



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 22nd October 2019

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Present:

The Speaker (Hon. J P Watterson) (Rushen);
The Chief Minister (Hon. R H Quayle) (Middle);
Mr J R Moorhouse and Hon. G D Cregeen (Arbory, Castletown and Malew);
Hon. A L Cannan and Mr T S Baker (Ayre and Michael);
Hon. C C Thomas and Mrs C A Corlett (Douglas Central);
Mrs C L Barber and Mr C R Robertshaw (Douglas East);
Hon. D J Ashford and Mr G R Peake (Douglas North);
Mrs K J Beecroft and Hon. W M Malarkey (Douglas South);
Mr M J Perkins and Mrs D H P Caine (Garff);
Hon. R K Harmer and Hon. G G Boot (Glenfaba and Peel);
Mr W C Shimmins (Middle);
Mr R E Callister and Ms J M Edge (Onchan);
Dr A J Allinson and Mr L L Hooper (Ramsey);
Hon. L D Skelly (Rushen);
with Mr R I S Phillips, Secretary of the House.

Business transacted

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<i>The House adjourned at 12.31 p.m.</i>	<i>50</i>

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House of Keys

The House met at 10 a.m.

[MR SPEAKER *in the Chair*]

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

Members: Moghrey mie, good morning, Mr Speaker.

5

The Speaker: Welcome back. I call on the Chaplain to lead us in prayer.

PRAYERS

The Chaplain of the House

Welcome to Members of the Powers and Privileges Committee of the National Assembly of Kenya

The Speaker: Hon. Members will have observed that in the Gallery we have visitors from the National Assembly of Kenya, from their Powers and Privileges Committee. They are here to understand a little bit more about the work of the House of Keys and Tynwald, and I am sure the House will join me in giving them a warm welcome.

10

Members: Hear, hear.

1. Questions for Oral Answer

CHIEF MINISTER

1.1. Digital exclusion – Rate on-Island; access to written Government documents

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Chief Minister:

What the rate is of digital exclusion on-Island; and how many people prefer to be able to access written copies of key Government documents?

The Speaker: We turn to Item 1 on our Order Paper, Questions for Oral Answer, and Question 1 is in the hands of the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

15

Mr Moorhouse: Thank you, Mr Speaker.

I would like to ask the Chief Minister what the rate is of digital exclusion on-Island; and how many people prefer to be able to access written copies of key Government documents?

20 **The Speaker:** I call on the Chief Minister to reply.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

The 2006 Digital Inclusion Strategy identified barriers to accessing online services, access to the internet, skills to use digital services and trust and motivation in using online services.

25 The hon. questioner will appreciate the difficulties in measuring levels of skills and more subjective factors like trust and motivation. In terms of access, the Communication Commission's market statistics show that as of June this year current broadband subscriptions provide an approximate penetration rate of 87% of premises on Island.

30 Mr Speaker, it is very difficult to measure how many people prefer to be able to access written copies of key Government documents as these preferences are fluid and are influenced by many factors such as the type of document, an individual's choice at any given time, location, time; and of course access, skills, trust and confidence. For this reason the Isle of Man Government has committed to providing a range of choices in how our documents can be accessed, be that digital or hard copy.

35 We use a number of regular written copy distribution routes including making copies of certain key documents available at libraries, town halls, post offices and doctors' surgeries. In addition, the Welcome Centre acts as a first port of call for Government enquiries and provides access to hard-copy Government documents on request, either by phone or in person.

40 It also has the Get Online room where people can have drop-in access to the internet.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Chief Minister, for such a detailed Answer.

45 How is the Digital Inclusion Strategy promoted and made attractive to those people who are currently classified as 'digitally excluded'?

The Speaker: The Chief Minister to reply.

50 **The Chief Minister:** Thank you, Mr Speaker; and I thank the Hon. Member for his question.

The Digital Inclusion Strategy was developed with the private and third sector; and a working group to share best practice meets periodically. The activities that aim to support those that may be digitally excluded are delivered predominantly by private enterprise and the third sector, and the advertising and promotion of such activities are undertaken respectively by organisations such as Code Club, Love Tech and Age Concern.

55 Digital inclusion, or reducing digital exclusion, is about making sure that people have the capability to use the Internet and wider technology to do things that benefit them day to day, whilst recognising that there will always be some level of exclusion because some people will never have an interest in the ability to get online.

60 **The Speaker:** Supplementary question, Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

65 I would like thank the Chief Minister for making reference to the Digital Inclusion Strategy. He just said there that inclusion is about making sure people have the capability to get online and access digital services, and he neatly wrapped that up by saying there are also people that will never have this ability. My concern with Digital Inclusion Strategy is that it does not really focus

on those people that will never have the ability to access services and documents and things online.

70 Can the Chief Minister please advise what work is being undertaken to make sure these people are being included?

A Member: Hear, hear.

75 **The Speaker:** Chief Minister to reply.

The Chief Minister: Well, thank you, Mr Speaker.

If I can give you an example, maybe, of the latest major documentation that we have been trying to communicate with the people of the Island, and that is the #I'll be ready for Brexit. In that, we have obviously had numerous articles in newspapers and on the radio. We have had 80 copies sent off to Manx Blind Welfare for them to convert it into audio tapes to help with members of the public who are unable to read because obviously of failing eyesight. Libraries, as I mentioned in my earlier answer, Mr Speaker; doctors' surgeries and town halls, etc. where we have sent copies. In fact I was up at Manx Radio not long ago where I left a number of copies 85 there, should any listeners ...

But equally the Welcome Centre does offer a good service to people and if they wish to have a hard copy then they are more than welcome.

The Speaker: Supplementary question, Mr Moorhouse.

90

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Chief Minister, for that answer.

It was particularly interesting to see the 11 copies of the booklet you have just mentioned being used by several people already in Castletown library. Thank you very much.

95 Has data been collected on the number of people accessing digital inclusion support at each of the identified centres?

The Speaker: Chief Minister to reply.

The Chief Minister: No, Mr Speaker, we have not been collecting data.

100 There were focus groups where, I think, 400 people met in focus groups to see the different levels of skills and what more could be done – but that project was five years ago and the data was not kept when that was done.

But if the Hon. Member has a suggestion on how we can improve our circulation to those people who do not have digital access ...

105 If I could respectfully point out that as of Quarter 1 of 2019 there were 34,786 broadband subscriptions across the Island and that has been rising. So if you look at 2016, I think from 2016 to 2019, the first quarter, there was a 22% increase in that.

110 So we are talking about a significantly shrinking number, but I do fully accept that percentage is still a very important sector of the Isle of Man and anything we can do to improve their access to documentation I am more than happy to take on board.

The Speaker: Supplementary question, Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

115 The Chief Minister touched there on those people who may choose not to be digitally enabled and also there are those people that he talked about through the likes of the Manx Blind Welfare service who are not able to access documents. I just wonder how it is decided what charge to levy for large print documents and whether he feels the charge in some cases could lead to exclusion.

120 **The Speaker:** Chief Minister to reply.

The Chief Minister: Thank you, Mr President.

I, personally, have never had a complaint about this but if the Hon. Member feels that there are people who feel the hard copy charges are too great and are putting them off getting the information, then I am more than happy to look into ways of improving that.

125 But what I have pointed out is if you go to the Welcome Centre at the Sea Terminal you can go free online and see all the information you require of Government documents, without having to pay a penny.

130 But if there are examples that the Hon. Member has of how we can improve our connectivity with the public then I am always open to good ideas.

The Speaker: Supplementary question, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

135 Given that it might be thought that his response to the Hon. Member for Ramsey's question was a little bit vague in terms of the need to identify those who are excluded and his comment, his point just made there that he is always open to good ideas, would he not accept that very carefully considered sub-post offices around the Island are an ideal methodology of dispensing those sorts of services to the excluded?

140 And does he therefore feel it is unfortunate that the Council of Ministers has so clearly washed its hands of the future of the sub-post offices?

The Speaker: The Chief Minister to reply.

145 We are straying a little into sub-post offices at this point (**A Member:** Shock, horror!) but in terms of digital exclusion ... ?

The Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

150 I think we are straying into a political view on post offices. Yes, of course, those post offices, I am more than happy to share that information and for them to show the information, but equally let's look at access to mobile phones, Mr Speaker.

The latest mobile phone subscription figures show that there were a total of 92,597 subscriptions in Quarter 1, 2019. Based on the 2016 census total population figure, for every 100 Isle of Man residents there are around 111 mobile phones where this data can be downloaded.

155 So there are lots of ways that technology is constantly trying to improve its access to people and as I say some people may well think they do not want that access, and I think on the whole we are doing enough. But you can never be perfect and as I said before to the Hon. Member for Douglas East, Mrs Barber, if anyone has a better idea then we are totally open to receive those ideas.

1.2. Laxey flooding – Emergency funding for residents

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Chief Minister:

How many Laxey residents have applied for and received £500 of emergency funding?

160 **The Speaker:** Question 2, I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker.

165 I would like to ask the Chief Minister how many Laxey residents have applied for and received £500 of emergency funding?

The Speaker: I call on the Chief Minister to reply.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker.

170 As of yesterday, 21st October, I am informed Treasury has received 37 applications for payment of flood support. Treasury officers are currently working to validate claims made and I am assured they are aware of the need to work quickly in this regard.

Fifteen payments were made on Friday, 18th October and further inquiries are being made on the remaining applicants before payment is made.

175

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you to the Chief Minister for such a rapid response.

180 Will the independent review consider the provisions of emergency support of this type to people affected by future disasters of this kind? It is possibly covered in the terms of reference section 5, subsection 6.

The Speaker: Chief Minister to reply.

185

The Chief Minister: Thank you, Mr Speaker.

The purpose of the review is to establish what happened in this specific circumstance and what needs to be done to protect Laxey from the threat of flooding in the future.

190 It is important that the review has this clear focus and I would be concerned that if we widened the scope of the review to include what the hon. questioner refers to, it could become distracted from that core purpose.

The Speaker: Supplementary question, Mrs Beecroft.

195 **Mrs Beecroft:** Yes, thank you, Mr Speaker.

Could I ask the Chief Minister under what legislation the payments were used – what actually gave *vires* to these payments?

The Speaker: Chief Minister to reply.

200

The Chief Minister: Thank you, Mr President.

It is my understanding that there is an emergency support payment that we can do this from, that Treasury have the powers to make this sort of payment.

205 It is an emergency support payment made to assist households with immediate expenses. I do not have the exact Act with me but I am more than happy to circulate that to all Hon. Members.

The Speaker: Supplementary question, Mrs Beecroft.

210 **Mrs Beecroft:** Yes, thank you, Mr Speaker.

I think the Chief Minister just beat me to my supplementary asking for it to be circulated, when he does find out which legislation was used.

Thank you.

HEALTH AND SOCIAL CARE

1.3. Medical supplies – When contracts were put in place

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Health and Social Care:

Further to his Answer of 8th October 2019, when the contracts for (a) NHS medicine supplies and (b) NHS consumable supplies were put in place?

The Speaker: Question 3, and I call on the Hon. Member for Onchan, Ms Edge.

215

Ms Edge: Thank you, Mr Speaker.

I would like to ask the Minister for Health with regard to his Answer on 8th October 2019, when the contracts for (a) the NHS medicine supplies and (b) NHS consumable supplies were put in place?

220

The Speaker: I call on the Minister for Health and Social Care to reply.

The Minister for Health and Social Care (Mr Ashford): Thank you, Mr Speaker.

225

For the supply of medicines, Noble's Hospital pharmacy is associated with the NHS North-West Regional Commercial medicines unit; and NHS consumable supplies are predominantly acquired from the NHS supply chain. Both organisations are UK public bodies and part of the UK Department of Health and Social Care.

230

In effect, both of these organisations contract with third-party suppliers on our behalf. However, my Department is not party to these third-party contracts, which is the normal practice for how both of these organisations operate and therefore we have no knowledge of the date when each individual supply contract was established.

But if the Hon. Member is asking in the wider context of when we started getting supplies and consumables from the UK, Mr Speaker, in terms of the NHS it has been since day one in 1948.

235

The Speaker: Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

240

I believe that is probably correct for medicines but can the Minister confirm with regard to consumables? Can he look into that further?

But also in his response to his Question last week he said there were other plans for other supply routes. Can the Minister advise further on that, please?

