



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 27th October 2020

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Present:

The President of Tynwald (Hon. S C Rodan OBE)

The Lord Bishop of Sodor and Man (The Rt Rev. P A Eagles),
The Attorney General (Mr J L M Quinn QC),
Miss T M August-Hanson, Mr P A Greenhill, Mr R W Henderson, Mrs K A Lord-Brennan,
Mrs M M Maska, Mr R J Mercer, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Moghrey mie, good morning, Hon. Members.

5 **Members:** Moghrey mie, Mr President.

The President: The Lord Bishop will lead us in prayer.

PRAYERS

The Lord Bishop

Order of the Day

1. Paper laid before the Council

The President: Hon. Members, I welcome you to this first sitting of Council in the new legislative session.

10 I call on the Clerk to lay papers.

The Clerk: Thank you, Mr President.

I lay before the Council the paper listed at Item 1 on the Order Paper:

Sexual Offences and Obscene Publications Bill 2019: Offences and Penalties [[PP No 2020/0176](#)]
(paper issued on 7th October 2020 by the Tynwald Chamber and Information Service)

2. Sexual Offences and Obscene Publications Bill 2019 – Third Reading approved as amended; Bill passed

Miss August-Hanson to move:

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

15 **The President:** Item 2 on our Order Paper is to consider the Third Reading of the Sexual Offences and Obscene Publications Bill 2019. To that we have a concatenated list of six

amendments. Once the Bill has been moved and seconded, we will work systematically through those amendments and then continue with the Third Reading debate.

So with that, I will call the mover, Hon. Member of Council, Miss August-Hanson to move.

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

I hope Members will bear with me this morning. I am somewhat out of breath!

The Sexual Offences and Obscene Publications Bill, the Justice Reform Bill that is on the way, the Council of Ministers (Amendment) Act, the Domestic Abuse Act – it feels quite incredible to say that actually, the Domestic Abuse Act – a culture change that is very much on the horizon still.

25 The Sexual Offences and Obscene Publications Bill and its sister Bills redress a power imbalance: an imbalance between victims of abuse and those who commit these offences. I am not moving this Bill here for Third Reading for myself or for the Department of Home Affairs or Legislative Council or Tynwald. I move this large, complex, detailed Bill, which updates our existing laws and addresses that imbalance of power for every victim who has been failed by a system in
30 the last 28 years that we have, both Government and Tynwald, neglected to protect with modern, intelligent, sensible law.

Through preparing this Bill for Third Reading, the people have spoken loudly. It is time for us to act.

I have met so many incredible people over the past few months, as lobby campaigns ensued
35 across the Island and on social media, and over the past two and a half years that I have been working on this legislation with the Department of Home Affairs. So many people have been victim to these crimes, so many strong people that I am very proud to know and trust.

Since beginning my work on this legislation, my friends, my family and people that I now come to call friends have shared their stories with me regarding sex offences and obscene publications.
40 It has been a frightening and humbling experience that I will never forget.

In moving the Third Reading of the Bill today, I am conscious that it has been subject to a detailed review and a considerable debate in this Chamber. I am very proud of Legislative Council for the work that has been done on this Bill.

I am not going to make a very long speech at Third Reading, because I did open with a very
45 long and detailed First Reading speech, as I am sure everybody remembers. We have had a Second Reading outlining the broad principles behind the Bill and we have gone through all the clauses with careful scrutiny, debated these numerous amendments to get to this point.

As well as Members in here, I would also like to thank the civil servants who have worked weekends and well into the night to bring this legislation to you in the form that you see it now. I
50 would like to thank the drafters for their diligence. This Bill has been checked, second checked and checked again by our drafting team – one that I am proud to work alongside.

Touching on the amendments made to the Bill during the clauses stage and, indeed, into today
55 itself, I would like to thank all Members for the time that they have spent scrutinising the Bill and working with the Department and legislative drafters to form the proposed amendments. My hon. colleague, Mrs Lord-Brennan, introduced amendments that ensure that issues such as upskirting and downblousing were covered by this legislation, suggesting amendments here today that I support wholeheartedly as we tie up our work in this place and ask the other place to consider our arguments for change.

Mrs Poole-Wilson has been diligent as ever, and I will be supporting her amendment to provide
60 additional protection to vulnerable people in this Bill. Her scrutiny has been of incredible assistance to the Department of Home Affairs and I thank the Members of this Chamber for that. I thank you personally for that.

