 to 136 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 137, Dr Allinson.

2945

Dr Allinson: Thank you, Mr Speaker.

Clause 137 makes provision for the protection of the identity of the complainant, and I beg to move that this clause do stand part of the Bill.

2950

The Speaker: Mr Malarkey.

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

The Speaker: I put the question that clause 137 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2955

Clause 138, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

Clause 138 makes provision for the identity of the person against whom an allegation of an offence has been made to be kept from publication.

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Subsection (3)(c) provides that the restriction on publication ceases in the event of a subsequent conviction from the date of conviction.

Mr Speaker, I beg to move that clause 138 do stand part of the Bill.

2965

The Speaker: Mr Malarkey.

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

The Speaker: Mrs Caine to move amendment 45.

2970

Mrs Caine: Thank you, Mr Speaker.

In moving these amendments, I am making a plea for this Hon. House to continue the tradition of open justice in the Isle of Man courts for all offences. The Bill as drafted for this particular clause is overturning the centuries-old custom that a person charged with serious sexual offences is tried in open court. It would effectively allow a defendant to have their name withheld unless or until they are convicted.

2975

Can the hon. mover clarify: if police officers had previously made application for a suspect to be named as part of an investigation, would the anonymity be back in place for any subsequent court proceedings? Wouldn't a defendant be able to seek to have their identity withheld during the court process under the Bill as drafted, even if their name had been made public for the purposes of the investigation?

2980

I am aware many Hon. Members and the public have sympathy with the principle that someone is innocent until proven guilty and that the stigma of being tried for a sex offence can endure long after court proceedings have concluded, but I have reservations that the Bill as drafted swings too far in favour of the defendant and could lead to an apparently secretive court process on the Isle of Man that would go against the principle of justice being seen to be done. I also take issue with it on the basis of the apparent equalising of rights to protect the identity of an alleged offender to the same level as the alleged victim; it may not be the intention, but it could be the result.

2985

Granting anonymity to alleged sex offenders through the court process could also set a precedent that could potentially lead to all criminal offences being tried on an anonymous basis. While sex offences carry a stigma, who doesn't also have sympathy for a businessman brought to court on allegations of embezzlement or fraud that subsequently are withdrawn; or an

2990

2995 alleged murderer who is found not guilty, surely one of the most horrific crimes – if found not
guilty to a widely reported murder, how difficult it must be to recover one’s reputation and
rebuild one’s life. When a case collapses or charges are withdrawn, the fact of having been
publicly before the courts is reported; it must be acknowledged that there is going to be an
ongoing impact. However, that is the court process we have, similar to that in England, which
has evolved since 1066, a system where, if the charges are denied, juries consider all the
3000 evidence and determine if guilt has been proved beyond reasonable doubt.

The media on the Island, and elsewhere, reports according to the current reporting
restrictions, but these reporting restrictions in clause 138 would be a step too far. If Hon.
Members are minded to support the Bill as drafted I am deeply concerned it will spread to other
offences and I fear that such secrecy in future could result in miscarriages of justice.

3005 I appreciate that in a small community people become aware of who has been charged with
an offence once it reaches court; also that, in the modern time of social media, that can be
amplified and leave a permanent digital record that can be difficult to expunge. Will any
members of the public attending a court be warned of the right to anonymity of a defendant
charged with sex offences? And what about off-Island interest in, say, a high-profile person
3010 charged with a serious sexual offence here? Will we potentially have a situation experienced in
Jersey recently, where a local newspaper naming a person in court proceedings widely reported
by off-Island entities results in a fine for the Island publisher?

The current system of open justice has worked for generations. Changes in social media have
made it harder perhaps for some crimes to be forgotten, despite the Rehabilitation of Offenders
3015 Act, but I think we would be unwise to go alone into protecting the identity of alleged offenders
throughout court proceedings. We need to have confidence that when a case reaches court it
has reached the evidential threshold.

Significantly, if this Bill is passed as drafted, a person charged with a serious sexual offence
would not be named in open court from the first appearance, not if remanded in custody and
3020 not until convicted of the offence. I think that could potentially lead to miscarriages of justice. If
there is enough evidence to bring a person to court and that evidential threshold has been
reached, why shouldn’t that person be named? Media reporting of court cases is an essential
element of our open justice system.

If we lost the human interest – if all cases were simply reported as ‘a man or a woman
3025 appeared in court’ for whichever serious sexual offence ‘but they cannot be identified for legal
reasons’ – it would make for dull articles. There would be a question over whether the media
would even bother reporting the majority of cases ahead of a conviction; perhaps not, and that
makes me nervous of a new regime of anonymity that we would usher in, that would potentially,
as I said previously, be argued to be necessary for other reputation-damaging offences. It might
3030 be inferred that we have lost confidence in our judicial process, that everyone’s identity has to
be withheld in case they are acquitted.

