

Order of the Day

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

Miss August-Hanson to move.

The President: We made very good progress yesterday and completed six Bills which can
10 now go forward for Royal Assent.

We are at Item 6 on our Order Paper, the Sexual Offences and Obscene Publications Bill, with
the clauses stage, I call on the mover, Miss August-Hanson, please.

Please remove jackets if you wish.

15 **Miss August-Hanson:** Thank you, Mr President.

It is an honour to commence clauses stage for this very important Bill and I propose today to
move the clauses that are not subject to amendment to move other clauses next week and the
Third Reading of the Bill at the next subsequent sitting.

20 Clauses 1 and 2, Mr President, provide the title and commencement provisions and I beg to
move that they stand part of the Bill.

The President: Mrs Maska.

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

25 **The President:** I put that clauses 1 and 2 do stand part of the Bill. Those in favour, say aye;
against, no. The ayes have it. The ayes have it.

Clause 3.

Miss August-Hanson: Thank you, Mr President.

30 I will spend a bit of time moving clause 3, dealing with interpretation. It defines a 'child' as a
person under the age of 16, unless specified otherwise, and defines a 'vulnerable adult' a person
who, among other things, is aged 18 or over. Other terms are self-explanatory.

This clause was amended in the other place with the insertion of subsection (4), which sets
out expressions relating to the years of age of the person in question throughout the Bill.

35 The Bill provides throughout for a variety of ages and there was some debate in the other
place generally about the ages at which offences and penalties become applicable. The
Department is anxious to indicate at this early stage the consideration it gave to this matter, so
the key parts are: an adult is and remains a person aged 18 or over. For an adult, as later clauses
will show, they are treated according to whether they are vulnerable or not on the one hand and
40 on the other whether they are held in a position of trust and in each case such factors will tend
to mitigate or aggravate an offence; in relation to persons under the age of 18 there are key
milestones, 16 is a key point because at that age a person may lawfully marry or form a civil
partnership or may otherwise engage lawfully in sexually intimate relationships. However, a
sexual relationship with another person who is under 16 years of age is an offence with a
45 significant maximum penalty. The severity of the offence and therefore the maximum penalty is
increased where the sexual relationship was with or other offence was against a person who was
under the age of 13.

Now, turning to the complexities of our society, whilst persons aged 16 and 17 are still
technically children, under international law they can engage in sexual relationships so this
50 clause defines a 'child' as being under the age of 16. Indeed in the wider social field, they may
vote in general and local elections so they are children who may in these areas act as adults. It

follows that they ought also to be accountable for their actions and may be prosecuted for offences against other persons who are under the age of 18.

55 The question of how to protect persons under the age of 18, whilst not criminalising them, especially where the offence was committed by one 16- or 17-year-old against another 16- or 17-year-old or indeed against younger persons was explored by the Department before the Bill was entered into the Keys and was explored further whilst the Bill was in the Keys. The problem is this: how can the Department legislate simply for a number of different scenarios such as the exchange of intimate images where this might be thought of as nothing more than teenage
60 exploration and yet the consequences at the time or later can be catastrophic.

Mr President, I have spent some time detailing the interpretation provisions relating to the general definition of a child here and then the issues raised by subsection (4) of the clause in terms of the different ages found throughout the Bill so I beg to move that clause 3 do stand part of the Bill.

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The President: Mrs Maska.

Mrs Maska: I beg to second, Mr President, thank you.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to thank the mover for her very detailed explanations of the definitions, particularly around ages; it is most helpful to have that at this stage. I also recognise that this is a matter that the Department has considered that has been considered in another place, but I also note that on Third Reading in another place it remained a matter that it was felt was important that this Hon. Council paid some significant attention to and I think that is an important context for what I would like to say next.

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I note that in the interpretation provisions a ‘child’ means a person under 16 unless specified otherwise and a ‘vulnerable adult’ means a person aged 18 or over. I think it is important to highlight at this stage that we should be mindful of the age limits throughout this Bill, both in terms of who can be liable for certain offences and the potential sentencing consequences and also who is protected within certain offences. I want to raise the point now to avoid highlighting the same issue each time we get to a specific division or clause where this issue arises because it is a theme that runs through the Bill.

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As has previously been articulated in this Hon. Council at First and Second Readings, we do have a duty in considering this Bill to think about proper protections and also I think to think about the challenge of education and awareness, particularly for our younger people, when it comes to behaviours that might be criminal under this Bill. Questions that come to mind include the line between behaviour that might be regarded by some as socially acceptable; normalised even, and a matter of choice, but which also have the potential for damaging consequences and which in some circumstances might be treated as a criminal offence. The Lord Bishop has previously spoken about the advent of technology and the challenge this alone presents when it comes to the matters of protection and appropriate intervention or sanction. We must also be conscious of vulnerable young people and avoid any lacuna where a vulnerable 16- or 17-year-old is not protected due to the use of defined terms.

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I would like at this stage to thank the mover, officers and legislative drafters for engaging with me and others on this issue and highlighting the different approaches and models used elsewhere that have been considered. At this stage I would like to flag that those discussions are continuing, particularly on the issue of ages, and in particular the position of 16- and 17-year-olds. I would also like to flag that I think we recognise that this issue is about more than law and order; it is also about social policy.

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105 In our debate yesterday on the outcome of the Domestic Abuse Bill conference it was recognised that the approach to the position of younger people in that context is an issue of social policy as well as of criminal law and to that end commitments that were highlighted yesterday to an increasingly holistic and cross-departmental approach to developing policy and legislation is very welcome.

110 In the interests of being able to progress clauses today while these discussions continue, I am content to proceed with the Bill as it stands in terms of the age provisions, but should ongoing discussions lead to thinking that any of the age issues should be adjusted, then we do have the benefit of being able to move relevant amendments at Third Reading.

Thank you, Mr President.

115 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

120 I very much welcome the mover's outlining of the issues that will be under consideration and would like to add my full support and thanks to the contribution by Mrs Poole-Wilson. There is a little bit more thinking to be done. I think that that will probably be welcome and I will be very glad to join in that effort to try and ensure that things get to the right place in the right way. So thank you very much, I am very supportive of everything that has been said on this this morning.

Thank you, Mr President.

125 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you.

130 I am already aware some of the discussions that have been had thus far have been very sensible and very pragmatic from Mrs Poole-Wilson, and also from Mrs Lord-Brennan, who has raised the subject of ages too. Essentially what we need to do is ensure that what we have here in this Bill is right but importantly it also needs to be justifiable as well. I think that is something that needs bearing out in discussion.

It is important to distinguish between juvenile adult and vulnerable adult in offending and sentencing and that is regardless of the fact that we do obviously trust the court to exercise some level of discretion when considering age and incapacity implications on any case.

135 Mrs Poole-Wilson is quite right, this Bill is about social policy, it is not just a criminal justice Bill, this has a huge sea change, a huge cultural implication across this Island, there are huge differences between what we are currently enacting now and what we will be acting into the future so I welcome any discussion, particularly in relation to ages following the debate that we had yesterday in this place on domestic abuse.

140 Thank you, Mr President.

The President: I put the question that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

145 Clause 4, Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

150 Whilst I do not propose to move every offence in this Bill clause by clause I am sure that we all agree that rape is such a significant, defining and damaging sexual crime in itself that it deserves to be singled out for special mention. In saying this I am most certainly not saying that the very many other offences that are set out in this Bill are any less important, they all harm the victim. 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.

155 Subsection (3) makes it abundantly clear that the mere fact of marriage or a civil partnership having been formed does not of 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.

I will deal with this issue of consent, which is fundamental to many of the offences in this Bill when we get to clauses 91 to 94.

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

The President: Mrs Maska.

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

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The President: I put the question that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 5, 6 and 7.

170 **Miss August-Hanson:** Thank you, Mr President.