245

The Speaker: The Minister to reply.

The Minister: Thank you, Mr Speaker.

First, in relation to consumables, as I stated, Mr Speaker, they come from the NHS supply chain and that relationship has been in place, including with its predecessor organisations, for roughly around about 30 years. So this is nothing new at all.

250 In relation to the comments I made, Mr Speaker, if I remember them correctly, they were
around saying we do not get everything through NHS supply chains. As I have stated in this
Answer as well there are some consumables to come from outside, and what I have said is we
have put contingency plans in place to ensure those can come into the Island, the same as we
255 have had our discussions with the DHSC in the UK around ensuring that supply continues should
there be a no-deal Brexit.

The Speaker: Supplementary question, Ms Edge.

Ms Edge: Thank you, Mr Speaker.

260 There have been a number of companies on the Island who have lost contracts with the
Hospital in the last couple of years with regard to perhaps paperware items, etc.

Can the Minister therefore confirm what the difference is with that contract – obviously it
has gone from local business now – and what the changes are? And clearly it is a contract that
was not in place 30 years ago.

265

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

270 Like I say, we have been buying stuff off the NHS supply chain and its predecessor bodies for
in excess of 30 years.

In relation to the things that the Hon. Member is referring to it is quite simple, Mr Speaker, it
comes down to price. When we buy through the NHS supply chain obviously they are a very
large organisation and they can get consumables and negotiate deals at a very, very competitive
price and when it comes to the Health Service every penny counts.

275

So while we do take into account obviously to try and keep goods on Island where we can, in
some instances the price differences just cannot be justified for us not to get them from NHS
supply.

The Speaker: Further supplementary question, Ms Edge.

280

Ms Edge: Thank you, Mr Speaker.

Would the Minister therefore mind circulating the business case for that change that took
place within the last couple of years?

285

The Speaker: The Minister.

The Minister: Mr Speaker, there has been no change! I have just explained this.

290 We have been buying from NHS supply chain for over 30 years. I can try and dig back through
the archives to the 1980s if the Hon. Member wishes, Mr Speaker, but it is highly unlikely I am
going to find anything.

There is no change in relationship.

The Speaker: Final supplementary, Ms Edge.

295

Ms Edge: Thank you, Mr Speaker.

The Minister has just stated that, yes, there was a change and they are not using some of the
local suppliers in the last couple of years. So therefore there must be a case for particular
consumable items that took place within the last couple of years. And if the Minister can
circulate that I would appreciate it, please.

300

The Speaker: Minister to reply.

305 **The Minister:** Mr Speaker, I am not going through and making the Department take up time to try and find all individual contract changes – which in some cases are relating to the purchase of the bin bags, which is one I am aware of. That is not a good use of time for the Department of Health and Social Care.

INFRASTRUCTURE

1.4. Manx Electric Railway – Changing to single track operation

The Hon. Member for Middle (Mr Shimmins) to ask the Minister for Infrastructure:

What consideration he has given to changing the Manx Electric Railway to single track operation and reusing the space occupied by one track to create a safer walking and cycle route between Douglas and Ramsey?

The Speaker: Question 4 and I call on the Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

310 I would like to ask the Minister for Infrastructure what consideration he has given to changing the Manx Electric Railway to single track operation and reusing the space occupied by one track to create a safer walking and cycle route between Douglas and Ramsey?

The Speaker: I call on the Minister for Infrastructure to reply.

315 **The Minister for Infrastructure (Mr Harmer):** Thank you, Mr Speaker.

This route is not being considered as a potential walking or cycling route. Single-line working would reduce the operational service to approximately 33% of its current timetable. This would adversely affect income. There would be a significant capital cost addressing resignalling, removing the line and making any necessary safety provision without any significant reduction in operational costs.

320 A draft business case has been prepared and submitted to Treasury for the works to upgrade the old railway line between St John's and Michael. This is hoped to be the start of linking Douglas and Peel with Ramsey.

325 **The Speaker:** Supplementary question, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker; and I am grateful for the Minister's response.

330 I understand that there will be a cost of reconfiguring the Manx Electric Railway. Currently his Department spends around £1 million of taxpayers' money each year on maintaining the 17 miles of double track, which is effectively 34 miles of rails.

What cost savings could be achieved in the long term by running the Manx Electric Railway on a single-track basis which is similar to how the Steam Railway operates?

335 **The Speaker:** Minister to reply.

The Minister: I think there are many other issues in terms of capital costs, for example, to change from existing operational systems of the 1890s to meet modern safety standards of a single track railway, i.e. an upgrade to signalling systems would cost many millions of pounds.

340 And, for example, not all the land occupied by the MER is Government owned – some of the land on the tramway is built subject to long leases and would revert back to the landowner.

What I am trying to say is, there is a lot of complexity with running a historic tramway as opposed to a modern light railway; and all of the signalling and all of the track changes and the other associated hardware costs and infrastructure would cost, as I say, many millions of pounds.

345

The Speaker: Supplementary question, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker.

350 I would like to thank the Minister for his statement about the use of the old railway tracks and obviously using that in terms of cycle routes is an intrinsic part of the Active Travel Strategy. The Hon. Member for Middle circulated a paper, I believe, in terms of metros and one of the things that struck me from that was the statement that a high level of separation is a prerequisite for the successful operation of a tram or train system.

355 Would he agree that in terms of using the existing MER track there are some safety considerations there in terms of both the electrical power input, but also the operation of the trams themselves?

Thank you.

The Speaker: Minister to reply.

360

The Minister: Thank you.

365 I completely agree with that. I think also that the space in between tracks, the signalling and the crossing points there is a huge amount of infrastructure. As I say, the MER is a historic train and its braking distances are very long. All of those considerations and a number of things that have happened that were noteworthy in the press, all indicate this would be a massive undertaking and also have very deep safety concerns, as the Member has just highlighted.

The Speaker: Supplementary question, Mrs Caine.

370 **Mrs Caine:** Thank you, Mr Speaker.

Could I ask the Minister, for the sake of clarity could he confirm that the possibility of closing one track of railway on the MER line for a walking and cycle route is completely ruled out by the Department at this time?

375 And also if he can clarify what investment the Department has put into that length of railway line over recent years?

Thank you.

The Speaker: Minister to reply.

380 **The Minister:** Thank you.

We are not looking at it at the moment, we are looking at so many other things to do with cycling and walking and active travel; and I think linking up St John's to Ramsey would be absolutely fantastic as well. There are hundreds of miles of footpaths that we need to maintain and so forth, and then there is another question on green lanes.

385 There is so much that we need to be doing to encourage people to cycle more. This really in my view is not the appropriate one.

In terms of capital investment I can come back with detail but what we do is we have a fixed capital budget for Heritage Railways that we then use across the network. So it is not just the MER, it is also the Steam Railway.

390 **The Speaker:** Supplementary question, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker; and I am grateful for the Minister's response.

Clearly, safety needs to be our priority. Would the Minister agree that many people are concerned about the safety of vulnerable road users and that segregated routes, which could be established on the Manx Electric Railway, are safer and encourage more people to participate in active travel, which is proven to deliver considerable health and environmental benefits?

The Speaker: Minister to reply.

400 **The Minister:** I am a massive advocate of active travel and those routes, and we know we are going to concentrate on the two and a half miles around the Douglas area and schools and so forth. There are other opportunities for segregated routes, and this is not one of them.

I think the Member from Ramsey highlighted a number of safety issues and the capital outlay would be absolutely immense.

405

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Would the Minister agree with me that if we are going to have segregated routes, completely segregated routes will be far better than something which is only partially segregated as the hon. questioner has suggested?

A completely segregated route, such as reinstating the old railway line from St John's via Kirk Michael up to Ramsey, potentially (**A Member:** Hear, hear.) would also be far cheaper to implement than a major reconstruction of the Manx Electric Railway proposition, and would avoid destroying something which is intrinsic to the tourist appeal of the Isle of Man.

415

Two Members: Hear, hear.

The Speaker: Now, before I call on the Minister to reply, the Question is about reusing the space between Douglas and Ramsey, not about potential other alternatives for the same amount of money.

But with that in mind, I call on the Minister to reply.

The Minister: Thank you, Mr Speaker.

I suppose, though, in some ways about making the best use of money is really important and I think we can celebrate the fact that this House and the other place have supported a new route, a new bridle path, the first one on the Isle of Man all the way through from Douglas to Peel. And subsequently we hope to be able to do St John's all the way to Ramsey.

But putting space for the single track in terms of Douglas to Ramsey, the problem with that is that it is not safe – and the cost of doing it. I would not imagine anybody walking along those tracks at the moment. It would only be a partial segregation, which the Member has highlighted, and it would also at one stroke remove quite a bit of our historical tourist trade.

430

The Speaker: Final supplementary, Mr Shimmins.

435

Mr Shimmins: Thank you, Mr Speaker.

Let me just assure Hon. Members this is certainly not about destroying the Manx Electric Railway, it potentially puts it on a much more sustainable basis for the future.

Is the Minister aware that active tourism has expanded exponentially across Europe and is now one of the fastest growing sectors in tourism? Would he agree that more segregated walking and cycling routes would help the Island attract more visitors; and that other islands

440

such as Tenerife and Menorca now receive several hundred thousand tourists every year, growing their economy?

445 Does he feel that his Department has a key role in providing safer routes to help the Island unlock this exciting economic opportunity?

The Speaker: Notwithstanding the Hon. Member's excitement, the Question is about safer walking and cycling routes between Douglas and Ramsey.

450 Within that context, Minister to reply.

The Minister: Thank you.

I am always keen to work with the Hon. Member and other Members in promoting safer and better routes for cycling and walking, and this is something I am massively passionate about.

1.5. A2 maintenance – Clearing drains and gullies in past four years

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Infrastructure:

How frequently his Department ensures drains and gullies are cleared on the Laxey to Ramsey coast road; and specifically when such routine maintenance has been undertaken on the A2 around the Minorca Hill junction in Laxey, and the Coronay and the Rest and Be Thankful in Maughold during the past four years?

455 **The Speaker:** Question 5 and I call on the Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

460 I would like to ask the Minister for Infrastructure how frequently his Department ensures drains and gullies are cleared on the Laxey to Ramsey coast road; and specifically when such routine maintenance has been undertaken on the A2 around the Minorca Hill junction in Laxey, and the Coronay and the Rest and Be Thankful in Maughold during the past four years?

The Speaker: I call on the Minister for Infrastructure to reply.

The Minister for Infrastructure (Mr Harmer): Thank you, Mr Speaker.

465 I can confirm gullies are scheduled to be cleared once per annum, in line with good practice guidance.

Gullies within the above areas within the Question were cleaned on the following dates: March, April 2015; April, November 2016; May, 2017; October, November 2018; and March, 2019.

470 **The Speaker:** Supplementary question, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

475 So can I ask the Minister, does he feel that the lack of clearance prior to the heavy rain of 1st October led directly to these areas flooding in the recent storm?

The Speaker: Minister to reply.

The Minister: Thank you.

480 I think that is sort of moving on a little bit, but in terms of the causes I know that is part of a wider remit. In terms of the gullies, the view is very much that they became blocked on the day and obviously it was overall quantity of flooding on that day that overwhelmed the network.

In terms of going forward, obviously I have asked for a review of gullies and how those are taken forward.

485

The Speaker: Supplementary question, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

490 Would the Minister agree with me that since the year 2000 the Department of Infrastructure has worked closely with the Green Lane User Group, they actually do a lot maintenance with them – over 2,000 hours has been completed with the Department up to now. Would the Minister acknowledge that?

The Speaker: Minister to reply.

495

The Minister: Thank you, I think that relates to Question 6, but yes.

The Speaker: Question 6. *(Laughter)* Sorry, Mr Perkins, were you ... ?

500 **Mr Perkins:** May I just ask the Minister if he would agree with me that after the hedge clipping it would be prudent to get the gangs to clear the drains after the hedge has been clipped?

The Speaker: Well, we are looking retrospectively, but Minister to reply.

505

The Minister: Thank you.

What I can say is that sweepers are deployed on a bi-monthly basis to ensure that gullies are kept free from detritus and so forth and they pay particular attention, so obviously after hedges are cut and things like that then there will be clearing from that point forth.