It also should be recognised that being found not guilty is not the same as being found
innocent. Sometimes a Deemster will comment that a defendant leaves the court without a
stain on their character, but not always. If there was adequate evidence to bring a case to court,
3035 there must have been a case to answer.

Several Members: Oh!

3040 **The Chief Minister (Mr Quayle):** Oh, dear, dear!

The Speaker: Order!

3045 **Mrs Caine:** If a person is found not guilty, that is usually given equal column inches or airtime,
and the bigger the case in reporting during the court hearing, the bigger the headline on the
acquittal.

3050 If supporting the clause as drafted, I would ask Hon. Members to consider how many times a court appearance for a sexual offence has resulted in more victims coming forward – I am led to believe frequently, and many of their testimonies have built a stronger case against a defendant. Sometimes a person planning to plead not guilty will reconsider in light of new evidence against him or her. We would lose something incredibly important in our judicial system, I believe, if we overturned that open process.

3055 However, I am conscious that the Department, in bringing forward the Bill, felt that there was a need for identities of alleged sex offenders to be protected, so in tabling the amendments listed in my name I have tried to find a balance. While I firmly believe the default position should be that once a sex offence reaches court the defendant's identity should be made public, I have added a subclause to clause 142, in amendments 50 and 51, to enable a court to determine if their identity should remain protected. Clause 142(3) would enable their anonymity to continue beyond a court appearance, but only if the court considers it necessary for the protection of a victim or in the public interest. Where that anonymity has been allowed to continue, 3060 subclause 142(4) would enable it to be reversed again on application of a police constable or the prosecution, so the defendant could be named.

In giving consideration to my amendments, I pondered how it would work in practice, the Department's legislation as drafted or with my amendments. Lists of cases before magistrates or the High Bailiff are published in advance, so in the case of sexual offences under this legislation 3065 is it the intention that the offence would be listed but not the defendant, can the hon. mover say? Surely the case would need to be listed with the charge, even if the defendant's identity was not made public, so the media and the public would be aware a particular case was being heard. I would not like to think that the fact of a case going to court would also not be made public. My amendments would enable the court to decide, at the defendant's first appearance, 3070 whether the identity of that person appearing on sex offences could be made public. I cannot think of any reason it would be in the public interest to prolong the anonymity of a defendant, but it is there if a court deems it necessary, should my amendments be approved.

3075 For all the reasons I have outlined, I strongly urge Members to support my amendments to ensure that open justice prevails once sex offences are brought to court. A process where neither the charge nor defendant was named would be too secretive to have confidence in justice being seen to be done. A new default position of alleged sex offenders not being named until conviction does not sit easy with me. If we are to uphold international standards and maintain our reputation as a jurisdiction that is open and transparent, I believe that should extend to our criminal courts.

3080 Mr Speaker, I beg to move amendment 45 standing in my name:

Amendment to clause 138

45. Page 139, lines 35 and 36, for section 138(2)(b) substitute —

'(b) does not apply in relation to a person charged with an offence to which this Part applies from the first court hearing for that offence; and

(c) does not apply in relation to a person who is convicted of an offence to which this Part applies.'

The Speaker: Mr Perkins.

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

3085 **The Speaker:** Can I have an indication as to how many Members wish to speak to this clause and the amendment – just a quick show of hands, please? In which case, I will adjourn the House. We will reconvene at half past two and continue deliberation of clause 138 and amendment 45.

Thank you.

*The House adjourned at 1.02 p.m.
and resumed its sitting at 2.30 p.m.*

**Sexual Offences and Obscene Publications Bill 2019 –
Consideration of clauses continued**

3090 **The Speaker:** Fastyr mie, Hon. Members.

Members: Fastyr mie, Mr Speaker.

3095 **The Speaker:** We resume our consideration of the Sexual Offences and Obscene Publications Bill 2019.

We find ourselves with clause 138 and amendment 45 both having been moved, so the floor is now open for debate for those Members who wish to speak.

Some people definitely put their hands up before! (*Laughter*) Mr Hooper.

3100 **Mr Hooper:** Thank you very much, Mr Speaker.

I was going to speak just to try and address some of the comments that were made by the Hon. Member moving the amendment. She said that a number of Members of this House believe in the principle of innocent until proven guilty – I would like to think that we all believe in that principle (**A Member:** Absolutely.) – but then went on to say that essentially there is no smoke without fire, so by the time something reaches court there must have been something there. That is complete nonsense. If you are innocent until proven guilty, the principle is that if no one finds you guilty you are innocent of a crime, and so I think that really needs to be borne in mind here if anyone is considering supporting this amendment.