We now turn to Part 2 of the Bill which deals with a variety of offences in addition to the offence of rape. I propose to move clauses in groups of different sizes dependent on the subject area or the type of offence.

175 Clauses 5, 6 and 7, Mr President, turn to the various offences I propose to move together as they deal with assault and causing a person to engage in sexual activity without consent.

The offence in clause 5 is committed where the penetration is by 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 95, so that it excludes, for example, intimate searches and medical procedures.

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

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

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

The President: Mrs Maska.

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

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

Then I think clauses 8 to 19 inclusive, Miss August-Hanson.

195 **Miss August-Hanson:** Mr President, 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 as set out in clauses 8, 9, 10 and 11. These are very serious offences against the very young.

200 Clearly the weight of the law will fall harder on offenders aged 18 or over. Nevertheless, there can be no excuse or exception in these cases in law if it is the case that the perpetrator of such offences is under the age of 18. Indeed a report by the Law Commission of the State of Victoria in Australia in 2004 noted that it was estimated between 20% and 40% of the sexual abuse of children is perpetrated by people aged under 18. It is sobering to reflect that the same report indicates that between 50% and 80% of chronic adult sex offenders committed their first
205 offence as adolescents: that is true in one state in Australia. However, whether the figure is

greater or to a lesser extent in our Island, it would be a serious error to hold to the view that there is no risk of similar statistics and harm being done by youngsters here. We have a common humanity with people around the world. The Department concludes that it is necessary to have these provisions with their offences and penalties on our statute book also.

210 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. These offences are naturally bound to be aggravated and to attract a higher penalty where the child is under the age of 13. The clauses recognise that a person over the age of 13 years may not have attained their 16th birthday and yet look to give the defendant reason to
215 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.

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 clause 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. As indicated
220 a moment ago, the Department believes that adolescents must be held accountable for their actions. In practice decisions on whether persons under 18 should be charged with child sex offences is an operational matter determined by police and prosecutors in accordance with established principles and guidelines.

In deciding whether it is in the public interest to prosecute these offences, where there is
225 enough evidence to provide a realistic prospect of conviction, police and prosecutors may take into consideration factors such as: 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 relationship between the parties and whether there was any existence of duty of care or breach of trust.

230 Clauses 17, 18 and 19 concern the arranging or facilitating of a child sex offence, meeting a child following sexual grooming or anything else and sexual communication with a child.

235 Clauses 12 to 19 were amended in another place so that they contained 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 an abuse of a position of trust set out in clauses 20 to 23.

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

The President: Mrs Maska.

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

The President: Mrs Poole-Wilson.

245 **Mrs Poole-Wilson:** Thank you, Mr President; and I thank the mover for her full explanation of the approach that is being taken in terms of looking at ages in these particular clauses.

I just, again, would flag at this point that this is an example of the area that is under discussion. So we recognise, for example, in clauses 12 to 15 that 16- and 17-year-olds, as drafted at the movement, cannot be victims of the offences. But we also recognise that those
250 under 18 could be perpetrators and I am not questioning that, I am just flagging the anomaly and I am flagging the anomaly that if you are a vulnerable 16- or 17-year-old you would not, as things stand, be protected against those offences.

So I flag it as an example of the areas which are under discussion and again, if those discussions come to a point where it is felt appropriate to make some adjustments I am grateful that we have the opportunity to do so at Third Reading.

255 Thank you, Mr President.

The President: Thank you.

Miss August-Hanson to reply.

260 **Miss August-Hanson:** I would just like to thank Mrs Poole-Wilson for engaging so fully with the Department, with myself and with drafters on this matter and I hope that we might be able to satisfy any concerns in due course.

Thank you, Mr President.

265 **The President:** I put to Council that clauses 8 to 19 inclusive do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 20 to 27 inclusive.

270 **Miss August-Hanson:** Mr President, clauses 20 to 27 deal with the abuse of positions of trust in relation to persons aged under 18 and vulnerable adults.

Clauses 20 to 23 provide that it is an offence for a person A aged 18 or over to intentionally behave in certain sexual ways in relation to a child aged under 18 where A is in a position of trust, as defined in clause 24, in respect of the child.

275 The prohibited behaviour in each of these 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 the 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 is also including a breach of a position of trust in relation to vulnerable adults.

280 Clause 24 sets out what the positions of trust are for the purposes of clauses 20 to 23. Exceptions 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) to clause 26 is to limit this exception to the situation where the sexual relationship that pre-dated the relationship of trust was lawful, so it would cover, for example, a relationship with a child under the age of 16.

285 Clause 27 was inserted in the House of Keys to expressly 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 interest to prosecute, justice must be done.

Mr President, I beg to move that clauses 20 to 27 stand part of the Bill.

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The President: Mrs Maska.

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

295 **The President:** I put the question that clauses 20 to 27 do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 28 to 33.

300 **Miss August-Hanson:** Mr President, clauses 28 to 33 address familial child sex offences. In clause 28, 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 29 is about inciting the child family member to engage in sexual activity and similar provisions apply to A here as in clause 28.

305 Clause 30 sets out the various family relationships covered by the provisions.

Clauses 31 and 32 make provision for exceptions where those in the relevant relationship are married or civil partners of one another or are in sexual relationships which pre-date family relationships.

310 Clause 33 covers sexual relationships that pre-date the coming into operation of sections 28 and 29 where, on the date they come into operation A and B are living together as partners in an enduring family relationship.

Mr President, I beg to move that clauses 28 to 33 do stand part of the Bill.

The President: Mrs Maska.

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

The President: I put the question that clauses 28 to 33 do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

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34 to 48 inclusive, Miss August-Hanson.

Miss August-Hanson: Mr President, clauses 34 to 48 deal with the offences against persons with a mental disorder impeding choice.

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As well as offences similar to those I have mentioned in previous clauses in respect of children, there are further offences in clauses 38 to 41 where inducements, threats or deception are employed in order to obtain sexual activity with a person with a mental disorder.

Clauses 42 to 46 deal with sexual offences committed by care workers in relation to persons with a mental disorder.

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Clauses 47 and 48 provide exceptions for marriage or civil partnerships and for sexual relationships that pre-date care relationships.

Mr President, I beg to move that clauses 34 to 48 stand part of the Bill.

The President: Mrs Maska.

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

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

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Just a general point again that by contrast with the offences that relate to positions of trust where an additional clause was added in another place to distinguish where the offender was under 18 and the maximum sentencing we do not see a similar provision in this next group of clauses where we are dealing with persons with a mental disorder, so again I flag it as an area that is relevant to ongoing discussions about provisions recognising different ages.

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Thank you.

The President: Thank you.

Miss August-Hanson, if you wish.

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Miss August-Hanson: Thank you, Mr President.

Again, Mrs Poole-Wilson's keen eye is very much welcome to myself and others working on the Bill, so I appreciate it.

Thank you.

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The President: I put the question that clauses 34 to 48 do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

49 to 53.

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Miss August-Hanson: Mr President, clauses 49 to 53 deal with crimes relating to the sexual exploitation of children.

365 Clause 49 sets out the offence of paying for the sexual services of a child. In line with our international conventions a child with respect to these offences is defined as a person under the age of 18. Subsection (3) is sufficiently wide to include any manner of payment or exchange. 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 50, 51 and 52 are about causing or inciting, controlling a child, or arranging or facilitating the exploitation of a child in any part of the world.

Clause 53 defines 'sexual exploitation' and 'payment'.

370 Clause 53 was amended in the Keys to add greater definition to the recording of an indecent image by adding after 'recorded', 'or streamed or otherwise transmitted' in subsection (1)(b) and recognises technological developments here.

Mr President, I beg to move that clauses 49 to 53 do stand part of the Bill.

375 **The President:** Mrs Maska.