510

The Speaker: Before this Question branches out ... **(Several Members: Ugh!)** *(Laughter and interjection)*

1.6. Off-road motorcycling and four-wheel driving – Dol policy

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Infrastructure:

What his Department's policy is in respect of (a) off-road motorcycling and (b) off-road four-wheel driving; and when this was last reviewed?

The Speaker: We will move on to Question 6.

I call on the Hon. Member for Garff, Mrs Caine.

515

Mrs Caine: Thank you, Mr Speaker.

I would like to ask the Minister for Infrastructure what his Department's policy is in respect of (a) off-road motorcycling and (b) off-road four-wheel driving; and when this was last reviewed?

520

The Minister for Infrastructure (Mr Harmer): Thank you, Mr Speaker.

In 2014, after lengthy discussions between Ministers of various Departments, officers and the numerous groups and individuals who use or have an interest in the green lanes, a Green Lane Management Strategy was developed by the Department of Infrastructure. This was published to all Tynwald Members and the public in February 2014, and is still available on the
525 Government website. An internal review of the strategy was carried out in 2016.

Essentially, the strategy states that motorised vehicles will continue to be allowed to use green lanes and that the Green Lane User Group will continue to be the forum where users can meet to discuss issues such as maintenance and restrictions. The green lanes are public highways and are there for the enjoyment of all the residents of the Island as well as to visitors,
530 which bring in much needed revenue.

I appreciate the certain groups and individuals would like to see the use of motorised vehicles on the lanes severely restricted, especially in the uplands. However, whilst I acknowledge this view, the Department has no current plans to post further restrictions, although it is being reviewed whether certain sections should be prioritised for certain users, such as horse riders.

535 As part of the Department's management strategy winter closures will continue, coming into force on 1st November 2019.

The Speaker: Supplementary question, Mrs Caine.

540 **Mrs Caine:** Thank you, Mr Speaker; and I thank the Minister for his response.

I would like to ask him in relation to the green lanes and the number of off-road, particularly motorcycles, now using them between the Agneash Road up to the Mines Trail, the Glen Mona track up to the hills and also above Laxey, off the Ballaragh Road, there are significant amounts of off-road motorcyclists every single weekend, I am told from residents, revving up outside
545 their houses from eight in the morning, all day, all weekend, so causing significant nuisance to particular households. But also they are very concerned that these constant motorcyclists, using particular tracks when the ground is soft following a lot of rainfall, are causing deep ruts that are then acting as a conduit for a huge amount of rainwater to run off the hills, significantly increasing the amount of runoff that is then coming down into Laxey, and exacerbating the
550 storm floods that we had last week.

So I would ask him again, when he talks about it going to be reviewed for road users, such as horse riders, is there a case that some roads should be closed to off-road motorcycles for sensitive reasons in terms of the environment?

Thank you.

555

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

This is one issue in terms of maintenance and I know there are some ... There has been a recent meeting with the Green Lane User Group, and I know one of the areas that is being
560 looked at is at Glen Mona.

Obviously we will continue to review the state of the green lanes and work with the Green Lane User Group. I think the Hon. Member for Douglas North talked about how much work has been put in by volunteers, and we need to continue to work with that.

565 At the moment there is a lot of work done, a lot of maintenance and a lot of hard standing. But I will take all of the comments on board, and obviously we will look to maintain and make sure that those areas are adequate for use.

The Speaker: Supplementary question, Mr Shimmins.

570

Mr Shimmins: Thank you, Mr Speaker.

I note the Minister's responses. Whether it is Sky Hill above Ramsey, the top of the Sloc down south or Kirk Michael and Ballaugh – the lanes above there – there are very deep, severe ruts that are being created by off-road motorcycles. Will his Department work with the Department of Environment, Food and Agriculture to ascertain the long-standing environmental damage and what, if anything, can be done to replace these habitats, which are very valued by many people across the Island?

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

A review was done in 2015 that looked at those environmental impacts. Obviously we will work with DEFA as we look at these lanes, but in many respects some of this can be resolved by good maintenance and that is what we will endeavour to do.

The Speaker: Supplementary question, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

Can I ask the Minister, while everyone wants everybody on the Island to enjoy their activities, and the Isle of Man as a whole, is he aware that in the United Kingdom, the Yorkshire Dales for instance and the Lake District have banned off-road motorcycles from going in those national parks? And one possibility of reducing the amount of damage on the hills would be to restrict the areas where off-road motorcycles can go or to license them or to somehow control them more appropriately so that significant damage is not caused to the hills, which then volunteers and the Departments have to maintain and repair.

So would he agree with me that actually reducing the number and the frequency of off-road motorcycling in the hills would actually reduce the bills for repairs and enhance the area and the environment for all users?

The Speaker: Minister to reply.

The Minister: Thank you.

I am aware that there are different groups in other jurisdictions that do restrict but there are other areas where they do not, so it is a very mixed picture.

I think it is something that we will work with the Green Lane User Group on. They do bring in a considerable economic value as well as fun, as well as for people locally on the Island. But I am aware of damage and we will continue to monitor, and obviously if it deteriorates then that is something we will address.

The Speaker: Supplementary question, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Would the Minister agree with me that this is a cross-Department problem rather than just his Department? It sounds to me like it is connected with DEFA for the uplands; the anti-flooding, the MUA; and the DoI should work together to try and get a resolution of this problem. Would the Minister agree with me that that is the case?

The Speaker: Minister to reply.

The Minister: I am very happy to work with agencies. I should note that these are technically highways but, yes, absolutely we will work with other agencies to resolve a whole wider range of issues.

The Speaker: Supplementary question, Mr Peake.

625 **Mr Peake:** Thank you, Mr Speaker.

Would the Minister agree with me that there is some confusion here on some language being used? These are highways, as the Minister said, and so vehicles do need to be licensed and fully roadworthy to be on these green lanes, and they are not uplands, they are actually highways, as you said. So it is cross-party and there are benefits all around. Would the Minister agree with me
630 that there are also benefits for tourism, as Mr Callister is in charge of, and he did actually quote, 'Isle of Man tourism is very supportive of the remit of the Green Lane User Group whose work and efforts greatly benefit the residents as well as our active visitor markets?' Would the Minister agree with me that there is a cross-party benefit to us all?

635 **The Speaker:** Minister to reply.

The Minister: Thank you and I think the key thing is about management. It is my taking and from talking to various people that at the moment there are a number of improvements. Compared to 15 years ago it is in a better position because volunteers do a lot of that work. A lot
640 of the volunteers that do that work are actually the 4x4 and the motorbikes and so forth.

But it is something that we need to keep a watching eye on to make sure that the green lanes are in a good condition and they are maintained. For example, there are a number of increasing hard standings so that they can be used throughout the season.

645 **The Speaker:** Supplementary question, Mr Perkins.

Mr Perkins: Thank you, Mr Speaker.

Would the Minister agree with me that we should actually look at some sort of additional licensing or permit for people coming in from the UK? Because my hon. colleague, Mrs Caine,
650 and I have heard tales, which I believe are true, of white vans with a UK number plate being parked at the end of some of these trails and the bikes are actually going on the trails with no number plates. Possibly, it may be a suggestion that we have some sort of permit system at the Welcome Centre and even a transducer fitted on the bike so we can actually track where these bikes go. The Green Lane User Group (GLUG) are very cautious on what they do and they do
655 adhere to it, the local lads are pretty good.

I would put it to the House that it is the people that do not know where some of the lanes are that come in from the UK, that do not actually adhere to it. Would the Minister agree with me that we should look at licensing and some sort of permit?

660 **The Speaker:** Minister to reply.

The Minister: Thank you.

There is also talk about transponders and so forth, it is something that we will certainly take up with the Green Lane User Group and discuss with them.

665

The Speaker: Supplementary question, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Would the Minister agree with me that the Department does have a regular established
670 channel of communication with the Green Lane User Group, and that does include liaison with the Auto Cycle Union's off-road officer, that provides a forum for these sorts of issues to be discussed in a very considered manner? And that the tone of both the Green Lane User Group and the Auto Cycle Union's off-road officer is very supportive of ensuring that the management of the Island's off-road tracks is done in a proper way for the long-term benefit of the Island.

675 **Mr Peake:** Hear, hear.

The Speaker: Minister to reply.

The Minister: Thank you.

680 There is a very good communication at the moment and it is in everybody's interest to look after the environment and to look after these highways in every possible way. So that communication is there, that channel is there and that route is there. I would encourage Members and everyone to use that route, because it does come up with good, sensible outcomes.

685 **The Speaker:** Final supplementary, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

690 Just picking up on a point the Minister mentioned that struck a chill into my heart, he said that the Department was looking at increasing hardstanding on the green lanes so that the users are able to use them for the whole of the season. I would suggest wouldn't it be better to protect our historic green lanes? Protect them for the future, for the best environment in our upland and hill land areas and suggest that in fact, where there is a historically intact green lane perhaps it is time to ban motor vehicles from that to protect it for the future, not put
695 hardstanding on so it can be a playground for both local and visiting motorcyclists?

The Speaker: Minister to reply.

The Minister: Thank you.

700 I was referring to where hard standing or stones and so forth had been put in place to improve the condition and so you do not get deep ruts and things like that. So I was really referring to historical, what has happened.

ENTERPRISE

1.7. Airport Technology Gateway – Progress in last 12 months

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Enterprise:

What progress there has been with the Airport Technology Gateway over the last 12 months?

The Speaker: Question 7 and I call on the Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

705 **Mr Moorhouse:** Thank you, Mr Speaker.

I would like to ask the Minister for Enterprise what progress there has been with the Airport Technology Gateway over the last 12 months.

710 **The Speaker:** I call on the Minister for Enterprise to reply.

The Minister for Enterprise (Mr Skelly): Gura mie eu, Loayreyder.

715 The Hon. Member will be aware that I have recently provided him and Minister Cregeen, the constituent MHKs, a detailed update on the progress of the Airport Technology Gateway Project. However, for the benefit of the House, I shall summarise.

Capital funding of £2.1 million from the Economic Development Fund was announced at the February 2019 sitting of Tynwald in order to progress the Gateway Project. It seeks to enhance the appeal of the business areas surrounding the Airport to companies considering relocation to the area and the Isle of Man.

720 A new Airport Technology Gateway design team, headed by Savage and Chadwick architects, was formally appointed in August and is now working across Government to develop a master plan for the project and to progress to a planning approval.

725 A number of key surveys have been commissioned to accompany this application, as required by Planning. During the coming months the design team will be conducting surveys and, most importantly, engaging with interested local stakeholders to understand the needs and opportunities within the local communities. It is anticipated that application will be submitted for in-principle planning approval in the first quarter next year.

730 It should also be noted that the brief to the design team requires that the gateway should be environmentally sensitive and utilise low-carbon impact design and materials which comply with the Government's forthcoming Climate Change Policy. The gateway should also take into account the Island's unique UNESCO Biosphere status.

The Speaker: Supplementary question, Mr Moorhouse.

735 **Mr Moorhouse:** Thank you, Mr Speaker; and thank you, Minister, for that incredible update. When does the Minister believe the planned investment will be visible to those people passing along the Airport corridor?

740 **The Speaker:** The Minister to reply.

The Minister: Gura mie eu.

That will probably be what I would regard as the second phase, the enabling phase. The first phase of course is the planning in principle, the master plan.

745 We know there are a considerable number of our stakeholders involved. There has been a lot of work to get to this particular stage. Now we do have the funds the various different surveys can be commissioned, and engagement with the local stakeholders to ensure that we do have a master plan that can be delivered.

So it would be in the enabling stage after the planning-in-principle application.

750 **The Speaker:** Supplementary question, Mr Cregeen.

Mr Cregeen: Thank you. Mr Speaker.

755 Would the Minister not agree that it has been a working partnership with the Department of Infrastructure as well? So this is cross-Department working regarding the gateway.

The Speaker: Minister to reply.

The Minister: Gura mie eu, Loayreyder.

760 Yes, I would agree with the hon. questioner, the constituent MHK. It has been a partnership and both MHKs have clearly been updated recently with the detail of this and will continue to be. So local stakeholder engagement is absolutely vital.

The Speaker: Supplementary question, Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker; and thank you, Minister.

765 In terms of seeing the change is it possible that that could happen within 12 months? Is that a realistic target?

The Speaker: The Minister to reply.

770 **The Minister:** Gura mie eu.