I would like to thank also Mr Henderson for his very intelligent tidying of clause 88 bringing
65 greater equality to the clause on conversion therapy.

It was the case in the other place that Part 8 of the Bill concerning the anonymity of victims, defendants and witnesses led to lengthy debate here, and I have referred to, before, the Minister for Home Affairs, Bill Malarkey, who believed that this level of anonymity was important in order

to maintain as a reality in people's minds that a person is innocent until proven guilty. This has left so many Members on the fence, both here and in another place. People have changed their minds and changed them again.

Crimes have developed due to advances in technology, the use of mobile phones and cameras. It is right that our legislation reflects technological advances. The landscape has changed. Therefore I understand Mrs Caine MHK for Garff's interest in this area and that of Mrs Sharpe, our colleague here. There is a wider policy debate that is yet to be had by the directly elected House of Keys as to whether a person is innocent until proven guilty in the eyes of the public or there is a policy of open justice, and to how far one extends into the other. That is across our criminal justice system and in our community, considering its size. I believe that policy debate needs to be had and needed to have happened some time ago, but it is not too late.

As has been highlighted in a number of high-profile cases, the permanence and stigma, in our modern world, of allegations, thanks to social media and the internet, can very rarely be set straight where a person is acquitted of an offence. It is an area that does need greater thought. It is a complex subject, and I am grateful to the Members of Council and the officers of the Department for putting forward arguments, and counter-arguments as well, to ensure that this was thoroughly debated.

I believe that here we have a very good piece of legislation which has benefited from some considerable examination, both in the other place and in Council, and I am happy with the discussions leading to the amendments that have been made.

Mr President, it has been my privilege to move this piece of Manx legislation that seeks to rationalise and modernise our legislation, so it better protects our community from harm and sets a high penalty for those who might do harm to that community. All that remains for me to do is to thank Mr Henderson, Mr Mercer and Mrs Maska for seconding the Bill at various times, and to thank all Hon. Members for their contributions, their consideration and their genuine interest in this matter.

Mr President, I beg to move that the Sexual Offences and Obscene Publications Bill be read for the third time and do pass back to the House of Keys to consider Council's amendments.

The President: Thank you.
Hon. Member, Mr Mercer.

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

The President: Thank you.

The Reading having been moved and seconded, we will proceed with consideration of the amendments. The first of those is the amendment to clause 19 in the name of Mrs Lord-Brennan. Thank you.

Mrs Lord-Brennan: Thank you, Mr President.

If the role of law is to protect the vulnerable in society, then there can be no more important section of our society to protect than our children. In moving the amendment to clause 19, I ask Members to support the maximum penalty for sexual communication with a child rising from two years, as presently provided in the Bill, to five years.

Mr President, it is important to recognise that sexual communication with a child can be the non-contact gateway offence, foreshadowing more serious abuse and offences. It is also behaviour of that nature which can see children victimised and exploited by perpetrators, by not only predatory behaviour but by subtle coercion. I therefore welcome very much Department support for this amendment and thank the Minister for Home Affairs and the departmental Member in the other place.

I beg to move the amendment standing in my name:

Amendment to clause 19

1. Page 63, line 5, for '2 years custody' substitute «5 years' custody».

120 **The President:** Thank you.
Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

125 I beg to second this amendment brought forward by my hon. colleague, Mrs Lord-Brennan,
and in doing so, I would like to express my full support for this amendment.
Thank you, Mr President.

The President: Mr Henderson.

130 **Mr Henderson:** Eaghtyrane, I would just like to add my support too, because it is very
important that we recognise the severity of what has been described by the Hon. Member,
Mrs Lord-Brennan. Personally, if I had my way I would certainly increase it further, but we have
what we have and I am fully supportive.

135 **The President:** Thank you.
Mrs Lord-Brennan, do you wish to reply?

Mrs Lord-Brennan: Mr President, no, I just wish to move the amendment in my name.
Thank you.

140 **The President:** Thank you.
I put to Council the amendment to clause 19: those in favour, say aye; against, no. The ayes
have it. The ayes have it.
Now, the amendment to clause 24, and I call Mrs Poole-Wilson.