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

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

Just to note the mover's commentary in this provision, there seems to be a slightly different approach insofar as we are recognising broader international conventions and recognising a simplicity of wording and the ability to then have scope to judge on a case-by-case basis. I highlight it merely because there is something that has a real ring of sensibility around that because I think that sometimes we can get very bound up in lots of complexity and lots of detail, and that is because we are trying to solve very important issues, but that approach there strikes me as being quite interesting. I wonder if it might be something that might be borne in mind as we analyse the other points. And also the fact that it is recognising that 18 and under is a child but within that under 18 years there will be variable circumstances, different cases, where different factors need to be taken into account and is that more properly done by the justice system rather than trying to outline every case and every scenario in the detail for the primary legislation.

390 So I thank the mover just for drawing attention to that approach in this particular provision.

395 Thank you, Mr President.

The President: Miss August-Hanson to reply.

400 **Miss August-Hanson:** I would just like to thank Mrs Lord-Brennan for her input there. She is certainly right on all points and she is right to point out the detail as well of some of these cases. We do need to leave some level of discretion to the courts and trust the courts to be able to interpret the legislation and come to the right conclusion as is right.

So, yes, thank you very much, Mrs Lord-Brennan.

405 **The President:** I put the question that clauses 49 to 53 inclusive do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now we have clauses 54 to 65 inclusive and I understand also clauses 120 to 138.

410 **Miss August-Hanson:** Mr President, I propose to move and speak to clauses 54 to 65 and clauses 120 to 138 together and I hope Members will bear with me because this is some speech that you have ahead of you.

As a whole, they deal with offences surrounding the exploitation of prostitution, the suppression of brothels and measures to close down premises used in this manner. This is, in effect, a repeat of existing offences in modern form and based on the UK Sexual Offences Act 2003.

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Clause 58 provides interpretation and clauses 59 to 64 deal with the suppression of brothels.

Clause 65 concerns the offence of allowing children or vulnerable adults to be in brothels. The law as it stands makes it an offence to allow a child under the age of 16, for whom a person is responsible, to be in a brothel, unless, of course, the child is under the age of four, which is just fine – a different era; a different time. The Department felt that this was wrong and that it should simply be the case that it is an offence to permit a person under the age of 18 for whom one is responsible to be in a brothel.

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There was some debate in the other place and the clause was further amended back to 16 but then to include in the offence allowing vulnerable adults for whom one has responsibility to be in a brothel and those aged 16 or 17 who would be vulnerable if they were aged 18 years or over.

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The key offence is therefore clarified to make it clear that the offence is made out if children under 16 and persons aged 16 years or over who are vulnerable because of physical, psychological or mental impairments are exposed to harm.

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Mr President, linked to these, but located in Part 7 of the Bill are clauses 120 to 138 and these deal with closure orders in relation to prostitution and pornography offences.

Clause 120 gives the meaning of specified offences in relation to prostitution, pornography and child sex offences and gives the relevant citation as to where the offence is set out in the Bill.

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Clause 121 empowers a police officer of the rank of inspector or above to authorise the issue of a closure notice to the premises where activities related to prostitution or pornography are suspected.

Clause 122 does likewise in respect of premises where activities related to child sex offences are suspected.

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Clause 123 sets out information that must be contained within a closure notice and how it is served on a premises.

Where a closure notice has been issued, clause 124 requires a constable to apply to a court of summary jurisdiction for power to make a closure order and describes this process.

Clause 125 makes supplementary provision.

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Clause 126 provides for the enforcement of closure orders on premises.

Clause 127 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 authorised by the Chief Constable.

Clauses 128 and 129 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.

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Clause 130 provides for the ending of a closure order and 131 provides for appeals.

Clause 132 makes provisions for a person to apply for access to the 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.

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Clause 133 provides for the reimbursement of costs where the Constabulary have incurred expenditure while clearing, securing, repairing or maintaining closed premises.

Clause 134 relieves the Constabulary from liability for certain damages. However, subsection (5) states the exemptions from liability in subsections (1) to (4) which 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.

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465 Clause 135 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 and clause 136 empowers the
Department to issue guidance relating to the discharge of functions under this part.

Clause 137 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.

470 Clause 138 provides interpretation or terms used in this part such as 'closure notice' and
'closure order'.

Mr President I beg to move that clauses 54 to 65 inclusive and 120 to 138 inclusive do stand
part of the Bill.

The President: Mrs Maska.

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

The President: I put the question that 54 to 65 inclusive and 120 to 138 inclusive do stand
part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clauses 66, 67 and 68.

Miss August-Hanson: Mr President, clauses 66, 67 and 68 are termed preparatory offences
where clause 66 makes it an offence to administer a substance, without the consent of the other
person, with intent to enable any person to engage in sexual activity with the other person.

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Clause 67 is where an offence is committed in order to commit a sexual offence, for example,
by kidnapping or the false imprisonment of the victim.

And clause 68 is the equally serious offence of trespass with intent to commit a sexual
offence.

Mr President, I beg to move that clauses 66, 67 and 68 stand part of the Bill.

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The President: Mrs Maska.

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

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The President: I put the clauses 66, 67 and 68. Those in favour, say aye; against, no. The ayes
have it. The ayes have it.

Clauses 69 and 70.

Miss August-Hanson: Mr President, clauses 69 and 70 are designed to address the situation
whereby a person aged 16 years over has sex with a relative aged 16 years or older.

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In clause 69, A commits the offence by taking the sexual action; whereas in clause 70, A
consents to B taking the sexual action. The penalties for such actions are different, and lesser, to
similar acts carried out by an adult.

Mr President, I beg to move that clauses 69 and 70 stand part of the Bill.

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The President: Mrs Maska.

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

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The President: I put the clauses 69 and 70. Those in favour, say aye; against, no. The ayes
have it. The ayes have it.

Clauses 71 to 81 inclusive and Schedules 1 and 2.

Miss August-Hanson: Thank you, Mr President.

515 Clauses 71 to 81 and Schedules 1 and 2 deal with offences related to indecent photographs and prohibited images of children.

 Clause 71 makes it an offence to possess, take or permit to be taken, distribute, share or publish any indecent photographs or pseudo-photographs of children.

520 Clause 72 makes it an offence to possess, take or permit to be taken, distribute, share or publish any prohibited images of children.

 Clause 73 provides an exclusion to the offence in clause 72 for classified films.

525 Clause 74 provides an exception for photographs, pseudo-photographs, images or prohibited images to be 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.

 Clause 75 makes an exception for criminal proceedings and investigations where it is necessary for investigation or prosecuting alleged offences or to enable a person to provide his or her defence.

530 Clause 76 deals with defences generally, such as legitimate reasons where a person had not seen the image or received an unsolicited image and did not keep it for any unreasonable period of time.

535 Clause 77 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 which the person is or was indeed under 18 at the material time.

 Clause 78 provides powers of entry, search and seizure.

 Clause 79 introduces Schedule 1 and makes special rules relating to information society providers.

540 Clause 80 introduces Schedule 2 about forfeiture provisions. For the purposes of these clauses, a child is a person under the age of 18.

545 Clause 81 provides interpretation to clauses 71 to 80. This was amended in the other place to clarify matters and in particular inserted a definition as subsection (15) in relation to the distribution of an indecent photograph or pseudo-photograph or prohibited image applying to both clauses 71 and 72. The additionally inserted subsection (16) includes accessing an image by streaming or any other form of transmission in order to reflect developing methods of accessing or consuming criminal material.

 Mr President, I beg to move that clauses 71 to 81 together with the Schedules 1 and 2 stand part of the Bill.

550 **The President:** Mrs Maska.

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

The President: Mrs Poole-Wilson.

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Mrs Poole-Wilson: Thank you, Mr President.

560 I think this is another area of the Bill that is somewhat challenging when we look at what I referred to earlier on as the line between behaviour which some may regard as socially acceptable or normalised and behaviour that crosses the line and is abusive and should be subject to sanction. Again, whilst we have the definition of a child being up to the age of 18 in this particular part, and we have an exception for those aged 16 or over who are spouses or civil partners, there is an area here that presents us with some challenge around again, the position of young people and I also look forward to continuing discussions around this area with the hon. mover and officers.