That would be predicting the outcome of the planning process, and I am sure we all respect that process. When we talk about the various different surveys that need to be conducted to ensure that we have a masterplan that can be delivered, there are eight in total from highways, to drainage, to wildlife, to Heritage landscapes – there is a whole host there that do need to actually be considered and incorporated within that planning process.

775 So I would hope we would all respect that and part of that process will be that local stakeholder engagement.

ENVIRONMENT, FOOD AND AGRICULTURE

1.8. Salmon spawning in Laxey River – Late September works

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Environment, Food and Agriculture:

What recent work was undertaken in the Laxey River to assist salmon spawning; why it was undertaken in late September; and if he will make a statement?

The Speaker: Question 8 and I call on the Hon. Member for Garff, Mrs Caine.

780 **Mrs Caine:** Thank you, Mr Speaker.

I would like to ask the Minister for Environment, Food and Agriculture what recent work was undertaken in the Laxey River to assist salmon spawning; why it was undertaken in late September; and if he will make a statement?

785 **The Speaker:** I call on the Minister for Environment, Food and Agriculture to reply.

The Minister for Environment, Food and Agriculture (Mr Boot): Thank you, Mr Speaker.

790 The recent work undertaken on the river weir adjacent to the Laxey Woollen Mills was conducted by contractors on behalf of Manx Utilities. This weir was refurbished in summer 2015 but assessment had established a requirement for repairs to the weir and reconstruction of the collapsing weir face caused by scour of the riverbed. It was also apparent that flood damage to the 2015 works had partially impeded the passage of migrating salmon and sea trout.

795 Following liaison with the Fisheries Team in DEFA regarding obligations under the Fisheries Act 2012 to provide for the free passage of migratory fish, Manx Utilities commissioned a specialist company to provide the design for the repairs – and at the same time to ensure that these would accommodate a passage for migrating fish and a wide range of flow conditions.

800 Manx Utilities informed the Department in July 2018 that it was committed to undertake the work and intended it to be done this summer, 2019. DEFA has a memorandum of agreement with Manx Utilities which includes the provision that in-channel works in rivers are conducted between the months of July to September, unless prior agreement is reached on an extension. This is to ensure that young fish are large enough to be caught and safely relocated where

necessary before works start, and also to protect the adult fish during the sensitive spawning period which commences in October.

805 In-channel works which do not require fish to be relocated are usually permitted to commence post-TT and occasionally sooner, depending on the nature of the works and the level of ecological risk. The works of the weir at Laxey Woollen Mills were scheduled to commence on 15th July and finish by 23rd August. Unfortunately, a delay led to the contractor not starting works until mid-August. Following further delays, including poor weather and problems with contractor's equipment, the Department agreed to a short extension to allow the works to be
810 completed and were informed by Manx Utilities that the in-channel works were expected to be completed by 4th October.

The Speaker: Supplementary question, Ms Caine.

815 **Mrs Caine:** Thank you, Mr Speaker.

I thank the Minister for that explanation but a couple of queries, if I may? He said it was essential work, the ecological considerations for the impeded salmon. What about the considerations for the village itself, given that the village takes its name from salmon and they have been successfully migrating up that river for centuries, certainly since Viking times?

820 Why was it so critical that this work was undertaken? And if it was so critical, how is it left now? My understanding is the salmon ladder, the repair, is actually in the river further down.

How much did these works cost? Is it critical? And actually does he feel now in retrospect that it was necessary at this time to go ahead with a delayed start date?

825 **The Speaker:** Minister to reply.

The Minister: Thank you.

Well, it is not quite as straightforward as that.

830 From our perspective, the works were commissioned and required by Manx Utilities to refurbish the weir which was already damaged. Our involvement from a DEFA point of view was to ensure that when the works were undertaken fish were able to migrate up and down the river.

So there is little confusion over why we wanted that work done: we were doing it for ecological reasons.

835 I agree with you entirely that people's homes and possible lives are more important than fish, but in this particular instance the weir work was required because of the scouring caused by earlier flood damage, and that is why it was commissioned. We were just working off the back of that to ensure that fish were able to access the upper river areas.

840 This weir was constructed, I understand, in 2015 and there was not one there before that. So until then fish had free access up the river. When you impose an impediment like this obviously it requires some ability for fish to get past it.

The Speaker: Supplementary question, Mrs Caine.

845 **Mrs Caine:** Thank you. Final one from me, thanks.

It is just a query on a general level: is such assistance for migratory fish undertaken elsewhere on the Isle of Man? Is this DEFA policy consistent across the Island and, if so, what other rivers are the focus of their attention?

850 **The Speaker:** Minister.

The Minister: Thank you, Mr Speaker.

855 Yes, it is a key objective of our Native Freshwater Fisheries Strategy that we enable access to upper areas of rivers, and this has happened in other locations; for instance, in my constituency in the River Neb at the Raggatt, a rock ramp was recently built to replace a broken weir. It has greatly improved the passage of fish species and the populations higher up the river. In fact the River Restoration Centre UK regards it as one of the best examples of its kind in the UK.

860 There are other examples, for instance a fish pass at Santon weir near the Fairy Bridge has led to a substantial increase in trout densities and upstream fish and salmon as well. So this is ongoing in terms of what we are trying to achieve ecologically and with our river management policy.

INFRASTRUCTURE

1.9. Off-road vehicles and erosion damage – DEFA repairs in past five years; uplands access and Biosphere status

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Infrastructure:

What work his Department has undertaken on green lanes, hill lanes and footpaths to repair damage caused by off-road vehicles and erosion in the past five years; and whether permitting vehicular access to uplands is in keeping with the Island's Biosphere reserve status?

The Speaker: Question 9 and again I call on the Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

865 I would like to ask the Minister for Infrastructure what work his Department has undertaken on green lanes, hill lanes and footpaths to repair damage caused by off-road vehicles and erosion in the past five years; and whether permitting vehicular access to uplands is in keeping with the Island's Biosphere Reserve status?

870 **The Speaker:** Minister to reply.

The Minister for Infrastructure (Mr Harmer): Thank you, Mr Speaker.

875 My Department, in conjunction with members of the Green Lane User Group (GLUG) have undertaken work on the following upland tracks and footpaths over the past five years: Lhergy Cholvine, Ballacobb, Barnell Lane, Baltic Road, St Luke's, Noble's Park Road, Glen Roy, Gretch Vooar, Narradale, Castlelake Jurby, Slabs to Eairy Cushlin, Glen Mona, Corrody, Ballacuberagh, Ennamona Road, Honey Hill, Glen Dhoo Ballaugh Plantation, Whallag Road (the Whiskey Run), Rollick Road, Sky Hill, East Mountain Gate and Clarum.

880 Permitting vehicles to some of these upland areas has been part of the Manx way of life for generations. The Department's partnership with the Green Lane User Group is a good example of managing the use of the environment and our impact on it.

885 From a Biosphere perspective, there is an interest in connecting people with nature and encouraging them to get out and about and enjoy our Island in a respectful and legal manner which a well-designed and maintained road and footpath infrastructure provides for. But this should not be to the detriment to our landscapes, habitats and species. The key term here is sustainability.

We are aware of damage occurring to some green lanes and constantly reappraise the most appropriate measures to resolve the issues.

The Speaker: Supplementary question, Mrs Caine.

890

Mrs Caine: Thank you, Mr Speaker.

I am interested that the Minister used the word 'sustainability' and I wonder when he reeled off such a long list of damage and such a wide range of roads and upland green lanes that had been repaired, whether he feels that is truly sustainable?

895

He once gave a figure for the amount of public highways that required the amount of money it was thought needed to repair all our roads. I wonder, given the huge number of hill lands and green lanes that they have repaired over recent years, can he give us an indication of how much that has cost? Could he give us an indication how much remains to be repaired? And what would the estimate be for all those to be repaired?

900

The Speaker: I call on the Minister for Infrastructure to reply.

The Minister: Thank you.

905

I think this really refers to the previous Question, and there are about 76 miles of green lane and much of this work is done with volunteers and there is not, as such, a cost to that work.

Obviously this is something that is monitored as the green lanes continue in use; and if they are maintained and as things continue in a satisfactory fashion then we will continue to monitor. But if it comes to pass that the green lanes are not in a suitable state, then obviously that can be reviewed but this is something that is worked on very closely with the Green Lane User Group.

910

The Speaker: Supplementary question, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

915

Would the Minister agree with me that this is a great example of how Government can actually work with the third sector and volunteer groups to share that responsibility?

His own Chief Executive acknowledges the Green Lane User Group has been an essential part of the Department's programme to secure the best social and economic use of the Island's green lane network.

920

I think the Minister must agree with me that these green lanes are for responsible users and that in some cases the user helps to maintain the green lane network.

The Speaker: Minister to reply.

The Minister: Thank you, that is absolutely right.

925

In terms of why there is a list, it is because many of the issues are being proactively maintained as soon as there is damage and putting in long-term solutions to manage the network in a sustainable way.

So it is very much a really good example of how different agencies and Government are working together to maintain and sustain the network.

930

The Speaker: Supplementary question, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

935

I think I would like the Minister to comment, to say that nobody wants to stop the Manx way of life and a hobby that people have enjoyed for generations. I think the issue that we are experiencing across Garff is the frequency, the much-increased frequency and large numbers of people heading off into the hill lands.

940

But is he also aware that it is not just a matter of use of the green lanes, there are tracks and ruts that are going into the uplands and also on footpaths. Only this morning I was sent a picture of severe damage caused apparently by a motor vehicle to the Millennium Way.

So would he accept that there is damage being caused to footpaths and uplands as well as the green lanes, and that however much volunteer input and sustainable policies the Department is trying to put in place perhaps this is just getting too big to control in a sustainable way on our Island?

945

The Speaker: Minister to reply.

The Minister: Thank you, Mr Speaker.

I think it is something that is very much part of our Biosphere status and working in communities is very important and it is not just the Green Lane User Group but we have agencies such as Beach Buddies massively helping on lots of footpaths, and doing that.

950

I think riding motorbikes, if that is the case, on the Millennium Way that is completely unacceptable. We know we are putting measures on a number of footpaths to stop ... When it is a footpath, it is a footpath, and there should not be any motorised vehicles whatsoever.

955

We are keeping an eye on it. We also have to address the very real issue that the weather and the climate are changing, and that is causing a lot more erosion on our network and that we will need to meet that changing need.

The Speaker: That concludes Questions for Oral Answers, Hon. Members.

960

Item 2, Questions for Written Answer, and those will be circulated in due course.

2. Questions for Written Answer

POLICY AND REFORM

2.1. Rate reform public meetings – Attendance figures

The Hon. Member for Arbory, Castletown and Malew (Mr Moorhouse) to ask the Minister for Policy and Reform:

How many people attended the four public meetings on rates reform with a breakdown of (a) Commissioners (at each element of the meeting), (b) the public, (c) MHKs, (d) officers and (e) others?

The Minister for Policy and Reform (Mr Thomas): Whilst no public attendance records were taken at any of the meetings, it is estimated that the following numbers were present:

South	25
West	20
East	30
North	40

There was one officer in an official capacity at the meeting in the south, and two officers for the meetings in the west, east and north.

ENTERPRISE

2.2. Off-road motorcyclists – Bed night value in past five years and DfE promotion

The Hon. Member for Garff (Mr Perkins) to ask the Minister for Enterprise:

What the estimated bed night value is in the past five years of visiting off-road motorcyclists; and how the Department promotes this?

965 **The Minister for Enterprise (Mr Skelly):** The Department only promotes off-road motorcycling, such as trials riding, if it is part of a formally organised special event for visitors.

Events that receive support through the Department's Tourist Event Development Scheme are promoted through the Department's visitisleofman.com website.

970 The off-road, formally organised tourist events that the Department supports through its Tourist Event Development Scheme include:

- The Manx National 2-Day Trial
- The Manx International Classic Trial

975 The event organisers of these two large annual trials estimate that they attract upwards of 2,000 visitors staying for three nights. This figure includes participants, support crew and event-specific organisers. This means that, using the average spend per bed night figure of £116, derived from the Isle of Man Annual Passenger Survey 2018, these two events combined, generate approximately £690,000 per annum. The number of visitors and the length of stay have remained constant over the last five years.

980 The Department has also supported rounds of the British Sidecar Trials Championships, Youth Trials and the British Trials Championship over the last five years.