145 **Mrs Poole-Wilson:** Thank you, Mr President.
As Hon. Members will be aware, the question of the position of 16- and 17-year-olds is a matter
that has been a subject of debate in this Council and in another place during the passage of this
Bill, and it was in revisiting that issue that prompted me to suggest the amendment before you
today, which I understand is supported by the Department.

150 Clause 24 appears in Division 6 of the Bill, which is about abuse of trust. The concept of position
of trust in that Division of the Bill is defined more broadly than specific roles and positions,
because it includes the situation where A is in a relationship with B that is exploitative of B.

155 It is also clear in this Division that the Bill regards a child as being anybody under 18. My
concern, however, Hon. Members, was to make sure that in looking at that group of under-18-
year-olds, we do also make sure that the Bill fully takes account of a child's vulnerability which
might put them at risk, more so perhaps than a 16- or 17-year-old in particular who does not have
that vulnerability.

160 So the amendment before you adds in a new factor, if you like, to clause 24(3) – a factor that
would allow the court, when looking at a series of issues, to infer whether a relationship is in fact
exploitative of a child. The amendment before you allows for the court to expressly take into
account the child's vulnerability in the same way that we allow for an adult – someone over 18 –
to have that vulnerability taken into account.

165 I have previously circulated to Members a scenario which perhaps gives some colour to why I
was concerned about this and for the record, I do think it is worth making clear the sort of scenario
that I had in my mind that the clause or the amendment seeks to address. That is the example of
a vulnerable 16- or 17-year-old who, via a dating app, might be exploited by another. Perhaps
there would be a very short-term series of encounters in this sort of situation, perhaps only by

170 exchange of messages, before the two individuals meet and there would be a fleeting sexual
encounter. My concern would be that where a 16- or 17-year-old had apparently *willingly* gone
on such a date and *willingly* exchanged messages with another older person and then willingly
met that other person and experienced a sexual encounter, but due to their vulnerability they
perhaps did not fully appreciate or were properly able to consent to that sexual encounter, then
175 is the clause as previously drafted strong enough to take into account that young person's
vulnerability?

My concern in particular is that a defence might well make a great deal of the apparent
willingness of the young person throughout the build-up to the sexual encounter. They might
argue the age difference was not excessive, the child was 16 or 17 and therefore knew what they
were getting into, there was an exchange of explicit messages that was consensual and that the
180 individual A did not exert control or influence; it was, in fact, consensual. My concern is that
without more to make it clear, as we do with adults, that the court should take full account of the
vulnerability of somebody under 18, then it would not be given due weight in any subsequent
prosecution.

That is my rationale for the amendment. I am very grateful for the officers in the Department
185 and the drafter and the mover for their full consideration and discussion of this and for their
support. So I would like to move the amendment standing in my name:

Amendment to clause 24

2. Page 66, line 6, after subsection (3)(c) insert —

*«(d) the degree of B's vulnerability in any case where B is under the age of 18 and his or her
ability to protect himself or herself from physical or psychological harm is significantly impaired
through physical or mental disability or illness, through intellectual, physiological or psychiatric
impairment or otherwise;».*

Renumber the following paragraphs accordingly.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

190 I would like to second the amendment from Mrs Poole-Wilson. I think it is a worthwhile
addition for clarity and to take account of the situations for 16- and 17-year-olds, to appreciate
the nuances around that.

Thank you.

195 **The President:** Thank you.

Yes, Mr Greenhill.

Mr Greenhill: I would like to thank Mrs Poole-Wilson for bringing this amendment. I fully
support it and thank you for your excellent description of the elements around that.

200 Thank you.

The President: Thank you.

Mrs Poole-Wilson.

205 **Mrs Poole-Wilson:** No, nothing further, thank you, Mr President.

The President: Thank you.

I put to Council the amendment to clause 24. Those in favour, say aye; against, no. The ayes
have it. The ayes have it.

210 We turn now to the amendment to clause 87. Again, I call Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

215 The amendment tabled to clause 87 removes an exclusion to the duty to notify Police of possible victims of child sexual abuse. This loophole, Mr President, if I can put it in that way, currently provides that a section 87 duty does not apply, and I quote:

if the person making the notification has reason to believe that another person in a regulated profession has previously made a child sexual abuse notification in connection with the same act of sexual abuse...

Mr President, I would put it to the Council that this should be removed, via my amendment, so that the duty is clear and unfettered and any doubt removed.