565 Thank you, Mr President.

The President: Thank you, Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

570 I am perfectly content and very supportive of any input that Mrs Poole-Wilson has.
Thank you, Mr President.

The President: Thank you.

575 I put clauses 71 to 81 and Schedules 1 and 2, those in favour, say aye; against, no. The ayes
have it. The ayes have it.
Clauses 82 to 86 inclusive.

Miss August-Hanson: Mr President, clauses 82 to 86 inclusive deal with a variety of diverse
sexual offences, as we will be seeing shortly.

580 Clause 82 makes it an offence for a person intentionally to expose their genitals where they
intend that someone else will see them and be caused alarm or distress.

Clause 83 makes it an offence to have intercourse with an animal. This clause was amended
in another place because as drafted it had referred to intercourse with a 'living animal'. The
change made there, and seen in the Bill before you, leaves the offence open as to whether or
585 not the animal was alive or dead at the time of the relevant act.

Clause 84 prohibits sexual activity with a corpse.

Clause 85 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
590 there was any person within hearing or sight who was likely to be offended against. The clause
was amended in the other place to make it clear that a constable on duty could not be the
person offended.

Clause 86 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.

595 Mr President, I beg to move that clauses 82 to 86 inclusive do stand part of the Bill.

The President: Mrs Maska.

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

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

605 It is just to comment really; in the narrative around clause 85 that just seems incredibly broad
and I just wonder why we need to cover that sort of thing in legislation? I mean, how is that ever
going to really be proven, I guess, is the point. I am not proposing that anything is done about it
or it is amended, I am just merely flagging up that it feels like it is very easy to put in place a
whole range of prohibitions that you just sort of ... it just seems incredibly broad to me, but just
to make that comment.

610 Thank you.

The President: Thank you. Miss August-Hanson.

Very sorry, the Lord Bishop.

615 **The Lord Bishop:** Thank you, Mr President.

This is merely a point of minor textual detail. I just wonder whether in clause 83(2)(c) and
again in clause 84(c), whether the first use of the word 'that' is redundant. In other words:

A knows that, or is reckless as to whether, that is what A is being penetrated by.

Would that not better be, 'A knows, or is reckless as to whether', and the same applies I thought in 84(c).

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The President: I just wonder if the second comma is in the wrong place: 'knows that, or is reckless as to whether that.'

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The Lord Bishop: That would be another way of phrasing it. I just feel at the moment, Mr President, the phraseology does not quite work, and I wonder further whether 83(2)(c) could just be tidied up so that it does not end with 'by' which is a sort of odd ending for a sentence. Those are pure points of phraseology but I think they are valuable in ensuring the authority of the legislation when it is finalised.

Thank you, Mr President.

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The President: Never use a preposition to end a sentence with! *(Laughter)*

The Lord Bishop: That is part of the point I am making, Mr President, yes.

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The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

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I just wanted to echo Mrs Lord-Brennan's comments really on clause 85. I agree with her that it is not necessarily that we need to do anything about it as such at the moment. But thinking about typical teenage behaviour, for example, it does seem as though this clause goes beyond ... is not really connected with the realities of life, could I say:

... engages in a sexual activity ...

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I am just imagining, for example, typical teenager behaviour where young people are victims of their own hormonal levels and how on earth would this be played out in reality, clause 85. It is not up to a constable to impose the offence, would a member of the public have to dial 999 if they came upon a teenage couple canoodling in one of the back alleys of Ramsey? I just think that this clause is a bit out of step with reality. That is all I wanted to say really.

Thank you.

650

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: I think actually I would be interested to know why the clause is needed. I note that it looks like it is an amalgamation of a few different original sources or original drafting, so why it is needed in reference to whatever it is trying to solve, why that would not be otherwise solved elsewhere. So I am thinking much more broadly if there was something to do with perhaps offences or issues that are covered perhaps by harassment or noise, I don't know, why do we need this is the question I would like the answer to.

Thank you.

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The President: Miss August-Hanson.

Miss August-Hanson: Yes, two matters: one, will the President allow that the Bishop has rightly pointed out some amendments that need to be made, but that they be made on the floor presently?

665

The President: Yes, you may.

Miss August-Hanson: Thank you.

So if I might refer to Tom then in that case?

670 **The President:** Mr Bateman, you are being asked to comment on the specific point made by the Lord Bishop. The word 'that' appearing a second time, it may be that ... Anyway, Mr Bateman, if you identify for the record your name and position, please.

675 **Mr Bateman:** Mr President, Tom Bateman, Legislation and Policy Manager, Department of Home Affairs.

I thank the Lord Bishop for his observations and I am more than happy, through the appropriate channels of the mover, and your goodwill, Mr President, for amendments to be made as the Lord Bishop considers appropriate.

680 **The President:** I suppose the question is to ask whether –

Miss August-Hanson: Clause 83(1)(c) and (2)(c) –

685 **The President:** Yes, if you could just clarify what the amendment would be and then we can deal with it.

The Clerk: You might like to ask the mover to invite the drafter to help because she is supposed to be on the line.

690 **Ms Graves:** Hello, I am online, and I am looking at it –

The President: If you would identify your name and position first that would be helpful, and then Miss August-Hanson will ask you the questions.

695 **Ms Graves:** I am Theresa Graves; I am a senior legislative drafter in the Attorney General's Chambers.

The President: Thank you.

Miss August-Hanson.

700 **Miss August-Hanson:** Thank you, Mr President; hello, Theresa.

So this is just in relation to clause 83 then: 83(1)(c), 83(2)(c) and 84(c) as well, just amendments to the commas in ... Oh, actually we have intercourse with an animal on 83(1)(c) that:

A knows that, or is reckless as to whether, that is what is penetrated.

So it is obviously slightly unclear and it just needs a tidy up.

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Ms Graves: I have been trying to work out different wording on the hoof, as it were. As it reads it is in two parts it would be, 'A person (A) commits an offence if A knows that that is what is penetrated or if reckless as to whether that is what is penetrated.' I can see the difficulty.

710 I think 'A knows that that is what is penetrated' works but it is 'A is reckless as to whether that is what is penetrated', so there are two elements: A knows that that is what is penetrated or A is reckless as to whether, that is what is penetrated.

Miss August-Hanson: Perhaps the A is reckless as to whether... A knows that and is reckless as to whether it is what is penetrated ... you are the drafter, not me!

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Ms Graves: If you had, 'A knows or is reckless as to whether that is what is penetrated.'

The President: I think what you are saying is that the word 'that' has two meanings that *that*, that object.

720

Ms Graves: Yes.

The Clerk: Mr President, it is possible for Legislative Council to suspend activity on this clause and leave it to next week, which might be more profitable.

725

The President: Well, we can certainly suspend voting on this clause to clarify that but I think in my own mind I would disagree perhaps with the Bishop that the word 'that' is being used in two senses, it is not just repeating the word.

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The Lord Bishop: That is correct, Mr President, and I am very grateful to the drafter who has in fact by doing that clarified my understanding of this clause. I think that comment that I made was a misunderstanding on my part and I am grateful that has been cleared up.

Thank you, Mr President.

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The President: Miss August-Hanson, if you concur with the position we can simply accept that the wording is correct and not requiring amendment in those three sections of the clause and clause 84.

Miss August-Hanson: I am still slightly concerned, Mr President, about 2(c) here:

A knows that, or is reckless as to whether, that is what A is being penetrated by.

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Actually, no, do you know what, that sounds just fine, you are quite right.

The President: If you would prefer that this be held over for your clarification for next week?

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Miss August-Hanson: No, I am content with it actually on reading it again. Either way, whether it is held over to give Members a little bit more clarity than that is fine as well.