3110 The idea that somehow making the alleged offenders anonymous up until they are actually convicted is somehow against the public interest, I find that quite hard to believe. I think there is a massive difference between what is in the public interest and what the public may want to read about in the newspapers, and I think there is a risk of confusing the two issues here.

3115 I would like to ask, however, if the Hon. Member for Garff could explain a bit more about what she meant by she believes there is a risk of a miscarriage of justice happening if these names are not made public. My reading of the Bill is that should the Police feel that in order to help their investigations the anonymity needs to be lifted, they can make that request to the court. They can say, 'Actually, we think there are more victims out there, we need to lift the anonymity clause. They can make that request. And so I think, from my perspective, that system seems to be one that should work quite well.

3120 The converse of that would be you would have people applying to the court to keep their anonymity, and on what basis would you make that determination; how do you determine whether or not somebody should be anonymous? It seems like that is almost impossible to prove – you are trying to prove a negative – whereas at least if you have a situation where the Police can ask for this anonymity to be lifted, it is reasonably straightforward. If they can make a case for lifting it, the court will lift it and the name gets published and it supports the investigation. I am a little bit confused about that, so I think I would like a bit more explanation as to exactly what the risk is here, what the issue is with enabling this additional protection.

3130 It is very specific to these types of offences. As far as I am aware, there has never been any suggestion that this should be extended to other types of criminal offences. If the hon. mover of the Bill could confirm that that is not the intention of the Department that would probably help put some minds at ease, but I am not particularly comfortable with this amendment because I am not sure that it will work in practice.

A Member: Hear, hear.

3135

The Speaker: Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you very much, Mr Speaker.

3140 I am torn on this, really, because the way I see it there are two aspects to this. On the one hand, there is the question of anonymity, particularly if an allegation is unproven when it gets to court, and you can understand, particularly in a small place, where that is a real issue and why the reputation of the accused could well be tarnished. But, as Mrs Caine said, that is also the case for a number of other offences, so you wonder what is different about this to other serious offences where anonymity is not granted to defendants.

3145 I also believe that generally the Crown Prosecution Service does not take cases forward to court unless there is a reasonable chance of success. So I think there is certainly some suggestion that potentially unmeritable cases could be brought, and that would damage someone's reputation. I would be surprised if the Crown Prosecution Service would entertain that, but clearly that is a matter for a jury in a court to decide at the end of the day. I absolutely understand the reputational damage; what I am struggling to understand is why that would not apply to other things. As I say, I am torn.

3150 On the other hand, by naming the accused there is the possibility that more people might come forward, more victims come forward, so you can see there is an advantage in doing that. I believe in some cases elsewhere that has helped secure convictions which may not have happened, so would those convictions actually take place if the whole thing was anonymous?

3155 So, you can see both sides of this argument. I certainly do not think, as some people have suggested, that Mrs Caine's amendment is completely out of order. I think actually it is quite a finely balanced debate, would be my view, and I am grateful for her bringing the debate forward.

3160 The other thing I would just like to – and I would perhaps welcome other people's views on this – just raise is realistically on this Island how do you preserve anonymity even with not naming the accused? We only have one court, social media is rife, gossip is rife, so I am not sure that someone being anonymous actually achieves the desired outcome in any case. I am just not sure about this.

3165 I just wanted to share my thoughts on this in terms of I think it is quite a finely nuanced debate and I think there are a number of different aspects to it, and I would welcome more people's thoughts on this.

Thank you, Mr Speaker.

3170 **The Speaker:** The Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

3175 I was not going to speak on this topic. I do not support the amendment, I hasten to add, but I was disappointed with a couple of comments the Hon. Member has made, and I would ask her maybe to reconsider and withdraw them.

3180 I think the Hon. Member, Mrs Caine insinuated that if you were being prosecuted, just because you were found not guilty ... you must have done something, no smoke without fire. I think that should be withdrawn because of all those people who are found innocent you are saying a Member of this House believes that you are not innocent, that you have done something wrong. I do not think that should be allowed to stand because that is clearly not the case.

3185 I think the Hon. Member, Mrs Caine also insinuated that a serious case would not be reported by the press if it was not juicy enough. I am sure members of the press, if a serious case is a serious case, are not going to not report it because the person was not named. Again, I think that could be perceived as a slight to my good friends in the press.

Just whilst we are talking about the press, I was reading an article at lunchtime, and I am quoting from Mr Tim Swift, President of the Isle of Man Law Society, who in today's newspaper said:

Anyone can be wrongly accused of a criminal offence through error, malice or unfortunate twists of fate.

