

**4.2. Sexual Offences and Obscene Publications Bill 2019 –
Third Reading approved**

Dr Allinson to move:

That the Sexual Offences and Obscene Publications Bill 2019 be read for a third time.

The Speaker: Item 4.2, Sexual Offences and Obscene Publications Bill 2019. I call on Dr Allinson to move.

Dr Allinson: Thank you, Mr Speaker.

I would like to thank Minister Malarkey for the opportunity to take this Bill through the House of Keys.

This important piece of legislation updates our existing laws on a range of sexual offences and better reflects the justice system we have created for the 21st century. It also addresses new concerns within our society, including image-based abuse, female genital mutilation, the potential harms of so-called ‘conversion therapy’ and the risk of people-trafficking for sexual exploitation.

In a world where almost everyone has a smart phone in their pocket, and when the internet has allowed us to be more connected than at any time in human history, it is right that our legislation reflects these technological advances. The internet is a force for good, but also can be used as a tool for abuse. This Bill updates our legislation on obscene publications and pornography. It tackles the increased access to indecent images of children and acknowledges the different ways these are now distributed by criminals.

The Bill tries to address the complexity of human relationships and the fundamental issue of consent. It also, quite rightly, looks back to a past where men were prosecuted and criminalised for loving another man. The automatic pardon and the ability to apply for previous convictions to be disregarded are important statements for 2020 as we celebrate the full implementation of the Equality Act.

This is a large, complex and detailed Bill.

There were a number of amendments discussed during the clauses stage and I would like to thank all Members for the time they spent scrutinising the Bill and for working with the Department and drafter to refine and improve it.

Amendments added more detail to the application for sexual risk orders, addressed the streaming of images, confronted the possible abuse of positions of trust by children themselves and refined the control of prostitution and brothels on our Island.

Mr Speaker, this Bill rationalises and modernises our legislation so it better protects our community from harm.

I beg to move that the Sexual Offences and Obscene Publications Bill 2019 be read a third time.

The Speaker: I call on the Hon. Member for Middle, the Chief Minister, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker, and I beg to second.

As Chief Minister, I am incredibly proud of what this administration has achieved so far. There is, though, much more still to do.

A key part of our programme is legislation – some of which has been technical, designed to maintain not least our international reputation. Some legislation, such as the Bill before us today, seeks not only to protect the people of this Island, but also to act as a reflection of the society we are today.

As parliamentarians, we know that we must always strive to represent the views of all of our constituents and of the wider public. That aim includes seeking to ensure that the laws we make should resonate with our people and the values that we hold.

Mr Speaker, it now seems incomprehensible that homosexuality was illegal on our Island up until 1994. There was a time when consensual sexual activity between men in the privacy of their own homes was seen as a criminal activity, warranting raids, searches and prosecution. And this was only in our recent history.

Before that, many of our countrymen were convicted as criminals simply for loving another adult. Many more lived in fear – afraid to be honest about their identity to their friends, family and work colleagues, forced to feel a sense of shame about who they were. We will never know the hurt our past laws in this regard may have inflicted on our own people; how many suffered; how many perhaps took their own lives; and how many left this Island never to return.

The Bill before us today tries to right this historic wrong. It gives an automatic pardon to men convicted of homosexual activity that would today be legal.

Justice Anthony Kennedy of the United States Supreme Court once wrote:

times can blind us to certain truths and later generations can see that laws once thought of as necessary and proper in fact only served to oppress.

And so a pardon is a step toward reconciling our past. But it is also a clear statement of who we are as a society today: a society which includes and embraces all people regardless of race, sexual orientation, religion or beliefs. We are an island where the LGBT+ community is not only accepted, but embraced as a part of who we are as a nation.

Mr Speaker, a change in our law is a major step forward, but today I wish to go further. Our previous laws discriminated against and criminalised men solely for who they were and who they loved. What we seek to do through this Bill is to clearly state that our previous laws were misguided and wrong.

The previous law reflected a different time, a different place – an Island of the past. Those who were convicted of these crimes, and their loved ones, should no longer have to shoulder any burden of guilt. They should be seen as innocent. All those people affected – the men themselves, their partners, wider family and friends – deserve an unqualified apology from us.

That apology can only come from the Government and from this House. Our justice system followed the laws we made. Our Police and courts enforced the law at the time. Those laws we now know to be unjust. Yet for decades this House tolerated and ignored this injustice.

Mr Speaker, today as Chief Minister I stand before you, before this House, and before the people of our Island to apologise for those laws, for the damage they may have caused and for the lives they ruined. I am sorry for that wrong.