I beg to move:

Amendment to clause 87

3. Page 105, lines 6 to 13, substitute —

«(5) The duty outlined in this section does not apply so long as, in relation to the discovered act of sexual abuse, that person complies with a safeguarding policy prescribed for the purposes of this section in regulations made by the Department.».

220 **The President:** Thank you.
Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

225 I beg to second and in doing so, I would like to thank the Hon. Member for identifying this 'loophole', as she refers to it. I am in full support, and I would urge Hon. Members to vote for this amendment.

The President: Thank you.
Yes, Miss August-Hanson.

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

Just a short addition to this: I cannot recommend enough that Members support this. I think that it is incredibly important that the duty to notify is taken extremely seriously, and I thank Mrs Lord-Brennan for bringing this amendment.

235 Thank you, Mr President.

The President: Thank you.
Mrs Lord-Brennan.

240 **Mrs Lord-Brennan:** Thank you, Mr President. I beg to move.

The President: Thank you.

I put to Council the amendment to clause 87. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

245 We turn now to the fourth amendment on the list: omission of clause 40. I call on Mrs Sharpe to move.

Mrs Sharpe: Thank you, Mr President.

250 I will not be moving the amendments in my name, Mr President, but with your permission, I would like to put on record my thinking behind these amendments and explain why I am not moving them.

The President: If Council is content? *[It was agreed.]* Thank you.

Mrs Sharpe: Thank you, Mr President.

255 So these amendments refer to clause 140, anonymity of suspects and defendants alleged to have committed certain offences, which is found in Part 8 of the Bill entitled, 'Anonymity of victims and others'.

260 I am not seeking to move these amendments, even though I am gravely troubled by clause 140. So to put on record why I am not moving them, firstly, when I explained my misgivings about this clause to Hon. Members from another place, very recently, and asked them whether they might potentially consider an amendment to clause 140, the majority indicated that they would not. Five Hon. Members from another place indicated that they would support an amendment; three indicated they would welcome an amendment in order to have the opportunity for further debate on the subject of anonymity, but would not necessarily support an amendment; and seven said they definitely would oppose an amendment. So there is no getting away from the fact that the majority of Hon. Members in the directly elected Branch do not wish at the moment to consider an amendment to clause 140, and I respect the will of the Keys in that regard.

265 Secondly, I would need the agreement of six of my hon. colleagues in Council in order to move an amendment, and I already know that I do not quite have six, especially as this amendment has already been rejected in this Hon. Chamber, so I do respect the opinion of my hon. colleagues.

270 Nevertheless, I would still like to outline the issues that I have, because I do feel that they still sympathise with these issues, and I do think that this is a subject to which we as Members will be returning in future.

275 So my first issue is that the public were never consulted on whether they might like current legislation appertaining to anonymity in sexual offence cases reversing. The Department of Home Affairs asked in its consultation whether the public agreed that anonymity of defendants could be extended *in some cases*. This is not the same as asking, 'Do you agree that *all* alleged sexual offenders should remain anonymous unless eventually found guilty?'

280 My second point is that currently our open judicial system has evolved in tandem with our free press. Clause 140, as it stands, restricts current press freedom in the case of only the offences covered in this Bill. Are we to start amending various Acts which cover various crimes and introduce various press restrictions in future? It would be unworkable. We need at some point in the near future to decide on what the traditional media are free to report on or not.

To take this wider, we need to decide when it comes to the courts what social media can report on or not, and that means what the public can report on or not – or post or not?

285 My third point is that clause 140, as it stands, means that media laws in the Isle of Man will be out of kilter with those in the UK. Therefore the identity of a defendant will be able to be published by the UK media, but not the Isle of Man media. I believe the public will not like this disparity and that it will lead to accusations against Government of trying to hush things up.

290 Fourthly, most defendants in sexual abuse cases are convicted not because of evidence from one witness but because of patterns of evidence which are revealed when multiple witnesses come forward. If the media cannot reveal the identity of a defendant, then it is likely that other witnesses will not be goaded into coming forward.

295 My fifth point is that although clause 140 provides a backstop, in that a judge may decide that a defendant's anonymity should be lifted because it is thought by the Constabulary that there may be other victims out there, neither the Police nor the judge can ever know *for sure* that there are no other victims out there. Therefore, the argument can be made that perhaps we should be erring on the side of caution and sticking to the current rules. That is, you can be named, but if a judge wishes to keep the defendant anonymous, then they can.