A Member: Hear, hear.

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The Chief Minister: I think the Hon. Member should think long and hard about her words and withdraw them.

Thank you, Mr Speaker.

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The Speaker: Miss Costain.

Miss Costain: Thank you, Mr Speaker.

Like my colleague, Mr Shimmins, I am finding myself seeing both sides of this argument, and it is a very finely balanced one.

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What I would like Members to consider is that the rules are very similar – is my understanding, and I am sure you will correct me if I am wrong – in that when you bring a motion to Tynwald, regardless of what you say, when the vote happens it is actually the written words on the Order Paper that you are voting for, not the rhetoric or any of the comments that are made prior to that. So I am assuming that the same happens with Mrs Caine's amendment, that it is actually the words that are in the amendment rather than some of the words that she has used when she made her speech to the amendment, which may have upset some Members. You are not voting on those words; you are voting on what is written on the Order Paper today. I think it is a very important distinction, because some of the words that she used I would say were ill-advised. I can understand where they are coming from, but I think that it could have been phrased in a different manner that would not have upset people. But we are not voting on that, we are voting on the law and the amendment, the words that are written into that amendment, so I would just ask Members to consider that when they are making their minds up as to whether to vote for it or not.

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The Speaker: Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

I urge Members not to support this amendment. My Department has gone through this in great detail and with a lot of research.

3220

Lots of words have been said, and yes, you are innocent until you are proven guilty. We live in an Island of 80,000 people. The wrong word said in the wrong place gets around this Island faster than anything else I know. There have been many cases, if you go back in history, where cases have collapsed or the accuser has withdrawn at the last minute accusations of rape or sexual abuse or whatever. Once the damage is done to the accused person on this Island and social media gets a hold of it ... The mover herself said in presenting it, when it is there it is there for good, it is there for life on social media. So if somebody is wrongfully accused of something and social media gets its hands on it they may as well leave this Island because their reputation will be finished forever, because of the small community we live in.

3225

We have gone into depth allowing the Police to apply to the Attorney General so the prosecution ... to have the courts name, if it is considered necessary and helpful that this person, the accused, should be named, and it can happen.

3230

I have heard also the mover say that this is unique, this does not happen elsewhere. I think we have all just watched a horrible murder trial in New Zealand where the young English girl has been killed as a backpacker. Her accused person has still not been named in that trial. They have

3235 been found guilty. All the way through the trial the person's picture has not appeared anywhere
in any television or press coverage, the person has not actually been named and until the person
has actually been sentenced, I think in February, that person has still got anonymity. So, this is
not unique. This is something where we are trying to protect an accused person from having
3240 their life completely destroyed when something goes wrong. We heard the Chief Minister read
out about vindictive accusations and the likes that have happened. These things do happen,
accusations like this do happen, all the time.

So I strongly believe that there is enough protection. If the person is found guilty at the end
of the day and the person is then named ... We hear all this about there might have been other
victims. Well, the second that person is named it might actually give other victims the courage to
3245 come forward and accuse that person of more assaults, and they can still be prosecuted. It does
not mean, just because that person has been found guilty of one rape or whatever ... and if he
has done it in the past and then the person is named, then the Police can go back and they can
prosecute them for the next offence. So, it is not protecting the accused and it is not eliminating
anybody who has been a victim. What it is doing is protecting those who may not have done
3250 wrong from having their lives totally ruined because we live on a small Island where social media
is rife and gossip is rife. People do listen to the radio and read the papers. Somebody could
actually be, for life, dismissed, whatever, not find it possible to live next door to their
neighbours. I am afraid at the end of the day, Mr Speaker, mud sticks; whether you are accused
rightly or wrongly, mud sticks.

3255 Please do not support this amendment. Allow it to go forward and I am quite sure that there
is enough protection there, for the victims, such that they do not have to have concerns that the
person, if they are guilty, will be prosecuted.

Thank you, Mr Speaker.

3260 **The Speaker:** Mrs Caine to reply on the amendment.

Mrs Caine: Thank you, Mr Speaker, and thank you to Members who have contributed to the
debate on the amendment today.

Turning first to Mr Hooper, absolutely I agree that people should be considered innocent
3265 until proven guilty. I am not sure in what context I said 'no smoke without fire'. I meant to say
that is often an assumption of people, especially when fake news is spread particularly fast on
social media.