985 In addition, the Department provides support to both the Douglas Beach Motocross during the TT and the Peel Beach Motocross during the Festival of Motorcycling. These events are promoted through the TT and Festival of Motorcycling race programmes, and the tourism website. As the visitors are already on the Island, and road racing is the primary purpose for their visit, the Department does not claim any event specific additional bed night value for visitors at these events.

990 The Department does not promote unregulated, off-road motorcycling as an activity, either to groups or individuals. Consequently, the Department does not collect data on visiting motorcyclists using green lanes and the countryside for unofficial off-roading for leisure purposes.

Order of the Day

3. BILLS FOR FIRST READING

3.1. Children and Young Persons (Amendment) Bill 2019

3.2. Domestic Abuse Bill 2019

3.3. Limitation (Childhood Abuse) Bill 2019

The Speaker: Item 3, Bills for First Reading. I call on the Secretary to the House.

The Secretary: Bills for First Reading: Children and Young Persons (Amendment) Bill 2019 – Member in charge, Mr Ashford; Domestic Abuse Bill 2019 – Member in charge, Mr Malarkey; 995 Limitation (Childhood Abuse) Bill 2019 – Member in charge, Mr Thomas.

4. BILLS FOR SECOND READING

4.1. Public Sector Pensions (Amendment) Bill 2019 – Second Reading approved

Mr Thomas to move:

That the Public Sector Pensions (Amendment) Bill 2019 be read a second time.

The Speaker: We turn to Item 4, Public Sector Pensions (Amendment) Bill 2019 and I call on Mr Thomas to move.

Mr Thomas: Thank you, Mr Speaker.

1000 The statutory basis for the Isle of Man's Public Sector Pension Schemes is the Public Sector
Pensions Act 2011. This short amendment Bill seeks to improve upon its provisions by: amending
section 3 of the Act which sets out how schemes for the judiciary are made; amending sections 4
and 6 which contain the provision for making schemes so that they include pension regulations
and orders in the definition of schemes; and amending section 15 to amend the Tynwald
1005 procedure for schemes that make administrative changes to schemes, i.e. those that do not
amend contribution or accrual rates.

Stakeholder consultation took place on this amendment Bill with seven responses including a
collective response from members of the judiciary.

1010 Clause 4 of the short Bill is the one which affects the judicial scheme. Under the current
provisions, the consent of each individual in the scheme is required before any change can be
made to the pension scheme. As drafted, the proposed amendment sought to remove that right
and to put in place arrangements that are more aligned to the remainder of the public service.

1015 Following discussions this summer, Government is minded to move an amendment at clauses
stage to address a concern raised by the current judiciary in respect of this clause. And I intend
to support this amendment which adds a saving provision regarding the consent for current
members and, subject to final approval, enables an amendment to the judicial pension scheme
to be brought to Tynwald for approval.

1020 For the benefit of doubt, the amendment proposed in clause 4 is unrelated to the core
functions of the judiciary; rather it is focused on how pension arrangements are implemented
for the judiciary. As such, this amendment does not affect the independence of the judiciary

although it seeks to put in place legislation which provides equity of treatment for all public servants in respect of how changes are made to public sector pension schemes.

1025 The amendment regarding schemes, regulations and orders addresses an issue raised by the fact that under the former Superannuation Act 1984 pension provision was made for police officers by the use of Police Pension Regulations, and for teachers through the Teachers' Superannuation and Pension Orders; whereas the 2011 Act defined the scheme as a Superannuation Scheme made or treated by this Act or made under this Act.

1030 The Public Sector Pensions Authority has been advised that whilst the PSPA may term all public service pension arrangements as schemes, legislatively a scheme is neither an order nor regulations. Therefore whilst the pension arrangements for police and teachers have been deemed to have been made by the PSPA, currently the PSPA has to update the appropriate orders and regulations via an amending scheme rather than amending orders or regulations as the case may be. The PSPA considers that it would be more straightforward to have the ability to make amending orders and regulations, and is therefore seeking to amend the definition of
1035 'schemes' within the 2011 Act to include superannuation orders and regulations.

Finally, in respect of Tynwald powers, the 2011 Act currently states that a scheme or regulations made under this Act must be laid before Tynwald as soon as is practicable after it is made, and if at the sitting at which it is laid or the following sitting Tynwald fails to approve the scheme or regulations, they shall cease to have effect. In cases where amending schemes are
1040 being made for administrative purposes, i.e. correcting a definition or clarifying a rule, the PSPA considers that these procedures are unnecessarily burdensome.

The PSPA is therefore seeking to follow the procedure taken by various items of Social Security legislation where administrative amendment schemes would be subject to negative resolution procedure and therefore only require laying before Tynwald. However, in cases
1045 where an amending scheme seeks to amend the contribution rates, accrual rates or benefit provisions of scheme members then such schemes would be subject to the current procedures, i.e. positive resolution.

The PSPA is therefore seeking to put in place provisions which differentiate between the two types of secondary legislation.

1050 Hon. Members should be assured that the PSPA is not seeking to put in place a procedure that can be utilised to introduce any form of change by stealth, but rather to reduce the burden slightly in respect of administrative changes. I remind Hon. Members that before determining which Tynwald procedure is appropriate in each case the PSPA will have reviewed both the proposed amendments and the feedback received following statutory consultation.

1055 I also remind Members that the PSPA board is made up of both employee and employer representatives with an independent Chair, and any scheme will also have been reviewed by the Attorney General's Chambers and approved by the Council of Ministers for introduction in Government as Government business.

1060 So, and in closing, this Bill neither introduces changes to current schemes nor gives new or different powers to the Public Sector Pensions Authority but it amends the current Act in light of the experience of having to progress pension changes through it.

Mr Speaker, I beg to move the Second Reading of the Public Sector Pensions (Amendment) Bill 2019.

1065 **The Speaker:** Hon. Member for Ayre and Michael, Mr Cannan.

Mr Cannan: Thank you, Mr President.

I beg to second and reserve my remarks.

1070 **The Speaker:** Mr Hooper, Hon. Member for Ramsey.

Mr Hooper: Thank you very much, Mr Speaker; just a few very short questions for the Minister.

1075 In respect of the proposed clause 4, the removal of the consent requirements, he mentioned this is in relation to the judicial schemes. Can he confirm this is solely in respect of the judicial schemes and this condition does not already exist for any other schemes?

1080 My understanding of the reason this clause was originally in the Bill was to help protect the perceived independence of the judiciary or to prevent any perception of interference. Following the removal of this consent mechanism, can he please advise how he intends to make sure that this perception is not affected by this change? And if he could expand perhaps a little bit more on his proposed amendment.

Further on this point, after this consent mechanism has been removed there will need to be an order laid before Tynwald to make actual changes to the judicial pension scheme. Can he please advise what his timescale is in respect of that proposed order?

1085 My last question is: in respect of the procedures he has just referenced, I appreciate that the existing Act already has the affirmative procedure outlined in it, but can the Minister please give us a little bit more information perhaps on why a full approval procedure was not considered appropriate, given how important pension schemes are especially when they are coming before Tynwald Court? I would just appreciate why he does not feel that the highest level of approval should be the most appropriate route.

1090 Thank you.

The Speaker: Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

1095 The Hon. Member for Ramsey has already asked the questions that I was going to ask. So I look forward to the reply.

The Speaker: In that case, I call on the Hon. Member for Douglas Central to reply.

1100 **Mr Thomas:** Thank you.

1105 Dealing with the administrative issue first. This was a point actually raised by one of the teachers' unions in the stakeholder consultation point, so we reflected on it greatly. And, as I said in my original moving speech, is entirely administrative and I hope that every employee inside the scheme, every union representing people inside the scheme can accept that this is purely and simply to reduce the administrative burden for purely definitional changes and clarifications; it is not in any way aimed that this procedure would be changed for material issues like the benefits accrued and the contributions made and all the other aspects of the scheme.

1110 I would remind Hon. Members that state pensions are equally important for people and, as I said in my opening remarks, this is purely making a change that reflects and mirrors the systems inside the Social Security Act, not a massive change. I can absolutely assure this House that the intention – there is nothing stealthy or clever about it – it is purely to bring things in line with the normal procedures for this type of administrative process.

1115 In terms of the judicial arrangements, yes, the hon. questioner and the other hon. questioner who would have asked the same question, makes an incredibly good point, which is that we absolutely need to make sure that not only does the judiciary understand that they are completely independent of the executive branch and the parliamentary branch, except as covered by law and procedure, but the whole public needs to understand that we have an independent judiciary on the Island because that is absolutely fundamental for a healthy democracy.

1120 Hon. Members will remember that we passed the Council of Ministers Act during this year to make that very point and to put it into statute, so a case could be made and somebody could

1125 attempt to argue that in some senses this is connected to that process, but I categorically assert against that and deny that; it is an entirely separate issue. No other public servant has the explicit individual consent and as I presented the case, I think quite clearly in my opening remarks, what we are doing is we are separating out entirely the notion of judicial independence from the idea that there has to be equity in terms of public servant pension arrangements. So a case could be made in terms of the Human Rights Act; a case could be made in terms of reducing salaries – but I have had advice on all of those issues and they are not relevant.

1130 The crucial point in this is that this is in no way aimed at upsetting the very delicate and very precious balance in terms of judicial independence. But it does actually bring fairness into the contributions and the consent around them for the judicial pension scheme.

1135 I was also asked an excellent question about the timetable and this has been a delicate process and I do not want in any way to upset that delicate process, but basically agreement was reached some months ago – there is trust on both sides, and I would hope with a fair wind that the scheme could be before the Tynwald Court no later than February, perhaps even in January or December.

1140 What I need to establish is that there is agreement around the amendment that is proposed in this Branch and also in the other place. And if we can establish that I think we have got everything in place to put to bed this very important part of Public Sector Pension Reform which is bringing the last scheme inside a fair basis of contributions and benefits from the scheme, and also integrating them reasonably into the cost-sharing arrangements in the same way that other public servants are. And at the same time respecting the independence of the judiciary which is absolutely paramount in any functioning democracy.

1145 So I hope, with that, this House can be satisfied and the other place can be satisfied and we can go forward as fast as we can, so we have certainty about the law such that I can bring a judicial scheme to Tynwald in February, perhaps even in January, and you never know, perhaps even in December.

1150 **The Speaker:** I put the question that the Public Sector Pensions (Amendment) Bill 2019 be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

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

Dr Allinson to move:

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

The Speaker: Next Item, Sexual Offences and Obscene Publications Bill 2019 and I call on the Hon. Member for Ramsey, Dr Allinson to move.

1155 **Dr Allinson:** Thank you, Mr Speaker.

I would like to thank the Minister for Home Affairs, the Hon. Bill Malarkey for asking me to take this important piece of legislation through Tynwald.

1160 We live in a country with the lowest crime rate in the British Isles. This sense of safety and absence of fear is a vital foundation of our society. It allows our population to thrive, our young people to develop and attracts people from around the world searching for a better way of life.

Despite this low crime rate, we are not immune from the harm of sexual offences, crimes which represent an expression of power rather than desire and which leave victims hurt, damaged and often robbed of their own self confidence.

1165 In his latest Annual Report, the Chief Constable discussed the rise in reported sexual offences
on the Island over the last few years. He discussed the way that when crimes were classified
according to their impact and severity, sexual offences were by far the most harmful. The
Constabulary continues to vigorously investigate such crimes and bring the perpetrators to
justice. This Bill seeks to update and strengthen the tools available to them to do so and to
reinforce a trust in the criminal justice system which will encourage more victims to come
1170 forward.

The latest crime survey statistics have shown that one in five women in England and Wales
have experienced some type of sexual assault, including attempted assault, since the age of 16
and just under 4% of men have experienced sexual assault in their adult lives.

1175 Mr Speaker, it is vital that as a society we clearly state these crimes must stop and as a
parliament we pass legislation to outlaw such offences and provide reassurance to victims that
they will be treated appropriately by the criminal justice system, their truth heard and the
perpetrators of these acts prosecuted accordingly.

1180 We last updated our legislation 27 years ago. The previous 1967 Sexual Offences Act was
outdated and victimised the people of our Island according to their sexuality. The 1992 Act was a
step forward but I would argue that Tynwald should regularly review such legislation as, whilst
sometimes technical in nature, it reflects our current society's morals, ethics and world view.