300 Having said all that, I do understand the arguments which were put forward during the clauses stage in another place. Living cheek by jowl as we do in our small community, it must be unimaginably awful to be wrongly accused of a sexual crime, even if you are eventually found not guilty, because your reputation would be forever tarnished.

I have been speaking with the Hon. Member for Douglas East, Mrs Barber, who described to me how difficult it is for people who have sexually offended to be rehabilitated, because everyone

305 knows what they have done. Sexual offenders feel that they will never be given a second chance
to reform.

Thinking further about Mrs Barber's opinion, I began to wonder whether if the identity of
sexual offenders was never revealed – although I do not know how you would keep it a secret,
but if it was *never* revealed – would more sexual offenders be successfully rehabilitated? In other
310 words, if we were kinder to abusers – I suppose ultimately what I mean is that if, as a society, we
could forgive sexual offenders – would it mean that they would not go on to abuse more people
and, because most abusers have themselves been abused, eventually would the numbers of
sexual offences committed in our society diminish?

I do not know the answers to these questions, Mr President, but I feel discussion is needed. I
315 have been speaking with the Hon. Member for Douglas East, Mr Robertshaw, who now will not
have the opportunity in another place to voice his thoughts on this topic, so I am sure he will not
mind my repeating them here. His ultimate belief is that everyone is innocent until proven guilty.
Therefore, he believes no defendant of any crime at all should have their identity revealed, either
in the traditional media or via social media, unless proven guilty.

320 So this clause 140 has been troubling me, Mr President, and I hope I have managed to lay out
clearly my misgivings. I would like to apologise to Hon. Members for not having brought forward
an amendment earlier. I do not feel, especially as my amendments do not have support of the
Department, that I necessarily brought them forward early enough for Hon. Members to really
have a good think about them. So I would like to apologise to Hon. Members for that.

325 On balance, though, I would not like my opinion of this clause to take away the immense relief
I feel on this Bill having reached the Third Reading, and the gratitude I feel towards all the officers
in the Department who have worked so hard on this Bill, together with the late Bill Malarkey and
the mover, the now Minister for Education, Sport and Culture, the Hon. Dr Alex Allinson. I would
also like to extend my sincere thanks to my hon. colleagues for their research and their considered
330 input; and to my hon. friend, Miss August-Hanson for the dedication that she has shown over the
past two and a half years to this Bill.

Thank you, Mr President.

The President: Thank you, Hon. Member.
335 Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President, and I thank Mrs Sharpe for outlining, once again,
her concerns behind clause 140 and also this stage that she has felt that she has been able to get
things to today.

340 It feels to me essentially that this is a matter that needs fuller policy thought around it, which
needs to be resolved and looked at not only by this place. I think that, given that it is potentially
an unresolved matter where further thought needs to happen, perhaps there might be an
opportunity in future Bills to address that. But I think she has done the right thing today. I do not
think that we are ready or minded to support now an amendment that was previously not
345 supported in this place, and I say that having seconded and supported Mrs Sharpe in that.

So I would put out a call, I guess, for a bit more thought, a bit more engagement, more thought-
out, developed policy on this and some consensus around how this matter is dealt with, with
Tynwald in conjunction with the other place.

Thank you, Mr President.

350 **The President:** Yes, Mrs Maska.

Mrs Maska: Thank you, Mr President.

355 Just a brief word: thank you to Mrs Sharpe for being so generous in her explanation of why she
has made the decision not to move this amendment today. I think it is the right decision. As the
hon. mover, Miss August-Hanson, outlined to us, to actually name an accused who is then proven

innocent would put an undue stigma and stain their good name in a way that is very difficult to remove in the modern landscape that we now have, especially with social media.

360 People seem to think that they have a right to say anything and I think in naming someone, whether it be formally, being the community that we have, the word sometimes gets out there. But I agree with my hon. colleague, Mrs Lord-Brennan, that this does need consideration in the future as to how we do treat this whole subject. But I do thank the Hon. Mrs Sharpe for her explanation.

365 Thank you, Mr President.

The President: Thank you.
Mrs Poole-Wilson.