But retaining anonymity until conviction is potentially working against the public interest, and
what I attempted to do in my amendment was to flip it, so instead of an assumption of absolute
3270 anonymity for all defendants on charges of sex offences coming to court, it would be down to
the court to determine if that identity could be released. What we could end up with, with the
current one – and the hon. mover can correct me if I am wrong – is, as Minister Malarkey
alluded to, the Police, if they have any doubt, can go to the court and ask for that name to be
released, for that reporting restriction to be lifted, and that would imply to me, as an outside
3275 person of a court case, that if the Police have asked for that anonymity to be lifted, that is a
particular mark against a particular defendant. I am not sure that that is any more fair, because
surely that would have implications in terms of having a fair trial for a particular individual.

I queried before if in the course of an investigation the Police have asked to be able to reveal
the name of a person they are making investigations into for sex offences, if that is released
3280 during an investigation, are reporting restrictions in place when it goes to the court that that
defendant, even though their name has been released during an investigation ... can no longer
be released, or having been once released is it released, or if other defendants at that time are
named, doesn't that have implications for justice?

The other main point that I was trying to get over is – and I concur with Mr Shimmins, the
3285 Hon. Member for Middle, and I thank him for his considered contribution – I think it is worth
having a debate at this time because potentially what this Bill will do is a significant shift in our

3290 criminal justice court proceedings. We go from a process of open government and reporting of a
defendant at the time it comes to court to not being named until conviction. I perfectly
sympathise, as Minister Malarkey said, with somebody ... and there has got to be the protection
there to protect those who may have done nothing wrong from having their lives totally
shattered, but are we saying that what has shifted is not our process of open court, open
government, open court proceedings and reporting restrictions; actually what has changed is the
social media phenomenon and the fact that everything is amplified many times over and around
3295 the world probably before the court case is even concluded? Are we saying that the significant
change in modern times is social media and we do not have any control over that anyway? So all
the reporting restrictions in the Island, yes, they will govern the local media, the media
registered on the Isle of Man, but they are not going to be able to control any reporting that
goes on outside, which obviously the Isle of Man population will be able to have access to.

3300 I am grateful as well to Mrs Beecroft for what she was saying. Yes, it is what is on the Order
Paper and all I am seeking is to have what we currently have, which is the assumption that when
the Attorney General's Chambers and the prosecutors have done their work, that they feel that
there is an adequate case to bring forward to the court, the defendant is named at that point. If
we have confidence in the prosecution case, what would be the issue with it except to agree
that some people are found not guilty?

3305 Mr Hooper queried what was I thinking, that there is a risk of miscarriage by not naming the
defendant at that point, and what I was alluding to was the very point that others have made,
that yes, once a name is in the public domain other people have the confidence to go forward to
the Police and potentially can contribute to a stronger case against a particular defendant.
Mr Malarkey again said that person could well come out of the woodwork and go to the Police
3310 after conviction, but there may not be a conviction because the case may not be as solid without
the other people coming forward ahead of the first prosecution. And then the point about when
it happens afterwards – in some cases they might go and prosecute again a convicted person,
but they might determine that actually that is not in the public interest because it would be the
same type of offence.

3315 I mainly struggle with doing this in isolation, doing this for sex offenders. As Mr Shimmins
said, do we not agree that there are other serious offences that would have a similar long-term
impact on people's lives, livelihoods and reputations that we are not looking at? I think with this
there is a saying by Kazuo Ishiguro that says when you become a parent you turn into a
manager, you are the person controlling the bubble of innocence around a child. My worry is
3320 with this Bill we put a bubble of innocence around a sex offender ahead of any other offences.

3325 Accepting that there will be an impact on those individuals who are found not guilty, I think
we do have to rely on the fact that future employers google – who wouldn't? – they instantly
look at Facebook pages, they instantly look at any past history of potential employees. And you
would hope that if there has been a major case it is equally reported by responsible media that
they have been found not guilty.

3330 In terms of what this Bill as it is drafted does, I feel it is considering the defendant as a victim
because of the potential impact on somebody found not guilty, an innocent person who goes to
court who then has all the reputational damage, but without the court process and an open
court process I do feel that we would lose something. We could potentially lose additional
witnesses and we could potentially get a very secretive system.

I would ask that people do consider supporting the amendment in terms that perhaps this is
a wider debate for another time, for all offences and not just sex offences in isolation.

Thank you, Mr Speaker.

3335 **The Speaker:** Dr Allinson to reply to the debate on clause 138.

Dr Allinson: Thank you very much, Mr Speaker.

3340 Can I just start by making it quite clear that this clause and this policy is not in any way to make the opinion that the Department believes that people make false allegations of rape; this is not about false allegations of rape. This is not about degenerating the integrity of those who are brave enough to bring cases to the attention of the courts and the Police. What this is an attempt to do is actually to make the criminal justice system in terms of sexual offences more robust, more secure, and rather than being more secretive, trying to make it far more adult, in a way, in that we respect people's privacy both in terms of the accused and the victim.