Ms Graves: May I intervene again?

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Miss August-Hanson: Of course you can, Theresa. Sorry, Mr President.

Ms Graves: I think on reading it, it would work if it reads ... so you go from clause 83(1), 'A person (A) commits an offence if —A knows, or is reckless as to whether, that is what is penetrated.' I think that works.

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Mrs Maska: Mr President, if I may.

I interpret it as:

A knows that,

Then you take a breath:

or is reckless as to whether, that is what is penetrated.

760 It is almost taking a breath and that might apply to each of the subsequent clauses where you have two 'that's' in the clause, and to me it makes sense. It is just thinking about taking that breath in your mind as you read it. I am content that the meaning, as written and drafted, is sufficient, but the learned Attorney might have a view on that as well.

765 **The Attorney General:** Mr President, I entirely agree with that. I think it reads sensibly and I think it is very clear as to what is intended.

The President: Thank you.

If the mover is content then we will accept the wording as printed and that is what we shall be voting on today, thank you.

770 I thank the drafter for joining us, Miss August-Hanson, if you perhaps complete your reply to this debate.

Miss August-Hanson: Thank you, Mr President.

775 I may need to make use of Tom and Theresa here again, if I could. It is just simply in relation to the sex in a public place. I believe it is already an offence is it not as a public order offence? So if I might make use of Mr Bateman perhaps.

The President: Indeed, Mr Bateman.

Mr Bateman: Once again, Mr Bateman, Legislative Policy, Department of Home Affairs.

780 There was, I have to say, considerable debate about the inclusion of this clause in the Department and taking into account wider, further afield.

785 If I may, Mr President, the clause replaces our previous offence of sex in a public lavatory which had other historical connotations, shall we say, which are addressed later on in the Bill. There was much debate as to whether or not to have an offence about causing harassment, alarm or distress. It was felt on balance that it was in all the circumstances appropriate but with a rider that the person being harassed, alarmed or distressed should not be a constable in uniform, it has to be a member of the public who is genuinely caught in circumstances where it is exceptional. But I am indicating I think that it is a genuine matter that was subject to a debate and nothing more but it was a matter that we considered with care.

790 Thank you, Mr President.

The President: Thank you very much.
Mrs Lord-Brennan.

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

If I can thank Mr Bateman and I wonder if it could be somewhat reduced or improved in scope or taken out? Would it take anything away if there are other areas of law which cover any potential real issue?

800 **Mr Bateman:** I would not be at liberty to make that kind of commitment now.

Mrs Lord-Brennan: Could we maybe defer some kind of vote on this until...?

805 **The President:** It is very much in the hands of the mover, if you wish this to be held over for further consideration, as we are doing with other clauses, it is entirely up to you.

Miss August-Hanson: Is there facility in our Standing Orders to take a vote in Council as to whether or not it should be deferred, just to get feeling from Members as to whether or not they feel comfortable with it or happy?

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The President: No, it is in your hands as to what clauses you move. If I may recommend that, if there is some question that you wish to satisfy yourself about as mover with the drafters, that be held over to next week.

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Miss August-Hanson: Actually, Mr President, with your leave, I would like to ask the drafter a quick question if I could?

The President: By all means.

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Miss August-Hanson: Theresa, the question that Mrs Lord-Brennan has just asked Tom, obviously Tom being a policy manager in the Department may or may not be able to answer that question. As drafter of the Bill, can you tell us whether or not the public order type offence that appears here in this Bill, whether or not it is satisfied by legislation elsewhere if it is removed?

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Ms Graves: I do not believe it would cover the specific element of it being sexual activity. There would be other legislation in other places that deals with behaviour that is alarming or distressful to people, or annoying to people, but it is the sexual element; if you were sitting in a park or walking in the park and you saw somebody doing something private in public, then you might be more harassed, alarmed or stressed by that behaviour, rather than if it was just ...

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The President: Miss August-Hanson.

Miss August-Hanson: I am content to move ahead.

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The President: With clause 85 to be voted on? (**Miss August-Hanson:** Yes.) Thank you then. In that case, I will take the clauses individually, I think that will be the best way. First of all, that clause 82 do stand part of the Bill, those in favour, say aye; against, no. The ayes have it. The ayes have it.

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Clause 83: those in favour, say aye; against, no. The ayes have it. The ayes have it.

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

Clause 85: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 86: those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 87.

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Miss August-Hanson: Clause 87 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: health care professionals; teachers; social care workers and a 'regulated activity' means any activity prescribed by order by the Department.

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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. 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.

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During the Second Reading debate, Mrs Maska enquired about guidance and training. This one is not a matter for the Department. The provision is quite clear about the duty of professionals to make a notification to the Police and equally clear that this duty does not apply if the person believes another person in a regulated profession has previously made a child sexual abuse notification in connection with the same act of sexual abuse or the person complies with a safeguarding policy prescribed for the purpose by the Department. Regulated

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professions might reasonably be expected to have such a policy and it will be for those professions to ensure their staff know, understand and comply with the terms of that policy.

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

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The President: Mrs Maska.

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

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

875 Just on the themes that I have already raised. This clause also, to my mind, I think has a potential lacuna because 'child' is reliant on the initial definition of under 16 so my concern would be the vulnerable 16- or 17-year-old I do not believe is covered by this provision as it stands.

880 And I suppose on the second point that the mover highlighted regarding the Department's role in guidance and training, I do note that the clause provides for safeguarding policy prescribed in regulations so it seems the Department does have some input into awareness raising and so on for the relevant professionals and I just wonder whether she could confirm that in her reply please.

The President: Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

I would like to take this opportunity – because it is to do with notifications and it is difficult to link in in other aspects of the Bill – to talk about the sex offenders register matter, which has obviously been something that is in place in the UK, because I feel that that does need to be not ignored as we reconsider this Bill.

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895 One of the reasons I would like to raise it is just to understand the position on a policy basis from Government on a few matters that I will summarise now. I suppose I am keen to find some sort of balance in terms of protecting the public and liberty. We have just had a bit of a conversation about offences that seem to go quite far in the previous clause that you could probably describe as being excessive, and we have had some really useful commentary earlier on in the sitting that talked about how offences against children are often committed by younger people, so clearly there is a need to have some kind of intervention and accountability to ensure hopefully that cases and offences and abuse does not escalate.

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905 My understanding is that the reason why there is not anything effectively like this in place on the Island in terms of a sex offenders register – and it is impossible to talk about that without raising the point about disclosure of that information upon request to the public, I do deliberately want to separate the two in raising this right now, I am conscious of the controversial – but my understanding is that the reason why we do not have something like this over here is because effectively the Police operationally know where offenders are. But I think in the UK it is the case where depending if someone, for example, is cautioned or depending on the nature of the offence, so all the offences that we are building in here would effectively be listed as to whether they would or would not be required some form of disclosure on this register and the details that relevant offenders must supply to the Police. They would include what you would expect: name, date of birth, email address, stuff like that, or details of any residents with a child. Now, my thinking on this is you think obviously the Police know, why would they need that information, but I wonder if by not having that here it is a lack of a deterrent potentially to further offences and also maybe it is a lack in being accountable because clearly ... and it may well be covered in notices or orders or whatever elsewhere in the Bill, but it strikes me that if

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there was an offence or a caution, if somebody had to then register, why would that not be a desirable thing for us to have here?

915 Secondly, building on from that in terms of public protection, the sex offender disclosure scheme, which is commonly in the news and the media referred to as Sarah's Law, now, you would rightly have concerns about the public availability generally of an entire register, however, I do wonder why it is not provided for that if somebody in the public had a concern about somebody that may have contact with their child to make that enquiry. As far as I am
920 aware, under that scheme in the UK a parent, carer, guardian or another interested party can ask the Police to check whether someone who has access to their children has a record of committing child sexual offences and applications are made direct to the local police force and the disclosure is at the discretion of that force, which may impose conditions on the person who is giving the information. So I suppose I am keen to know why we would not do that and why
925 having some kind of register is not considered a good thing, bearing in mind there are different levels of offences, so it is more to understand.