370 **Mrs Poole-Wilson:** Yes, thank you, Mr President, and I also thank Mrs Sharpe for that explanation. I think she has raised a significant point which extends beyond this Bill. I recognise – I think that she has taken the right decision in the present circumstances not to move the amendment – but what strikes me is something that the Lord Bishop has referenced before, that just because there is a minority that is concerned or a minority would support an amendment, it does not mean that it should not be properly debated and considered, and I do feel that this is a wider debate.

375 I have a particular concern, for example, about young people under 18 who are accused of crimes, who *are* protected from being named, but unfortunately the impact of social media means at the moment that there is a lot of comment on social media that actually does identify young individuals. So there is a much broader policy question here that absolutely merits proper consideration, scrutiny and discussion.

380 Thank you, Mr President.

The President: Thank you.
Lord Bishop.

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

I, too, would just like to thank the Hon. Member for those reflections and thoughts, and to say that I would concur that the correct decision has been made.

390 The Hon. Member left us with a very poignant question, I think, which is perhaps one of the root questions around crime and punishment – that is to say, whether, in dealing kindly, as you put it, or leniently perhaps, one is actually able to reduce the criminal impulse in longer-term influence and effect. I think none of us will know the answer to that question, but that is one of those deep philosophical questions underneath it, into which perhaps further research could be taken when we come back to this question another time, as in one form or another, we surely will.

395 Thank you, Mr President.

The President: Thank you, sir.

400 Mrs Sharpe, would you wish to respond to this particular part of the debate? You do not have to!

Mrs Sharpe: Thank you, Mr President.

405 I would just like to say thank you to my colleagues for their comments. I know they agree that there does need to be a lot more thought around what this amendment raises, and I am sure it is something that we will be coming back to in the future.

Thank you, Mr President.

The President: Thank you, Hon. Member.

410 We move now to the fifth amendment and that is substitution of clause 144. I call again Mrs Sharpe, please.

Mrs Sharpe: Thank you, Mr President.
I will not be moving this amendment.

415 **The President:** Thank you.
We turn then to amendment 6, which is an amendment to clause 145.

Mrs Sharpe: Thank you, Mr President.
I will not be moving this amendment.

420 **The President:** And amendments 7 and 8 similarly are consequential.

Mrs Sharpe: That is right, Mr President.

425 **The President:** Thank you very much.
That is fine. Having considered the amendments, the Bill is open for wider discussion at its Third Reading stage, if you wish.
Mrs Lord-Brennan.

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

In reflecting back to my original concerns around the Bill, I felt that certainly something that Legislative Council has concerned itself with has been the matter of ages. In fact, I think it was a specific request that was flagged with us one way or another to give some thought and consideration of that, so I felt it appropriate to convey to the Council some of the points that I had originally raised at First Reading, that I now feel that they are fine in the Bill, and the reasons for that.

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440
445 Certainly some of the remarks that initially did relate to the balance that we have to strike between legislating for sexual behaviour in relation to teenagers, and specifically our need to find a way to protect the vulnerable from abuse, while at the same time not unnecessarily criminalising normal teenage behaviour, and certainly a number of us have reached out to understand on what basis prosecutions would be pursued, in broad guidance, general terms. Of course, the point that I take comfort from is that even though offences may well end up being committed and they are laid out in law as being relevant for the younger age brackets, of course, the public interest would have to apply, in which case that would have to take account of matters – the context, if you like – around that behaviour.

450 I think that in terms of the sort of factors that are taken into account further afield in the UK, when I have been looking at this, whether it is the relevant age of the parties, the parity between the parties regarding sexual, physical, emotional and educational development, the relationship between those parties and what is in the best interests of the welfare of the complainant and the defendant. These are all things that will be especially taken into account where it is the younger age bracket, to assess whether this is about normal teenage sexual behaviour.

I think, in that, another point that we were very aware of is that much of this is around education, and that is something that features specifically in the prosecution guidance which exists in the UK, which I am going to talk a little bit about now.

455 It says that:

In addition, it is not in the public interest to prosecute children who are of the same or similar age and understanding that engage in sexual activity, where the activity is truly consensual for both parties and there are no aggravating features, such as coercion or corruption. In such cases, protection will normally be best achieved by providing education for the children and young people and providing them and their families with access to advisory and counselling services.'

And that, it states there, is the intention of Parliament – of course, they are talking about Westminster there.

460 So I just wanted to convey, that is how I have settled my mind here, that we have a good balance here for protection and also not seeking to overly criminalise normal teenage sexual behaviour.