1185 As we debate and refine this Bill it will touch on offences and impacts that may have been
experienced by you, your families, your constituents and those people listening to our
deliberations. This is one of the first major pieces of criminal law this Tynwald has had to deal
with and I hope we can proceed with dignity and sincerity. I also hope that those affected by
sexual offences can receive help and support from the excellent organisations we have on the
Island.

1190 The Bill in front of you is based on the United Kingdom Sexual Offences Act 2003. It is
important that our criminal legislation corresponds to that of the adjacent isle as sometimes
sexual offences can cross between borders, and their detection and prosecution involves
multiple jurisdictions.

1195 It also repeals and updates the Obscene Publications and Indecent Advertisements Act 1907.
With new technologies the ability to produce, sell and share indecent images is greater than
ever. There is now a real crossover into sexual offences, especially in relation to indecent images
of children and other forms of extreme pornography. Often these images depict graphic sexual
offences and can encourage their commission.

1200 I would like to thank all the staff at the Department of Home Affairs, the Courts, Constabulary
and Attorney General's Office for their help, advice and assistance in drafting this Bill. I would
also like to thank Mr Hooper and Mr Speaker for their engagement and help during the
consultation period and afterwards in terms of refining some of the detailed clauses. After
looking at the application of laws in England and Wales we have also incorporated concepts
from Scotland and Australia, and consulted law experts in the United Kingdom to enable our
legislation to be as relevant to our Island as possible.

1205 One of the key issues raised by this Bill is that of consent. Consent simply refers to a person's
capacity to make a choice. It cannot be merely implied and in terms of an alleged sexual offence
has to be proved. The Bill specifically details presumptions that may be challenged by the
defendant but makes a clear statement about body autonomy and consensual sexual acts.

1210 This substantial Bill comprises 14 Parts explained by a comprehensive explanatory
memorandum. Part 1 is the introduction to the Bill, and defines a 'child' as a person under the
age of 16, unless specified otherwise in the Bill. Sixteen-year-olds are legally able to vote, marry
and join the British Army yet they cannot buy alcohol or cigarettes until 18. The criminal justice
system is reviewing the way it classes and treats young people, especially men up to the age of
25. There are clauses in this Bill where the Department felt an older age was more suitable and I
look forward to discussing this aspect further with Hon. Members as our debate on the
1215 individual clauses develops.

Part 2 deals with sexual offences and describes the act of rape, penetration, sexual assault, child sex offences and grooming. The wording of these clauses is blunt and graphic. In criminal law this is important in order to steer the courts and jury to determine if an offence was committed beyond reasonable doubt.

1220 Part 2 also deals in detail with abuses of a position of trust and familial child sex offences which can often remain hidden behind a veil of denial and disbelief. It is important that the victims of these crimes are encouraged to come forward and their voices are heard.

1225 The Bill goes on to deal with offences committed against vulnerable adults including those with a mental disorder and is specific in its description of the roles and responsibility of care workers.

The exploitation of sex workers is dealt with. Loitering and soliciting remain an offence as does the keeping of a brothel. Clear powers are vested in the Police to close such premises, if necessary, for the public good.

1230 There is expanded and clear guidance on offences relating to indecent photographs of children. In a digital age the terms 'image' and 'pseudo-image' are used and the increasing use of the internet to circulate images and commission offences is recognised.

1235 As recommended by the United Kingdom Independent Inquiry into Child Sexual Abuse, clause 86 makes it mandatory that professionals such as teachers, social care workers and health care professionals notify the Police promptly if they discover that a child appears to have been subjected to sexual abuse. This duty strengthens formal routes of information-sharing and clearly defines the boundaries of confidentiality.

Part 3 of the Bill details offences related to indecent matter which is publicly displayed but exempts displays within art galleries or when included in the performance of a play or licensed film.

1240 Part 4 deals with the separate issue of extreme pornographic images. These may have been created through the commissioning of an offence. There is increasing evidence that repeated exposure to such images can also encourage or initiate such offences. Due to this concern it is entirely appropriate that there is a separate offence for the possession of such images, although the Bill details images which may be excluded if they are all or part of a classified work.

1245 Part 5 discusses the tests of obscenity to be applied to publications and advertisements which may be thought by some to be obscene. There is exploration of the existing classification system for moving images and a clause detailing those works which may be defended as being of public good.

1250 The reality today is that with the preponderance of mobile phones, most people now have a camera in their pocket. Part 6 of the Bill deals with the crime of voyeurism and recording an intimate image without consent. Although the press has used such terms as 'upskirting' and 'revenge porn' these are inaccurate and sometimes minimise the effect such actions can have on the victim. In the Bill we refer to these offences as 'image-based sexual abuse' to truly represent their significance.

1255 Part 7 of the Bill gives the Constabulary the power to issue a closure notice on premises used in the commission of prostitution or pornographic offences or child sexual offences on the Island. Once these have been given the constable must apply to a court for a closure order and the Bill gives clear guidance regarding the duration of such orders, the right of appeal and possible compensation.

1260 If our society is to honestly tackle the effects and damage caused by sexual offences we must provide the right access to health care and psychological help and support to victims and their families. But we must also reinforce trust in the criminal justice system for those who decide to press charges.

1265 Part 8 of the Bill grants automatic anonymity to the victims and witnesses following an allegation. It is important that the general public have confidence in the court system and the press have an important role in ensuring that justice is seen to be done. However, on a small Island there can be serious long-term repercussions for anyone mentioned in a court report and

1270 implicated in a sexual offence. For this reason, clause 138 extends anonymity to suspects and
defendants as well. This anonymity is not unconditional and can be lifted by an application from
the Constabulary, the prosecution or the judge themselves if deemed to be in the public interest
or essential to encourage other witnesses to come forward.

1275 The balance between the freedom of the press and personal privacy is one which needs
constant review. The intention to grant anonymity for those suspected of committing sexual
offences should not be seen in any way to support the erroneous myth that victims make false
allegations of rape. In a comprehensive 2012 report of over 5,651 prosecutions brought for rape,
the English Crown Prosecution Service found only 35 cases had been malicious. The reality is
that only around 15% of those who experience sexual violence report it to the Police and that
conviction rates for rape are far lower than other crimes. It is the hope of the Department that
greater anonymity will encourage more victims to come forward to seek justice.

1280 There are unfortunately many myths surrounding rape, sexual assault and sexual offences.
Some are based on ignorance or prejudice but others stem from misogyny. The Constabulary
and Courts have made significant progress in understanding and responding to the needs of
victims. It is essential that both young people and the wider population are educated about
healthy relationships and consent. Part 9 of the Bill gives clear guidance about restrictions on
1285 evidence or questions about the complainant's previous sexual history and is aimed to ensure
any victim is supported during the court process.

There is also a balance which must be made between agreed fundamental human rights such
as the right to privacy and the need to protect the wider public from harm. Part 10 details the
notification requirements which a person can be subject to after conviction of a sexual offence.
1290 For the most serious offences, indefinite restrictions and notifications to the Police can be
ordered and travel outside the Island can be monitored or curtailed. The Bill also details the
powers the Police have to enter and search the home of an offender to assess and determine
any further risks they may present.

1295 Sexual Harm Prevention Orders can be made by the court to include any prohibition
considered necessary to protect children, vulnerable adults or the wider general public from
sexual harm. These protections can be wide ranging and include forms of employment, engaging
in particular activities on the internet or travelling off the Island.

1300 The Chief Constable may apply to the court for a Sexual Risk Order to protect the public or
particular members of the public from harm from a defendant who has previously, or is likely to
commit a sexual offence. In the United Kingdom these have allowed authorities to take
preventative action where there is evidence that a child may be at risk of sexual abuse from a
specific individual, and can be used to prevent other individuals from travelling to countries
where the sexual exploitation of children is more prevalent. Whilst there have been public
campaigns about their use in the United Kingdom from some civil liberty groups, their
1305 application has been measured and they continue to exist as a discretionary power in certain
rare cases.

1310 Mr Speaker, as I have previously stated it is important that our legislation on sexual offences
is regularly reviewed to reflect the views and experiences of our society. Previous Acts have
outlawed sexual activity between men and led to a climate of persecution and fear among
sections of our community.

Our young people must now look incredulously at reports from our Island during the 1980s
where it was an offence for a man to love another man. We will never know the harm and
damage our legislation caused to those men or their families. There is no record of the number
of people who took their own lives due to the strain and pressure these laws caused, or the
1315 countless Manxmen who left our Island in disgust never to return. In this very Chamber language
was used by politicians at the time that has no place in any modern society. It was only due to
those who spoke out against injustice and campaigned publicly that our law was changed in
1992 but the damage had been done and even today peoples' lives remain tarnished by a
criminal record from a past era.

1320 Whilst intolerance against the LGBT+ community continues here and abroad, our Equality Act tries to define the society which we have become: one that embraces and values diversity and strives for tolerance and fairness. Part 11 of this Bill deals with pardons and disregards for certain offences. **(A Member: Hear, hear.)**

1325 In the United Kingdom the campaign established to pardon for historic sexual offences and publicity around the case of the late Alan Turing led to an amnesty contained in the Policing and Crime Act 2017.

It seems more fitting that in writing our new Sexual Offences Bill we incorporated this concept in the very framework which previously was used against sections of our population. The purpose of Part 11 is clearly set out in clause 211 which states it is to:

... acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences ...

1330 It is intended that, as in Scotland, an automatic pardon is given to all those convicted of certain specified offences which are no longer illegal. But there may still be people on our Island who carry a criminal record from our misguided past, a criminal record which may stop them applying for certain employment or restricts their ability to move forward in their lives.

1335 The Bill before you enables a person who has been convicted of a historical sexual offence to apply to the Department to have this disregarded and removed from their records. The effects of this disregard are explained along with an appeals process.

I sincerely hope Hon. Members will see this measure as an important step forward to reconcile our past and ensure that the Isle of Man continues to strive towards becoming an equal, inclusive and progressive society.

1340 As our society becomes more diverse, our legislation needs to adapt to new concepts and challenges. Part 13 of the Bill updates our legislation to prohibit the act of female genital mutilation which is a child-safeguarding issue. This physical assault on female sexuality is still practised in some countries and has no place in a modern society. The extra provisions offered here will reinforce the existing Prohibition of Female Genital Mutilation Act 2010.

1345 Finally, Part 14 contains enabling powers to allow the Department, after full consultation with the judiciary and others, to introduce sentencing guidelines in relation to sexual offences. Our criminal justice system is now faced with offences involving hundreds of thousands of images, comprising numerous individual sexual offences often against children, in multiple jurisdictions. It is essential that there is consistency in the prosecution of justice and the sentences applied. In addition to providing guidelines about child image cases it is envisaged these powers may be exercised in relation to other sexual offences, albeit sparingly and only where the dual test is met – that is, guidelines must be in the public interest and enhance the interests of justice.

1355 Mr Speaker, I would like to thank Hon. Members for their patience today. This is a substantial and important Bill with over 230 clauses spanning 260 pages. As I suggested at the outset, such pieces of criminal law have to reflect the standards we hold as a society, standards of decency and care for those in our community who become victims of sexual abuse.

1360 Defining such standards is not an exact science, and relies on measured debate and careful consideration of the sensitive topics involved. There are already a number of amendments which need to be tabled following the publication of this Bill, but I ask all of you to take part and co-operate in the further debates on the individual clauses so that we can, as the representatives of the people of this Island, mould and craft legislation fit for the present and the future.

1365 Mr Speaker, I beg to move that the Sexual Offences and Obscene Publications Bill 2019 receives its Second Reading.

The Speaker: I call on the Hon. Member for Douglas West, Mr Malarkey.

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

1370 **The Speaker:** Thank you.

I call next the Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

1375 I commend the mover of the Bill for the clearly very significant amount of work that has gone into this very important Bill. I fear I have not yet done it justice as I have only read through the Bill once at this stage and obviously will give it very close attention as we progress through the clauses.

1380 I would, however, make two points at this early stage and it is a very difficult area at clause 4, subsections 4 and 5 where the Bill addresses the matter of rape within marriage or civil partnership. How incredibly sensitive and difficult that matter is when it comes to proof of consent. I look forward to examining that in very careful detail, particularly with regard to subsection 5 of the same clause which says that the maximum penalty here is life imprisonment. So that from my perspective will enjoy very close deliberation.