Thank you, Mr President.

The President: Mr Greenhill.

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Mr Greenhill: Thank you, Mr President.

May I ask the proposer if in the definition of the regulated profession or regulated activity it was considered in any way to include sports clubs, coaches, associations, guides, scouts etc.?

Thank you.

935

The President: Thank you.

Miss August-Hanson to reply.

Miss August-Hanson: Thank you, Mr President.

To my knowledge, I do not believe that the DHA has a place in terms of clause 87. So I am
940 going to defer on this matter, particularly in relation to Sarah's Law, I know there is some background in relation to a document that was sent around to Members by Dr Alex Allinson, which I know will have prompted some of this discussion. There has been no incident that has prompted interest in Sarah's Law thus far, but concerns have been raised in relation to unregistered baby sitters, I believe, in the past, and who might be employed as registering baby
945 sitters to ensure that those who are employed as registered baby sitters do not have some sort of sex offence history.

I think the arguments put against Sarah's Law in the UK ... I mean, DHA has not really got any concerns on a small Island, they know where all of the sex offenders are, the Police are aware of where they all are, they are not particularly worried about them being forced underground or
950 anything like that either, so the arguments over in the UK do not particularly stack up here but the sex offenders here are known to Police, as I am aware.

I would like to be able to defer to the Department as to what their position is on this with the leave of Mr President, if I may, and then come back to Mr Greenhill's comment afterwards.

955 **The President:** When you say defer, would you then wish to hold over clause 87?

Miss August-Hanson: No, Mr President. I would like to be able to bring in Mr Bateman to have a discussion on Sarah's Law.

960 **The President:** You wish Mr Bateman to clarify, yes.
Mr Bateman, please, again.

Mr Bateman: Tom Bateman, Legislation Manager, Department of Home Affairs.

965 The Department's longstanding position on Sarah's Law is that it is not appropriate for the context of the Island.

The Chief Constable has been clear that we are, or they are rather, well aware of where personnel are. I think on a wider front one would say that these kind of schemes only tell you so much; they only tell you at a particular time and what the Police do for us in terms of public safety is keep an awareness all the time and we believe the work of the Public Protection Unit in the Island is actually sufficient for our purposes.

970 It is important to remember also the balance between having a bureaucratic system, a system of Sarah's Law of apply and consideration, and a matter where the Police are always alert. We do have later clauses in the Bill that deal with sexual risk orders, sexual harm prevention orders with notification and these the Department would submit are, in the context of our community, more than enough.

975 I do think in a small community in supporting the Chief Constable and the work of law enforcement we need to strike the balance between procedures and weighing our public safety personnel, our Constabulary, with procedures to follow whereas they are focused on keeping an eye on those in our community that we would hope they are keeping an eye on. So I would, on behalf of the Department, urge that Sarah's Law may be appropriate elsewhere but not here. The later measures in the Bill are significant.

The President: Does any Member wish to take anything up with Mr Bateman?
Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President, and thank you to Mr Bateman.

I wish to make it clear that the query was not related just only to the notion of Sarah's Law but starting principally with the idea of the sex offenders register because I appreciate that the latter is controversial but probably still we should not shy away from it. But it sounds like similar reasons would also apply for not having a register as to what has been explained about Sarah's Law.

990 I would also like to add Mr Bateman if in terms of the Public Protection Unit what is the oversight of that, particularly in connection with children?

Thank you, Mr President.

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The President: Mr Bateman.

Mr Bateman: If I deal first with the notification or register of personnel. That has been in force for a long time under existing legislation and notification procedures. They are set out in a great deal more detail in this Bill because we followed the model of the UK Sexual Offences Act. It deals with travel outside the Island; it deals with people coming into the Island, as we will see next week when we deal with the notification procedures. Those are comprehensive in terms of providing the Police with the information necessary to know who is in the Island who we should be aware of and I believe it goes further than what we have now, well far enough in terms of keeping an eye on.

1000 Apologies, Mrs Lord-Brennan, would you repeat the other question?

Mrs Lord-Brennan: In terms of the Public Protection Unit who has oversight over that, particularly in connection with whatever it deals with to do with children?

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Mr Bateman: I would simply say it is a matter that falls within the Constabulary and therefore the Chief Constable is the person in overall operational command of his units. So the Public Protection Unit is a division or unit within the Constabulary and it falls to the Chief Constable.

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Miss August-Hanson: If I might be able to help in some way here. Sorry, I am just trying to plug a gap, I apologise, Tom.

1020 But the Multi-Agency Public Protection Unit (MAPPU) very much sits within the Police remit. It is something that they kind of came up with, something that they have worked with other Departments to try and establish. When it comes to accountability in relation to the Police there is no political accountability as it were within the Department at all. The Police need to have some degree of separation between the Department, the Government arm and the enforcement arm. So that is the reason why I would imagine Mr Bateman is not able to give you a full response on that because he literally cannot give you a full response on that, that is
1025 something that has to come directly from the Chief Constable himself or other agencies that are linked into MAPPU, which includes Children and Families, for example.

So yes, I am just trying to help.

The President: Thank you.
1030 Any further questions to Mr Bateman?

Mrs Maska: Yes, please, Mr President.

The President: Mrs Maska.
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Mrs Maska: It is a hypothetical situation but I wonder – and this is again through personal experience – if a convicted sex offender is living in one location but say forms a relationship, takes a partner, who lives elsewhere and has children, and it takes months actually for this to come to light, the children may be exposed to that risk because their mother, say, has no idea of the past history of her new partner. I am wondering how that is dealt with under current provisions?
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To my personal knowledge, it only came to light in the case I have in mind, through benefits checking who was living at a property and maybe claiming benefits that were not entitled to. So a register of some kind, such as my colleague, Mrs Lord-Brennan, has referred to, might assist all the agencies in keeping ... Even though it is a small island it is very easy, to my knowledge, to actually work behind the scenes, go behind borders and doors. I say borders, from one town to another. Although it is a small island, it is amazing what can go on without even the Police being aware of that. I am wondering how that is handled at the moment in terms of public protection?
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Thank you, Mr President.
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The President: Thank you, Mrs Maska.
Mr Bateman.

Mr Bateman: I do believe this is genuinely an area where I must defer and invite questions in another place, another time to the Chief Constable as that does fall within his operational areas of responsibility.
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Mrs Maska: Thank you, Mr President.

The President: Thank you.
1060 Okay, Miss August-Hanson to complete your reply.

Miss August-Hanson: Thank you, Mr President.

1065 I think what we have in law presently, at the moment, is not brilliant. It has been sort of 27 years in the coming to bring this piece of legislation forward, which is going to do a hell of a lot more in terms of trying to make those connections between the Police here and the Police

elsewhere to try and bridge the gaps that we currently have in our society, which have been in the past relatively poor, just to finish off that discussion.

1070 What I would like to hear though, Mr President, if you would be agreeable, I know you do not want to linger too much on one clause, but if I might ask Mr Bateman a question?

The President: Yes, by all means.

Miss August-Hanson: Thank you, sorry, Tom.

1075 In the scenario that Mrs Maska has just described, within this legislation here how are those connections made?

1080 **Mr Bateman:** I think on the one hand I must again repeat and defer that the practical safeguarding and knowledge of where sex offenders are and where they move to and who is on is an operational matter for the Chief Constable.

In terms of the legislation that we are dealing with we will be covering next week in notifications, sexual risk and sexual harm. I think that is a matter we can address perhaps more fully next week.

1085 **The President:** Okay, thank you.

Miss August-Hanson: Thank you, Mr President.

Just going to Mr Greenhill, and I believe that was the first question that he has asked so congratulations and thank you, it is a very good question!