3345 I would like to thank Mrs Caine for bringing her amendment and actually starting this debate, because throughout this Bill there are some new things that we are doing to break with the UK and this is a big part of that. We, as in Tynwald, are making a change to the way we treat both the victims and the people accused in courts, and doing it in a quite different way than it is done in many other neighbouring jurisdictions, although as Minister Malarkey has said, it is employed
3350 in other places.

Often anonymity in court cases is the privilege of the rich, who can bring in various confidentiality agreements. We are trying to apply it just towards sexual offences. Mrs Caine asked about whether this would set a precedent for other offences. The answer to that is no, we are just dealing with sexual offences. And why are we just dealing with sexual offences? Because
3355 we know from the Chief Constable's Report that they can be some of the most damaging assaults on people in terms of the effect they have on victims.

In Northern Ireland there was a report by Judge Gillen looking at a famous court case reported last year, which was two footballers accused of rape, and he pointed out that the vast majority of serious sexual offences are not reported and there is a high dropout rate for those
3360 who are reporting to the criminal justice system. We can postulate why that is, and surely the glare of media attention on to these court cases puts people under incredible stresses, both the victims and the accused together as well as the witnesses. If we can try to remove some of that stress and leave it up to the court, the jury and the judge to try people, rather than trial by
3365 media – whether that be social media, printed media or auditory media – that has to make it a better process. I would hope that by bringing in these clauses and by making the court process far more discreet, far less threatening to people, far less sometimes what can be described as a media circus, and concentrate on the criminality, concentrate on the law, then we could reassure people that when they came forward they would be treated in a responsible way by the courts.

3370 The other aspect is are we trying to police social media and is this all about social media: no, it is not, but I think social media has amplified those parts of our society who find perhaps titillation in sexual offences cases when they occur.

Mrs Caine also asked if anonymity was lifted during the accusation phase, whether it would be reapplied during a court phase. I think that is incredibly unlikely. I think the judge would say
3375 that it has already been out into the public domain and it would be nonsense then trying to close things down.

I would like to thank Mr Hooper for his comments about the presumption of innocence and also that this does not set a precedent, but agree with Mr Shimmins and Miss Costain that there are two sides to this argument. It is not an easy argument to make. It is quite a fine distinction
3380 between recognising the rights and responsibilities of the court, recognising that we need to make a safe place for the victim, but also recognising that there will be cases – and probably quite a few cases – where the prosecution and the Police will apply for that anonymity to be lifted for the greater good, either because they want other people to be able to come forward or because they believe that in the public interest it is important for it to be reported.

3385 But again, there is a big difference between the public interest and what interests the public, and I think none of the discussion we have had are meant to cast any disdain on our media but what they are meant to do is try to reinforce the value that we put on our criminal justice system. I would like to thank the Chief Minister for his comments about the role of the press in our society for reporting issues of national interest, of human interest, and making sure justice

3390 can be done, but that has to be balanced by responsibility and also that has to be balanced by
the rights of individuals to have that confidentiality. Again, that is one of the main differences
here. We are not talking about secrecy; we are talking about confidentiality so that the court
case can actually take place in an organised way, so that people do not feel, once they have
come forward, that they are going to be intimidated, by the furore that can occur around some
3395 of these cases, to actually not think it is worthwhile and not being able to endure it.

With that, Mr Speaker, I would like to thank all the people who have taken part in this
debate. As we stated at Second Reading, these clauses need to resonate with how we feel, and
sometimes there is not necessarily a right and a wrong decision – it is our judgement what we
feel is right now, and I think if this Bill is passed and becomes an Act what we will need to do is
3400 look very much at the application of it and the implications, and monitor that. But I think in
principle the idea that when people walk into a court to do with sexual offences – whichever
side of the bar they be, whether the accused or the victims – that they have that confidence that
they have that ability to take part in the criminal justice system without being named, and
sometimes shamed, I think has to be a positive in terms of reinforcing what we do in the courts.

3405 Thank you, Mr Speaker.

The Speaker: I put the question that amendment 45 in the name of Mrs Caine be approved.
Those in favour, please say aye; against, no.

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

FOR

Mrs Caine
Miss Costain
Mr Perkins
Mr Shimmins

AGAINST

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot
Mr Callister
Mr Cannan
Mrs Corlett
Mr Cregeen
Ms Edge
Mr Harmer
Mr Hooper
Mr Malarkey
Mr Peake
Mr Quayle
Mr Robertshaw
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: With 4 in favour and 20 against, the noes have it. The noes have it.