Nothing I or we can do can erase any past injustice. But I hope, Mr Speaker, that this apology, together with the new legislation before us can at least start to heal some of the pain caused by past attitudes and decisions.

Whilst we try to make amends for the past, we also have to consider the present effects of previous laws. Some of our family, friends and work colleagues still have a criminal record. This remnant of a previous era continues to cause people shame and hurt. That is why, at the same time as we propose an automatic pardon for all, this Bill allows for individuals to apply to have any convictions which are no longer to be considered offences to be removed from their criminal record. I hope this will go some way to putting the past behind us, and allow those affected to plan for a better future.

Over the past decades our Island has changed in many ways. We have become more inclusive, more equal and more open about who we are. The Isle of Man now celebrates and respects same-sex relationships, marriage and civil partnerships. Our Police Force and judiciary continue to strive for inclusion.

Mr Speaker, I am very proud to look around this House and see it has become far more representative of the people we serve. And that change will continue. The challenge of equality for all must be seized and we must work tirelessly to banish all forms of discrimination and injustice from our Island. As a spokesperson for the Manx Rainbow Association previously stated, 'We cannot move forward without recognising and understanding our recent past.'

Mr Speaker, I hope that today we can move forward with the LGBT+ community. I recognise that this is a small step on that journey, but I hope that it can be seen as a step in the right direction, because it is only together that we can challenge prejudice and ignorance. And it is only together that we are stronger, calling out hate and speaking up for those who do not have a voice.

I am truly sorry for the hurt caused in the past, so now let us look together to our future as a modern, progressive and tolerant Island.

Thank you.

Members: Hear, hear.

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

Mr Hooper: Thank you very much, Mr Speaker.

My comments are going to be much more prosaic, unfortunately, Mr Speaker. This is a really positive Bill. I think there is a lot in here that should be commended.

There is one aspect of the Bill, however, that still concerns me, and that is the way that the Bill deals with young people – people between the ages of 16 and 18. It is not consistent throughout the Bill, and there are some clauses, I think, which risk inadvertently criminalising young people on the Island, which I know is not the intention of this Hon. House and it is not the intention of the Department moving this Bill.

When we moved through the clauses stage, I talked to a number of these amendments and made these concerns quite specifically clear, and I would like to think, as this Bill progresses through the Upper Chamber, through the Legislative Council, that those Hon. Members will give some heed to those concerns that were raised in this Hon. House; and actually if the Department will keep thinking about whether or not some of these provisions in the Bill are adequate, are appropriate, for a 21st century nation, whether they are keeping up with the way technology is progressing and is being used in the modern world.

I would just like that to be further considered, as this Bill progresses.

Thank you very much.

The Speaker: Mr Thomas, Hon. Member for Douglas Central.

Mr Thomas: Thank you, Mr Speaker.

I just would like the mover in summing up to join with me in recognising the presence in the Gallery of some of the people involved: Mr Shea, who was involved in this case, both when, as the Chief Minister described it, there was a historical wrong situation that was dishonest, fearful, shameful, causing hurt, misguided, unjust. I would like the hon. mover, when summing up, to acknowledge the very moving remarks and speech of the Chief Minister about how we celebrated, respected and embraced the new tolerant Isle of Man. I would hope the hon. mover would have words to reflect that in his summing-up remarks.

Thank you.

The Speaker: I call on the mover to reply, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

I would like to thank Mr Hooper for his participation in this Bill, all the way through, and just say to him that yes, the legislation in terms of dealing with 16-to-18-year-olds is complex; that the Department has looked at various ways of refining that from the United Kingdom version, and we still struggled with getting something that is quite just.

What the Department has done, though, is work with the Constabulary to see the way that operationally they enforce the legislation and has worked quite closely with them, in terms of the ability to advise young people and point them in the right direction without criminalising them. I think it is quite clear that our Attorney General's office very much follows what is in the public interest in terms of bringing convictions at this point.

But I can reassure him that I have already briefed the Legislative Council on some of the nuances of the Bill, particularly to do with this topic, and asked them to perhaps invite further evidence from those people who may be affected, so that we can refine this Bill and get it right. However, the Department will be constantly reviewing how this Bill operates when it actually gets Royal Assent, hopefully in the near future, and then we can refine it in the future.

I would like to thank Mr Thomas for his comments and really thank the Chief Minister for seconding the Third Reading; but also for what is a very historic speech that he has just made. I thank him very much for that. The words he used are not confined to just this Bill, and hopefully should resonate far beyond this House to the wider community.

With that, Mr Speaker, I beg to move.

The Speaker: I put the question that the Sexual Offences and Obscene Publications Bill 2019 be read for a third time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.