1385 I also at first read had some concerns with regard to clause 132 where it talks about exemption from liability for certain damages with regard to the Constabulary, and when I read about the matter in the UK that has currently gone through, known as the 'Nick' affair – where this character brought extraordinary claims against people like, for example, the Chief of General Staff, whose reputation was utterly destroyed, and whose wife has done her absolute damndest to recover her husband's reputation – is moving now to a successful conclusion of that.

1390 Frankly, the failure of the Police in regard to that whole case brings me to a point of concern about removal of liability with regard to the Police. I look forward to examining that in very close detail as well.

So those are the only two points at this stage that I wish to make.

1395 But also, because it is the Second Reading, I would like to make a general point. It is a strange description but I hope it has some traction.

1400 When I read this Bill, an image came to mind of somebody standing at a sink in a kitchen with an overflowing sink trying to turn the tap off in order to stop the flooding from happening. Yet at the same time – I suppose it is post-Laxey floods, really – one imagined that while the person was concentrating on trying to stop the sink overflowing there was actually a flood outside and a huge flood came through the door, and had people standing up to their knees in cold water. The reason I described that strange analogy is that I fear when we are dealing with this Bill there is a whole huge area that we are not concerned with, and that is access to pornography on the internet for children – which must be a real worry to us all.

1405 So I wonder whether, in his remarks in responding to my comments, he would recognise the fact that there is little or nothing in here about control of internet pornography accessible by children, and does he wish to express concern about that area, and what he must have obviously considered in this regard when he was putting this Bill together in the first instance?

Thank you, Mr Speaker.

1410

The Speaker: I call on the Hon. Member for Garff, Mrs Caine.

Mrs Caine: Thank you, Mr Speaker.

1415 I welcome the legislation before us today. I believe this Bill brings significant modernisation of our laws, in keeping with a digital society necessary for 21st century life and modern technology.

Clauses enabling pardons for people convicted of homosexual activity prior to the 1992 legalisation are particularly welcome, and I commend the Department of Home Affairs for ensuring people impacted now have the ability to receive an official pardon, even accepting that

1420 for many it will come too late. Can I ask, though, for clarity why pardons are automatic for historical homosexual offences but people must apply to the Department of Home Affairs for their criminal record to be wiped clean?

1425 Among the many positive provisions, I do have some concerns over section 138, in that people charged and even on trial for rape and certain other sexual offences will be granted anonymity unless, on coming to trial, the judge is satisfied that this would impose 'a substantial and unreasonable restriction upon the reporting of proceedings at the trial'. This overturns the whole principle of open justice and would seem to be a significant precedent to set. The default position in rape and sexual offences from henceforth, if this law passes, will be no public reporting of any named individual by any media or members of the public during the trial unless
1430 a judge is persuaded that naming the defendant is in the public interest.

If it is considered that going on trial for rape and serious sexual offences is so damaging to a person's reputation, what about other serious offences of violence or even murder? Will those defendants not equally have a case that their identity should also be withheld, that they should also have the protection of anonymity unless and until found guilty of the charges against them?

1435 I can accept that there is a particular stigma with sexual offences, but I wonder if this is a case of the Isle of Man believing we are special, given the size of our Island community, and that protection of the individual outweighs the long-established tenets of open justice. Is this a result of being in a digital age, when news is communicated around the world in minutes thanks to social media platforms; and the digital record of one's crimes and the details of reported court cases can be seen forever with a simple internet search? But that is also the case for court proceedings in other jurisdictions.
1440

Could we conceive of a time in the future when media organisations will be prevented from naming suspects, as well as the alleged victims and underage defendants, in all Isle of Man court cases because of the perceived damage to someone's reputation in the event they are found not guilty?
1445

I can foresee a time when overstretched journalists do not bother to attend court and perform that duty of reporting the detail of both prosecution and defence cases, because the human interest simply will not be there with unnamed defendants. So crimes could go unreported, even when defendants are convicted of offences. The details of those crimes as relayed in court may not be reported because it has not been worth the while of the media to sit through several days of evidence of anonymous people.
1450

What is the opposite of open justice? Because open justice, that citizens have taken for granted for centuries, of justice being seen to be done, is under threat here. Will a judge consider that the likely reputational damage to a rich, powerful or famous individual is more significant than a lesser-known person in our community? Could it lead to one law for the rich and another for ordinary working class?
1455

I do have deep concerns that this would set an unwelcome precedent and that, even when equally applied, the right to anonymity for defendants throughout their trial will put the Isle of Man at risk of being considered a jurisdiction that is less transparent and one that does not uphold the principle of open justice.
1460

Can I ask the hon. mover to confirm whether any media organisations were consulted or have commented about this significant change?

Thank you, Mr Speaker.

1465 **The Speaker:** I call on the Hon. Member for Douglas North, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I thank the Department and the Hon. Member for Ramsey for bringing this forward.

I am sure many of us find it hard to understand a lot of the content in here but generally I think it is about trust and stealing people's future for their own personal gratification must be
1470

stopped, it is abhorrent. It is very important that these adverse childhood experiences are helped. They have a damaging effect; a hugely damaging effect on the rest of their lives.

It will be hard to hear and a lot of these words and phrases will be difficult to listen to, but it is important that we debate them. We must do all that we can to protect the young people from these perpetrators and it is right that we update and review this legislation.

Thank you.

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

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

Firstly, I would like to welcome the automatic pardon that has been included in here and the inclusion of a disregard process. I think both of those things are long overdue and I would like to congratulate the hon. mover on this aspect of the Bill. I did have the same question as the Hon. Member for Garff, however, about this dual process and I would just appreciate some clarity on that, if possible.

1485 I would like to thank the Hon. Member and the officers from the Department and from the Attorney General's Chambers for the time they have spent over the summer going through this Bill with me so I can get a bit more clarity on this.

1490 We all know how important this legislation is and I think the hon. mover has set out very well why we need this Bill and why we need to do this update and this modernising of the legislation, so I am not going to dwell on that. Instead, I am just going to talk very briefly about the areas where I have some concerns in this Bill. As was mentioned in the opening remarks, this is a huge piece of criminal legislation and it is absolutely essential that we get this right.

1495 To start with, right at the start in the definitions section of the Bill it defines a 'vulnerable adult' as somebody over the age of 18. But in very many cases throughout the Bill a 'child' is somebody under the age of 16. So there are circumstances where a vulnerable adult is not being treated as a child or a vulnerable adult, they are being treated as neither. So there are a number of instances throughout the Bill where there is the potential as someone who is vulnerable to fall through the cracks or protections that are built into the Bill, because they are not being classified as a child and entitled to those protections, and they are not being classified as a vulnerable adult and entitled to those protections.

1500 This is 16 and 17-year-olds I am talking about. There is a real risk that people at that age will fall through the cracks, and this is repeated throughout the Bill and I intend to pick this up with the hon. mover separately on the specific instances, but I think there are still a number of them.

1505 The first major gap, I think, in this Bill is in the start of Part 2, specifically clauses 4 to 7. They do not cover the concept of something called 'forced to penetrate'. This is instances where a female is the primary perpetrator of a rape against a man or where a man is forced to engage in sexual activity without consent.

1510 There is an offence in the Bill and it is called 'Causing a person to engage in sexual activity without consent'; but, apart from that, there is no acceptance that this offence is rape. In the Australian state of Victoria there is a specific offence of rape by a compelling penetration – it is missing from our Bill.

1515 There is a recent study by a Dr Siobhan Weare, a lecturer in law at Lancaster University Law School, which is entitled, 'Experiences of men forced-to-penetrate women in the UK: Context consequences and engagement with the criminal justice system.' She summarises the legal problem quite succinctly so I will quote briefly from that report:

Participants were aware that the current legal definition of rape excludes FTP cases. This is because the legal definition in section 1 of the Sexual Offences Act ...

– which are provisions, Hon Members, that are repeated here –

... requires penile penetration of the victim's anus, vagina or mouth by the perpetrator. Therefore, only men can be recognised as principal offenders of rape ... Participants were not, however, aware that what they experienced was already criminalised under section 4 of the Sexual Offences Act.

– which is the section I have just talked about. But:

As discussed at the beginning of the report, this is a very different offence with a different sentencing regime. Suggestions for law reform were put forward by participants ... When participants were asked how they labelled their [FTP] cases the most frequently used label was 'rape'. There is therefore a clear disconnect between how male [FTP] victims label their experiences, and how the law does so.

1520 So highlighting that in this draft Bill, rape carries a life sentence causing a person to engage in sexual activity without consent has a maximum sentence of 10 years. That is a substantial difference. The report concludes:

The importance of appropriately labelling experiences of sexual violence within the criminal law is well-recognised, and therefore serious consideration needs to be given to reforming the law of rape to incorporate FTP cases. There are multiple ways this could be done, including the introduction of a completely gender-neutral definition of rape, or the introduction of a new offence of rape by compelled penetration ...

1525 This issue matters. I would like to ask the Hon. Member moving the Bill that he gives these proposed changes serious consideration and then either makes these changes or comes back to this Hon. House and explains to us why these cases are deserving of less serious criminal penalties when the victims themselves most often classify their experiences as rape.

1530 Clauses 12 to 16, these are later clauses. Later clauses after this in respect of children actually flip an evidential presumption. Clause 21 basically talks about if a person is under 18 it is on the defendant to prove they did not reasonably believe that the person they were engaged with was a child. But for some reason in the earlier clauses this evidential flip is missing. So it would seem that the prosecution has to make this case. I would like to understand from the Hon. Member why there is a difference in treatment here. From my perspective, the Bill needs to be consistent, either it should be of the onus to prove consent should be on the defendant or it should be on the prosecution. But I would like to think it would be consistently treated throughout the Bill.

1535 One of the areas in the Bill where 17-year-olds I think are being poorly treated or, rather, not considered properly, is in clauses 18 and 19, sexual grooming – 'Meeting a child following sexual grooming'. It would seem that it is impossible for a 17-year-old to commit these offences. I wonder if that could be confirmed at some point by the Hon. Member and explained why that decision was made.

1540 Strangely, this issue again rears its head further in the in the Bill, section 48, 'Sexual exploitation of children'. Again, I would like an understanding really, maybe not today, I appreciate these are quite technical points, but if the Hon. Member could circulate something following that I would be grateful.

1545 Moving a little bit further into the Bill, I think there are some problems with what is defined as sexual exploitation in the Bill. So Section 52 talks about sexual exploitation as where, 'An indecent image of B' – B being a child – 'is recorded.' There is no age reference there. So it means that if two consenting 17-year-olds or two consenting 16-year-olds in a relationship where one takes an intimate image of another they have now committed an offence, simply by taking the image.

1550 By taking the image the law recognises they have sexually exploited their fully consenting partner. Now, I suggest that this is slightly ridiculous, and I would like the Hon. Member to maybe consider fixing this. Given the risks involved, I fully appreciate that this is behaviour that should not be encouraged, but it should not be criminalised.

1555 Moving to section 57, there is a very broad interpretation in the Act of the term 'prostitution', simply defined as somebody who 'offers or provides sexual services'. Now, turning to Mr Robertshaw's earlier remarks, does this include somebody who is making pornography?

Surely that is someone providing a sexual service. I have no idea if this is an industry on the Island and I do not know whether it is something that should be encouraged or discouraged, and perhaps the Enterprise Minister might wish to weigh in on that. *(Laughter)*

1560 But I think we could all agree that whatever the case, this is not something that should be criminalised. What about regular films that have sexual scenes in them? An actor being paid to perform a sexual scene – is this covered by the term ‘sexual services’? It does not seem to be defined anywhere and from the research I have done it seems to be interpreted quite broadly across the UK. I think some clarity would be appreciated here because the same goes for
1565 instances of people operating a webcam service or a chatline, I suppose. Again, I have no idea whether this is happening on the Island, but whilst it might be something you wish to discourage it is not something you want to criminalise.

I would like to talk briefly now about the imagery-based offences in the Bill, because I am concerned at the very specific way that Division 16 in the Bill deals with imagery. It is an offence
1570 to have an indecent image of a child in your possession, tick. It is an offence to take, make distribute or show an indecent image of a child, tick. Is it an offence to simply view the image off a screen or off a livestream?