3410 I put to you that clause 138 as printed stand part of the Bill. Those in favour, please say aye;
against, no. The ayes have it.

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

FOR

Mr Ashford
Mr Moorhouse
Dr Allinson
Mr Baker
Mrs Barber
Mr Boot

AGAINST

Mrs Caine

Mr Callister
Mr Cannan
Mrs Corlett
Miss Costain
Mr Cregeen
Ms Edge
Mr Harmer
Mr Hooper
Mr Malarkey
Mr Peake
Mr Perkins
Mr Quayle
Mr Robertshaw
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

The Speaker: With 23 for and 1 against, the ayes have it. The ayes have it.
Clauses 139 to 141, Dr Allinson.

3415 **Dr Allinson:** Thank you, Mr Speaker.

Clause 139 empowers the prosecution or the defence to restrict the publication of details of any witnesses on the grounds, for example, of the age or maturity of the witness, the physical, intellectual, psychological or psychiatric impairment of the witness, trauma or fear of intimidation. The safeguard is that the court must have regard to the need to ensure a fair trial, the views of the witness and the need to promote the recovery of the complainant from the alleged offence plus any other factor that is relevant to justice in the case.

3420 Clause 140 specifies the offences to which this Part applies in relation to anonymity. The provisions include the offences in Part 2 of the Bill, and these include all those that one would expect such as rape, sexual assault offences against children, offences against those with an impairment, image-based abuse and so on.

3425 Clause 141 empowers a person charged with an offence, and before trial, to apply to the court for a direction to set aside the anonymity of victims or witnesses. The purpose must be to induce people who are likely to be needed as witnesses at the trial to come forward. The court must be satisfied the conduct of the applicant's defence is likely to be substantially prejudiced if it does not give such a direction. Further power is given to the judge of the trial to lift restrictions to the extent necessary if the court is satisfied a substantial and unreasonable restriction has been placed upon the reporting of proceedings at the trial in question and it is in the public interest to remove or relax the restriction.

3430 Mr Speaker, I beg to move that clauses 139, 140 and 141 do stand part of the Bill.

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The Speaker: Mr Malarkey.

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

3440 **The Speaker:** I put the question that clauses 139, 140 and 141 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 142, Dr Allinson.

3445 **Dr Allinson:** Thank you, Mr Speaker.

Clause 142 makes provision for the naming of a suspect where it is necessary for the protection of the victim or any other person, or is otherwise necessary in the public interest. In such a situation an officer of the rank of superintendent or above may apply to a justice of the peace for a direction that the anonymity provisions of clause 137 do not apply in the particular

3450 case. Similarly, a constable or the prosecution may apply under this clause either before the commencement of a trial or during a trial for the lifting of restrictions on the publication of the identity of the person accused of an offence.

Mr Speaker, I beg to move that clause 142 do stand part of the Bill.

The Speaker: Mr Malarkey.

3455

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

The Speaker: Mrs Barber.

3460 **Mrs Barber:** Mr Speaker, the amendments numbered 46 to 48 amend clause 142 by replacing the reference to a justice of the peace within subsection (1) with 'a judge of the High Court'. Subsequent references to a justice are also harmonised by replacement with 'the judge' within subsection (1).

Mr Speaker, I beg to move that amendments 46, 47 and 48 be approved:

Amendments to clause 142

46. Page 143, on line 13, for 'a justice of the peace' substitute 'a judge of the High Court'.

47. Page 143, on line 14, for 'the justice' substitute 'the judge'.

48. Page 143, on line 17, for 'the justice' substitute 'the judge'.

3465 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you, Mr Speaker, I am happy to second those amendments.

3470 **The Speaker:** I put the question that amendments 46, 47 and 48 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 to you that clause 142 as amended stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 143, Dr Allinson.

3475 **Dr Allinson:** Thank you, Mr Speaker.

Clause 143 sets out the offence of publishing anything in breach of sections 137, 138 or 139. This inherently breaks anonymity.

I beg to move that clause 143 do stand part of the Bill.

3480 **The Speaker:** Mr Malarkey.

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

The Speaker: Mrs Barber, amendment 52.

3485

Mrs Barber: Amendment 52 omits subsection (6) for the reason stated in previous amendments – the Attorney General is the sole prosecuting authority.

Mr Speaker, I beg to move that amendment 52 be approved:

Amendment to clause 143

52. Page 145, lines 16 and 17, omit subsection (6).

The Speaker: Mr Hooper.

3490 **Mr Hooper:** Thank you, Mr Speaker, I am happy to second that amendment.