1090 We did talk about this at length while I was in the Department and certainly with Dr Alex Allinson, who also worked with me on this piece of legislation, with Tom, and with various different drafters and we kind of ended up, I believe, unless Tom has anything further to add, coming to the conclusion that 'regulated profession' needs to be (a) a profession, but (b) they need to be responsible for children in some way, shape or form sitting within Government and are in some way corporate parents of those children, so that would be the reason why it is listed thus here.

1095 Thank you, Mr President.

1100 **The President:** I put to Council that clause 87 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

I think clause 88 is being held over, in which case we move to clause 89.

1105 **Miss August-Hanson:** Mr President, clause 89 makes it possible to prosecute offences committed outside the Island by persons ordinarily resident in the Island and I beg to move that clause 89 stand part of the Bill.

The President: Mrs Maska.

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

1110 **The President:** I put clause 89, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 90.

1115 **Miss August-Hanson:** Clause 90 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 that clause 90 do stand part of the Bill.

1120 **The President:** Mrs Maska.

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

1125 **The President:** I put clause 90. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 91 to 94.

Miss August-Hanson: Mr President, clauses 91 to 94 deal with the issue of consent.

1130 Clause 91 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.

1135 Clause 92 sets out the evidential presumptions about consent. In the event that the three propositions in subsection (1) are proved 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. 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, for example, drugs or alcohol.

1140 Unsurprisingly, this clause created a certain amount of discussion in the other place. The question being whether it covered all the circumstances where it should evidentially be clear a person did not or could not give consent to the act complained of. It was the Department's view, when listening to the arguments, that the circumstances set out in subsection (2) would cover abusive domestic situations.

1145 I commented when moving the Domestic Abuse Bill that there were links and connections between the Bills the DHA was moving. For example, paragraphs (a) and (b) speak of violence or the threat of violence and the domestic abuse offences in the Domestic Abuse Bill outline just those kinds of actions. In fact domestic abuse would negate consent. The clause as drafted has similarities in the legislation of other jurisdictions such as those in Australia.

1150 Clause 93 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 someone known to the complainant.

Clause 94 defines the meanings of 'relevant act' and 'complainant' in the offences to which clauses 92 and 93 apply.

Mr President, I beg to move that clauses 91 to 94 inclusive do stand part of the Bill.

1155

The President: Mrs Maska.

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

1160 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

1165 I am wondering how you address the evidential challenge with this. That is it really, how do you address that, because it is quite reliant on that. Also, aside from obviously I appreciate there are some elements that deal with capacity to some extent, but where does this really link in with capacity?

1170 I suppose the other thing I am concerned about is how do you deal with the fact that actually ... I have raised this in a bit of a tongue-and-cheek way before, but people are not signing forms before doing things, are they? So I worry a little bit about this broad stretch, about sufficient evidence in essentially dealing with human behaviour and human relationships.

1175 Now given in the round and all of that there could be offences that have taken place, there could be other context to the situation and I just feel a little bit concerned that you are trying to boil it down to something where you are looking for a clear indicator of consent almost as an absolute thing. It just feels like we are looking for a black and white when I just think it is quite difficult to deal with. I suppose amongst the concerns that I am probably not articulating very well, I would probably be looking at how the evidential challenge is dealt with so if that could be addressed, and also who gives the consent.

Thank you, Mr President.

1180 **The President:** Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1185 Just to check for the record the use of the word 'capacity' in clause 91, so in order to be able to consent it must be by choice and the person must have the 'freedom and capacity'. Clarity on what that absolutely covers, because in clause 92(2)(e) we talk about the complainant's physical disability preventing the complainant being able to communicate consent and I am interested in whether capacity is understood to cover all, I suppose, mental disabilities or conditions that might impede a person's capacity to give consent, so just to have absolute clarity on that point please.

1190 Thank you, Mr President.

The President: Thank you.
Miss August-Hanson.

1195 **Miss August-Hanson:** Thank you, Mr President.

I think Mrs Lord-Brennan is quite right, the issue of consent is extraordinarily complex and I suppose that this is a very difficult subject matter in getting it down in words and particularly in this way. It is absolutely right that it should be zoned in for scrutiny.

1200 I believe that what it is trying to do at the moment is give a level of generality, it is like balancing generality with specifics and it is quite a difficult thing to do so I would have to refer to the drafter, if I could, in explaining her drafting the words that are down on the page as to whether or not we are dealing with black and white or we are dealing with generalities here. So I would appreciate her explanation of the drafting and how we came to this place that we are sat at right now, because it did from a lot of discussion and a lot of debate within the Department with various different drafters.

1205 In relation to the meaning of consent, which Mrs Poole-Wilson raises, without a mental capacity Bill it is quite difficult to get it defined in law I suppose to an extent because the word 'capacity' crops up in various different places in legislation throughout all of the different Departments. Capacity is in this Bill meant to mean exactly that. Anyone that is not fully able to provide consent they should fall under that. But you are quite right; it is a very general term, people tend to throw it around an awful lot and until we have a mental capacity Act I think that we are kind of flying in the wind to a sense but this it is what it is meant to mean and be interpreted as in the Bill.

1215 So if I could, I would be very grateful if Mr President would allow that I defer to Theresa just regarding the consent wording.

Ms Graves: Hello, may I speak?

The President: Yes, before you come in, Mrs Poole-Wilson.

1220

Mrs Poole-Wilson: Thank you, Mr President.

1225 Just to build on this issue of capacity, earlier in the Bill, clauses 35 and 36, we do explain a bit more what capacity might mean in that context, so these are clauses where we recognise that somebody has a mental disorder impeding choice, and we do provide more context as to what the capacity needs to be about, the ability to understand what is going on and the ability to agree. So I do not know whether that assists in the fact that within earlier clauses in the Bill we spell out a bit more what we mean by capacity but in clause 91 we just use the word.

Thank you, Mr President.

1230 **The President:** Thank you.

Miss August-Hanson, yes, if you invite the drafter, please.

Miss August-Hanson: Thank you, Mr President.

1235 Just to ask the drafter to explain whether or not she feels that the wording that sits within section 92 of the Bill is sufficient to cover all areas in relation to evidence and providing of evidence to prove consent.

And just as a secondary, it is both parties, Mrs Lord-Brennan, that would provide consent in this particular area, not one or the other.

So if you would, Theresa, thank you.

1240

Ms Graves: Thank you, Theresa Graves, legislative drafter.

Dealing first with clause 91, capacity in that sense is mental and physical capacity so basically if you are unable to make the choice due to your mental or physical capacity.

1245 In relation to clause 92, the question of whether or not it covers all of the scenarios that it should cover, I am afraid I would need to defer to Mr Bateman on that point. But in relation to the mechanics of how do you establish whether somebody has consented in practice, that would be an evidential matter when the Police and the prosecution are deciding whether or not to prosecute somebody they will be looking at all of the circumstances and whether there was an element of consent and whether that consent could be said to be withdrawn or whether it was impossible for the alleged victim to give consent. So all of those sorts of things will be considered, even before somebody is prosecuted, and then it will be for the court to listen to the evidence and for the court or the jury to decide whether or not in fact the defence of consent has ... [*Inaudible*] that in fact the alleged victim did consent to the actions that form the activities of the subject to the event.

1255 So I think that is really all I can say, I think it is fairly wide. Clause 92(2) sets out a number of circumstances where it indicates when consent could not be thought to have been given but it would be up to the defendant to say whether or not it was in fact in those circumstances. Hopefully that helps.

1260 **The President:** Now, you are breaking up a little bit but, Miss August-Hanson, can you just tell us if you are satisfied with that explanation?

1265 **Miss August-Hanson:** I am, yes, because I was able to make out much of what she said but I would just like an indication from Members of Council if they were able to do the same, because it was quite broken up there. More importantly, Mrs Lord-Brennan, did you manage to make that out?