I will close my comments on that and, finally, I would very much like to thank Miss August-Hanson, for steering this modernising and much-needed piece of legislation through Council; not only that, but really facilitating in every way she possibly could, along with the Department of Home Affairs for the opportunity for proper consideration and improvements in this Branch. I 465 commend her, and I thank her very much. I think that the improvements that we have been able to achieve here will make a real difference on the ground, as it were.

Thank you very much, Mr President.

The President: Thank you.
470 Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to echo what Mrs Lord-Brennan has just said. I will not repeat it, but I think the points that she has made are very important.

475 I recognise that in another place a number of questions were asked and there was specific direction to this Council to look further at some of them. I would like to reassure Members in another place that that work has been undertaken. There were some technical points which I know Hon. Members of the Council have gone back to the mover and the Department of Home Affairs to double-check on and seek clarity, and those questions have been answered 480 satisfactorily. I, too, would like to thank the mover very much for her diligence and hard work and willingness to engage with all Members of Council in their questions and points, along with the officers and the drafter.

One thing that I would like to put on the record at this stage is that we are modernising our legislation, which is quite right, but actually the world moves fast and the modernising legislation 485 we are now bringing forward is based on UK legislation, which is already nearly 20 years in being, and so I would say that, in common with Mrs Lord-Brennan, people like the Director of Prosecutions have been enormously helpful in explaining what the policy approach is to considering different circumstances and whether a prosecution would be in the public interest; but there is also an important feedback loop here, where if we do become aware that there are 490 gaps in our legislative provision, particularly when it comes to the vulnerability of young people, that line between normal teenage sexual behaviour, which we would all agree we do not want to criminalise, but also making sure there is appropriate protection for those who need protection, then the feedback loop is important so that we can act in a timely way to update our legislation further as needed.

495 Thank you, Mr President.

The President: I call on the mover to reply, Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

500 I will make this very brief. I agree with absolutely every word that Mrs Lord-Brennan and Mrs Poole-Wilson have just had to say. I thank them, though, for what they have said. It has been a lot of hard work on the part of an awful lot of people, and some of those have been a little bit under-resourced over at the Department of Home Affairs, and they have worked extremely hard to try to make up for that.

505 The ages: I think that Mrs Lord-Brennan has made this point with domestic abuse as well as with sexual offences and obscene publications, and we have all talked about this a number of times, whether it be in this place, in another place and in Tynwald. We have talked about this

510 being the foundation stone, and we have talked about there being a strategy that needs to follow, good policy and guidance that need to follow, and that needing to be interlinked throughout the Departments that are involved in various areas of this. I think it is incredibly important that the Departments that are involved with these pieces of social legislation work closely together, to make sure that we get this right; in places, we have not in the past. It is time to build on the culture change, above and beyond what we have now legislated for, should the House agree with, quite frankly, the absolute above-and-beyond amount of scrutiny that has happened in this place.

515 I am really very proud to be part of this Legislative Council and to work alongside Members who have got this level of interest in legislation, as I do myself, and I am very proud to work alongside all of you. Mrs Poole-Wilson is quite right, all Members in here have been picking up on the various aspects that have been highlighted by Keys and then have taken that one step further and given a very detailed review of this Bill.

520 I would also like to thank the Director of Prosecutions as well for her very helpful support. Obviously she has had to be very careful of a line not to be crossed, and she has done that in a very professional manner, and I have a great deal of respect for her.

525 Mrs Poole-Wilson also makes mention of the feedback loop, and I hope that down the line we will not be waiting another 28 years to look at sex offences and obscene publications, and we will not be waiting a long time either for the Domestic Abuse Act, to see some post-legislative scrutiny in this place, another place or in Tynwald. I am very hopeful for that. I think that it will be extraordinarily valuable and it will teach those who need it, to read, learn and take notice a great deal.

530 Again, I would like to thank every Member of this Council, and again I would like to say that good work has been done here.

Thank you, Mr President.

The President: Thank you, Hon. Members.

535 I put now to Council the question that this Bill do pass. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. That concludes the business of Council for this morning. May I say that the Council has demonstrated that they have performed a very thorough revision and consideration of this particular piece of legislation, and I, too, would like to congratulate the mover and all Members for a good job – a very good job.

540 Council will now stand adjourned until our next sitting, 3rd November.

The Council adjourned 11.15 a.m.