I would like to ask the hon. mover if he could just clarify: it is an offence here to breach any of the anonymity clauses, including publishing the name of a victim, in a publication, but again can he just confirm that someone posting online would also be in breach, that this would also be considered an offence? It is just that I want to be clear that we are not creating this one rule for the formal press and yet if one of those journalists decides to just post something on social media they can get around those restrictions that way.

The Speaker: Mr Shimmins.

3500 **Mr Shimmins:** Thank you.

I would also like the mover to just explain the breadth of this restriction. We heard a bit earlier about the case in New Zealand and it was suggested that the person had not been named. Of course he had been named, but outside New Zealand, and it was widely reported by international media and all over the internet. So, what is going to happen in that circumstance here is my question to the mover, and what realistic action will our justice system be able to take should that situation occur?

The Speaker: Mrs Barber, do you have anything to ...?

Dr Allinson to sum up on the clause.

3510

Dr Allinson: Thank you very much, Mr Speaker.

I would like to thank the Hon. Member for Ramsey for pointing out the difference between a journalist and a newspaper or media outlet publishing this, and an individual posting on social media. There have been cases where people have been posting from court and the courts have felt unable to charge them with contempt of court because of gaps in the criminal justice system. Those are being addressed in terms of breaking that ban in terms of individuals. What this clause does is very much deal with media organisations, and we live in a time where often people will respond to articles in the paper which are then repeated on the internet. So, this is very much regarding newspapers, periodicals and also media outlets, rather than individuals, although their ability to commit contempt of court will be dealt with through other regulations.

In terms of Mr Shimmins, I think he makes a very valid point that what we are trying to do here is write a law for the Isle of Man, and unfortunately other media outlets outside our Island can ignore that at their will. That does not mean to say that we should not be doing the right thing and we should not be doing laws that suit our nation. And he is quite right that the case in New Zealand has been widely reported in Australia with pictures, entire biographies, of the person who has been convicted, but that is not done in New Zealand.

I think we have to be pragmatic about this, that we can only make laws for our own country. We can try to work with media outlets outside our nation, but we can only do what we can do within our statute for the people who live on this Island. I would hope that, given the mood from this House, that would permeate through and that that responsibility in reporting and having respect for our laws should permeate other media outlets, but we shall have to wait and see how that evolves in time.

With that, Mr Speaker, I beg to move.

3535 **The Speaker:** I put to Hon. Members first the amendment numbered 52 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 143 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 144, Dr Allinson.

3540

Dr Allinson: Thank you, Mr Speaker.

Clause 144 provides interpretation of terms used in clauses 137 to 142 such as 'complainant' and 'picture'.

I beg to move that clause 144 do stand part of the Bill.

3545

The Speaker: Mr Malarkey.

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

3550

The Speaker: I put the question that clause 144 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 145, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

3555

The original intention of clause 145 was to make it an offence for a police officer, other person employed by the Constabulary or a prosecutor employed by the office of the Attorney General to disclose the identity of parties to certain proceedings without the consent of the appropriate judge.

For formal completeness, I beg to move that clause 145 stand part of the Bill.

3560

The Speaker: Mr Malarkey.

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

3565

The Speaker: Mrs Barber, amendment 53.

Mrs Barber: Mr Speaker, the effect of amendment 53 is to remove clause 145 from the Bill. This is because, on further review, it is accepted there is a risk this clause could conflict with the duty of the Police and the prosecution under the Criminal Procedure and Investigations Act 2016 to disclose to the defence material that is not used in the prosecution case where the material is relevant, and would, or might, assist the defence.

3570

Mr Speaker, I beg to move that amendment 53 be approved and consequently the clause be removed from the Bill:

Omission of clause 145

53. Page 147, lines 9 to 37, omit clause 145.

Adjust clause numbers and cross references throughout.

The Speaker: Mr Hooper.

3575

Mr Hooper: I beg to second.

The Speaker: I put amendment 53 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3580

What is left of clause 145: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 146 to 149, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

3585

We now get to Part 9, which is the complainant's history. Clauses 146 to 149 prohibit questions or evidence being adduced about a complainant's sexual history except on written application to the court. Where it is in the interests of justice, appropriate restrictions are placed

on what may be adduced in evidence. This Part also gives guidance on interpreting the terms used around sexual history and the meaning of types of offences mentioned within this Part.

3590 Mr Speaker, I beg to move that clauses 146 to 149 do stand part of the Bill.

The Speaker: Mr Malarkey.

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

3595

The Speaker: I put the motion that clauses 146 to 149 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 150 and Schedule 3 – no, that is as far as you would like to progress things today, Dr Allinson? In which case then, that will bring us to the end of our Order Paper for today.

3600

The House will stand adjourned until a week today at 10.30 in Tynwald Court. Thank you.

The House adjourned at 3.11 p.m.