1270 **Mrs Lord-Brennan:** I did, but I was not really sure that it was ... I think it is quite hard for a drafter to answer the point about the evidential challenge points that I was making, so I do not take issue with it and I am grateful for the...

The President: In that case, I think on this matter it would be quite acceptable for you to clarify next week. We can proceed to vote on these clauses but you can give the additional clarification to Members next week when you have consulted the Department or the drafter.

1275

Miss August-Hanson: I am very happy to.
Thank you, Mr President.

The President: Thank you.

1280

In that case, can I put clauses 91 to 94 inclusive, those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clauses 95 and 96.

Miss August-Hanson: Thank you, Mr President.

1285

Clause 95 defines 'sexual' for the purposes of this Part.
Clause 96 provides general interpretation for Part 2. In Clause 96 the definition for 'image' was replaced in the other place with an updated definition that allows for the inclusion of, for instance, an image that has been encrypted.
I beg to move that clauses 95 and 96 stand part of the Bill.

1290

The President: Mrs Maska.

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

1295

The President: I put clauses 95 and 96, those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clauses 97, 98 and 99, please.

1300

Miss August-Hanson: Mr President, clauses 97, 98 and 99 relate to indecent displays.

Clause 97 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.

1305

Clause 98 provides a constable with powers of arrest, seizure and entry.

Clause 99 empowers the Department to make a code of conduct about the display of material that it considers may be offensive, including adult titles and some so-called lifestyle magazines.

1310

It is important to emphasise here that we are talking about a code of conduct the Department may make after consultation; it is not necessarily the case that the Department will do so and if it did so it would be to assist rather than to censor.

Mr President, I beg to move that clauses 97, 98 and 99 do stand part of the Bill.

The President: Mrs Maska.

1315

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

The President: I put clauses 97, 98 and 99. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1320

Clauses 100 to 103 inclusive.

Miss August-Hanson: Mr President, these clauses deal with what, for want of a better expression, are extreme pornographic images.

1325 Clause 100 makes it an offence to possess an extreme pornographic image. An image is
pornographic if it is reasonable to assume its production is solely for the purpose of sexual
arousal. In defining an image as pornographic or indeed extremely pornographic an important
factor in any particular case is the context. The definition of 'image' is amended to include
encryption and streaming, as elsewhere in the Bill, to reflect modern usage.

1330 Clause 101 states that an offence is not committed under clause 100 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 when an image is not an excluded image and subsection (5) defines terms used in this
clause for example 'classified work'.

1335 Clause 102 sets out general defences and clause 103 refers to Schedule 1, which was first
introduced by clause 79 and makes special provision in connection with the operation of clause
100 in relation to persons providing information society services within the meaning of that
Schedule.

Mr President, I beg to move that Clauses 100 to 103 stand part of the Bill.

1340 **The President:** Mrs Maska.

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

The President: I put clauses 100 to 103 inclusive. Those in favour, say aye; against, no. The
ayes have it. The ayes have it.

1345 Clauses 104 to 110 inclusive.

Miss August-Hanson: Mr President, Part 5 of the Bill consists of those clauses and deals with
obscene publications and indecent advertisements.

1350 Clause 104 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 105 applies to anything intended to be used for the reproduction or manufacture of
obscene articles.

1355 Clause 106 makes it an offence to publish obscene matter 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.

1360 Mr President, clause 106 was amended in the Keys to remove reference to 16mm moving
picture film as the reference was felt to be unnecessary and covered by existing provisions.
Clause 107 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 in any proceedings to
confirm, or otherwise, the validity of the defence.

Clause 108 sets out the maximum penalties for printing, selling or keeping indecent or
obscene publications.

Clause 109 describes what a classified video recording is and clause 110 provides powers of
search and seizure of obscene articles within premises.

1365 Mr President, I beg to move that clauses 104 to 110 do stand part of the Bill.

The President: Mrs Maska.

1370 **Mrs Maska:** I beg to second, Mr President, and reserve my remarks.

The President: I put clauses 104 to 110 inclusive, those in favour, say aye; against, no. The
ayes have it. The ayes have it.

I understand clauses 111 and 112 will be held over, so we deal with clauses 113 to 119.

1375 **Miss August-Hanson:** Thank you, Mr President.

Those clauses deal with new offences of image-based abuse and have been based on clear legislation enacted in New South Wales, Australia.

Clause 113 establishes the offence of recording an intimate image without consent, or enabling the recording of an intimate image without consent.

1380 Clause 114 provides the offences of distributing an intimate image without consent and of distributing an intimate image of oneself without consent.

1385 Clause 115 is the offence of threatening to record or distribute an intimate image. These offences 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 victims.

1390 Clause 116 provides that where a person is convicted of an offence under sections 113 or 114 the court may order the person to take reasonable actions to remove, retract, recover, delete or destroy any intimate images they recorded or distributed, and to do so within a time period set by the court. The Keys inserted as new subsection (2) provision making it explicit that the court may require a person found guilty of an offence under clause 115 to remove, delete or destroy any intimate image in the person's possession that the person had threatened to distribute within the period specified by the court. 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 the image is no longer in existence.

1395 Clause 117 provides exceptions where the alleged conduct was done for genuine medical or scientific purposes, law enforcement, legal proceedings or where a reasonable person would consider the conduct acceptable given the factors set out in subsection (1)(d).

1400 Clause 118 defines the meaning of consent in relation to intimate image cases and clause 119 provides interpretation of terms relating to clauses 113 to 118, for example, 'distribute', 'intimate image' and 'image'.

Mr President, I beg to move that clauses 113 to 119 inclusive do stand part of the Bill, and with your leave I ask that we continue clauses next week.

The President: Mrs Maska.

1405

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

The President: Mrs Lord-Brennan.

1410 **Mrs Lord-Brennan:** Thank you, Mr President.

1415 I have highlighted to the hon. mover some amendments that are in the pipeline relating to addressing 'publish' as well as 'distribute'. I am aware that this may potentially fall within the clauses that are being moved, although I cannot give a definitive on that because I am waiting for the drafting of those, I am waiting to see exactly where they would fall in the Bill. So when these amendments come forward they would be quite straightforward in that they would merely – I believe, I am waiting to see them – add 'publish' to 'distribute', or they would deal with making sure both publish and distribute are covered. I am happy to proceed on the basis that if I am moving those particular things I would anticipate they would need to meet a higher bar at Third Reading, but at the same time I really do not know where I am at with these because I am waiting.

1420

The President: We are on the final part of the business of the Bill today, 113 to 119, which has been moved and seconded. We can conclude the debate next week in the light of any amendments.

1425

Mrs Lord-Brennan: Yes I am waiting for them, so that might be better. Thank you.

1430 **The President:** That is the way to deal with that.
Mr Mercer.

Mr Mercer: Thank you, Mr President.
Elsewhere in this Bill when we are talking about recording and publishing we are specifically mentioning streaming but it is not present in this particular set of clauses so it could be, for example, that someone could stream an intimate image without consent and that would not be a problem, and I do not think that is the intention of these clauses.

The President: Miss August-Hanson.

1440 **Miss August-Hanson:** Thank you, Mr President.
Can I just double check that there would not be any unintended consequences that I am unaware of because obviously I would be quite happy for that to be there, can I just check with ... ?

1445 **The President:** I suggest that this matter be dealt with next week when we have had time to consult and get the correct information to Council.

Miss August-Hanson: Quite right, thank you, Mr President.

1450 **The President:** Are there any other contributions this morning? That is fine.
Well, the position is, as I say, we are on clauses 133 to 119, there was no intention to deal with any other clauses today, they will be dealt with next week.
That being the case, that concludes the business for today and Council will now stand adjourned until the next sitting, which will take place on Friday 26th June in Tynwald Court at 2.30 p.m.

The Council adjourned at 12.21 p.m.