Now I have asked this question and I have been told that case law says yes, it is treated as making an image when you stream it, when it appears on your computer. But I am not
1575 comfortable leaving this up to case law. I think there should be a specific and clear reference in the Bill to streaming, to ensure that the intent of the law is clear when it is further interpreted by the judiciary.

It is also quite relevant when you get into Section 98, it is even more relevant actually because that section appears to make it an offence to possess extreme pornography but not to
1580 *make* extreme pornography, which seems to mean the case law about streaming would not even apply in that circumstance. So I think streaming needs to be factored into the law because it does not seem to have been properly and consistently addressed.

I would also like to ask the hon. mover if he could perhaps clarify what ‘distributing an image’ means in practice? Does it have to be the whole image or something identifiable as an image?
1585 The reason I ask this is quite straightforward. Imagine if you will a jigsaw with a picture of a cat in a field. Now, imagine I have made a hundred of these identical jigsaws. It is possible for one person to go to a random selection of these jigsaws and remove randomly selected pieces to make their own jigsaw image. Imagine if they are doing this after flipping the jigsaws over. Without looking at the image itself, they will not know which pieces of the image came from
1590 which jigsaw; nor from which person they have taken; nor from which section of the image they are actually taking – not until they have reconstructed the whole jigsaw and flipped it over. And that is basically how peer-to-peer file sharing works, although in the digital world pieces are copied not removed.

So I would like to ask: has any one of those hundred people shared an image of a cat in a
1595 field? Now, imagine that is an image of child abuse: has any one of those hundred people shared an image of child abuse? How about the person who has just shared a corner piece of that jigsaw? And until the entire jigsaw is put together and flipped over, has the person collecting the pieces of that jigsaw possession of an image? What if they stopped halfway through and only had enough jigsaw to, say, make the field, not the child. This would then surely come down to
1600 intent, but it does not appear to be a criminal act to intend to download an image of child abuse; only the act of actually doing it would seem to be covered by the Bill.

There is a case in the UK, *R v Dooley 2006*, which seems to make the position in respect to peer-to-peer software quite clear but not particularly pleasant. According to CPS guidance the words included in the Bill, ‘with a view to’ requires that distribution or showing must be one of
1605 the suspect’s purposes but not necessarily his primary purpose. So in this case, the defendant was aware, because of the way his computer was set up that other people could access and share the photographs he had stored. But because he gave evidence it was not his intention and not one of the reasons he had these images, the court held that in those circumstances

1610 awareness the photographs were likely to be seen by others was not enough, and he was entitled to be acquitted.

The point I am making is in doing some research for this Bill it came across very clearly just how difficult it is to prosecute people who are operating with this sort of modern technology in light of the way these Bills are worded. It is clear the law is not strong enough here and I would urge the hon. mover to review this as a matter of priority.

1615 Some of these sections also have a real flaw in treating anybody under the age of 18 as a child. This section would make it a criminal offence for two 17-year-olds in a consenting relationship to have in their possession any sexual imagery of the other unless – and this is bizarre – they live together in an enduring family relationship. Not if they live apart in such a relationship. This language is repeated a few times in the Bill and in the schedules and, given the
1620 hon. Mover’s comment at the start about needing to make sure that our law keeps pace with changing society and family structures, this looks to me to be an oversight which needs correcting.

Moving on to the exposure offences, I wonder if my hon. colleague could advise why it is a requirement for it to be an offence exposing your genitals has to be *intended* to cause alarm and
1625 distress. What if that was the effect but not the intention? ‘I didn’t mean to upset anyone officer, honest’.

Equally, why is exposing others not a specific offence? It has been mentioned in previous correspondence that I have had that it would probably be considered sexual assault, but sexual
1630 assault requires that the touching be sexual. Now, is the act of exposing somebody always sexual? Maybe the act is not but the intended results, the intended end product might be.

Hon. Member, why is intercourse with a dead animal not an offence? Why only a live animal? And actually it is not just a live animal: it is a live animal if I *knew* it was alive, or I did not *care* if it
was alive. I really think we need an explanation of that one.

In clause 86 I would like to question why childminders are not included in the list of
1635 professions with a duty to mandatory report. I am also aware of concerns from teaching unions about the mandatory reporting in respect of teachers and I would appreciate a little bit of clarity on how this clause was consulted on.

I am also concerned this clause does not apply to vulnerable people and it does not seem like
1640 there is an equivalent provision elsewhere in the Bill that does. I would argue that the purpose of mandatory reporting of suspected sexual abuse is to protect those who cannot protect themselves. This applies to children and it must equally apply to vulnerable adults.

I would like to talk briefly about consent now. Can a child consent? Because in some
1645 circumstances a child is someone defined as under the age of 18. Section 89 simply says consent is agreeing by choice with ‘the freedom and capacity to make that choice.’ But earlier sections of the draft Bill talk about where a child has consented and it makes no reference to the age of that child. So I think this is a little bit unclear and risks potentially confusing the issue of the age of consent.

The definitions of consent also make no reference to mental disability, only physical
1650 disability. Clause 90 highlights if a person because of a physical disability cannot communicate consent there can be no consent. There are sections of the Bill that deal with mental disabilities but it looks like in order for them to be relevant the defendant could not be charged with rape. They would have to be charged with sexual activity with a ‘person with a mental disorder impeding choice’. Now again, this matters because the sentencing is different: life for rape,
14 years for the other charge.

1655 Section 90 also talks about threats of violence, fear of violence and using violence. There is no recognition or acceptance of the concept of coercive control, which is recognised in the Domestic Abuse Bill.

It is also more than slightly concerning that only threats of violence are covered and not
1660 other types of threats – so blackmail, for example. This is the same in clause 116 which deals with intimate image offences.

I think the issues of non-violent threats need to be covered when you are talking about consent because interestingly, section 56, which talks about paying for sexual services of a prostitute subjected to force, does refer to a situation where a person uses force, threats or any other form of coercion. So can the hon. mover please advise why it was felt appropriate to include non-violent threats here in respect of the exploitation of individuals through prostitution but not in respect of every other aspect of the Bill?

In clause 95, this talks to Mr Robertshaw's point about online pornography. Can the hon. mover advise if a website is considered to be a public place? Because if it is considered to be a public place I think this Bill does actually adequately address some of the concerns raised by the Hon. Member for Douglas East.

Turning now to Part 5 of the Bill, I would like an explanation from the hon. mover of why clause 104 is so specific. What is it about a moving picture film of a width of not less than 16mm that means a prosecution requires the consent of the Attorney General? This seems to have come from a 1959 Act, but I would suggest technology has moved on somewhat since then.

In this Part there is a defence when it comes to making of obscene films. And we have seen 'film' being defined as something which might 'deprave and corrupt' its viewer – that is quite a broad definition, if ever I have heard one. It is not an offence if you make something which gets an age classification.

So my question for the hon. mover is: how much pornography is actually classified under an official classification body? Can you give us an indication? How about online pornography? Again, I do not know if this Part applies to digital publishing, it would appear to. I am not saying there is an industry involved in making pornography on the Isle of Man but we have a number of data centres. We are a rapidly expanding digital economy and it is not beyond the scope that this material could be hosted or distributed through or via the Isle of Man. I would like to be very careful that we are not criminalising this behaviour accidentally.

Part 6 of the Bill deals with voyeurism and image-based abuse. I am actually really glad to see the two issues separately identified. I am concerned about the way consent is referred to here; voyeurism only appears to be an offence if the offender knows the victim did not consent. There is no recklessness, there is no knowledge or reasonably should have known, you must know someone did not consent. That seems quite hard to prove that someone did not *know* that their victim did not consent. I would have thought that, as is mentioned in several other points in the Bill, that this concept of 'recklessness', as in 'I did not care if they consented or not', needs to be factored in here.

I have also got some concerns about what a court may order rectified. If I record an image without consent, or distribute that image without consent, a court can force me to delete the image. But if I have an intimate image and I threaten to distribute it, I can be convicted of that offence but the court cannot order the image destroyed. So I can then go ahead and threaten you again or actually release the image. It seems a little bit of an oversight.

Part 7 deals with 'Closure Orders' and there is a bit of inconsistency here as well. If a court makes a closure order it can direct that nobody can enter a premises for three months, not even if you live there. It seems a little bit unusual and I would like some clarity on that because the previous clauses actually talk about exceptions for residents, whereas the actual closure orders do not.

Hon. Members, there are a lot more detailed questions that remain unanswered, for example, around the clauses dealing with sexual risk orders and anonymity. I am not going to go through those. I am not going to go through any more of the Bill here today.

What I have tried to do is give an indication and give a flavour of just the serious amount of work there is still to be done on this Bill; and why it is absolutely essential that this Hon. House is given enough time for proper consideration. I really do look forward to engaging further with the hon. mover on all of these issues.

Thank you, Mr Speaker.

The Speaker: Next, I call on the Hon. Member for Douglas Central, Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

1715 I have very brief comments in two areas, as a constituency MHK and as a former Member of the Department of Home Affairs.

The first point is I congratulate the mover, in fact this Hon. House more generally, on bringing this important piece of social legislation. Would the hon. mover agree with me – although full credit has been given to the officers around the place and the current Minister and Members –
1720 that this has been coming for some time? I would just like to put on record massive thanks from my personal point of view to a group of mums and dads, constituents, who worked with Mr Speaker – who was then Minister – in the background, using disguised voices on the media to make sure that we did everything we could to change this legislation and the sentencing legislation; and also social care procedures and also the procedures around how the courts
1725 work.

And with that I would like to just say that basically, I suppose guilt and satisfaction is now there that this legislation is beginning its passage through these things, so a big thank you to that group of mums and dads who had some difficult issues to deal with back five or six years ago.

1730 The second point I would like to say is that, as parliamentarians, obviously we all welcome this legislation that deals with the shocking situation in respect of homosexuality legislation, and often when this sort of legislation has come forward other things have come forward to provide some comfort to those who have endured injustices in the past. I would hope that at some point during the passage of this Bill our Government and parliamentarians can provide that degree of
1735 comfort at the appropriate point.

I do not need to dwell on that point, but to me it would be absolutely appropriate for that to be associated with the pardon that is implicit in this piece of legislation.

Thank you, Mr Speaker.

1740 **The Speaker:** Now, I have no-one else on my list to speak, so with that I will call on the Hon. Member for Ramsey, Dr Allinson to reply.

Dr Allinson: Thank you very much, Mr Speaker.

I would like to thank all those people who have talked and all those people who have not
1745 talked because this is very much a draft Bill before you. As I said at the outset I think it is really important, as the Hon. Member for Ramsey has said, that we spend the right amount of time on this so that we get it right. But we also agree that nothing we do today will be perfect and it will have to change, it will have to evolve. These sorts of laws do. They may be right for this time but in five or 10 years' time as technology moves on and as society moves on we will have to go back
1750 and revisit it.

So whilst I am keen on trying to get this as precise as possible, some of these concepts are very nebulous; some of them are a balance between different rights and different responsibilities and we will have to decide which side of that balance we stand on. We will have to accept that and vote on that and live with that decision until it is reviewed.

1755 If I can just go through some of the points raised, but obviously say that there is quite a lot of detailed work here which we will have to go through clause by clause to adequately balance it up, and also balance up the way the whole Bill sits together as a whole, which is really I suppose the role of the Second Reading to give that overall context, and then later on drill down into the specifics.

1760 Mr Robertshaw talks about the concept of a rape within a marriage and a civil partnership, and this is certainly something that previous legislation was deficient in – the previous legislation did not make it an offence to be raped within a marriage or a civil partnership. That is inherently wrong; we need to have that ability, particularly when we are looking at other aspects of

1765 domestic abuse and domestic violence, that we are quite clear that rape is rape. But he is right that we need to consider the consequences of that, the sentencing, and we need to be cognisant of that.

1770 He also brought up the case in the United Kingdom recently with false accusations of historical childhood sexual abuse. Again, was that a failure of the legislation? Or was that a failure of the application of it on behalf of the Police? I think there is some work to be done about that.

1775 Certainly at the time it was said, I think by the police officers involved, there was an atmosphere at the time that politicians wanted prosecution and so they went after various people. And we need to be very clear that what we do as parliamentarians in terms of drafting the legislation stops there. We are giving the Constabulary and the judiciary the tools to do *their* job. Our job is getting these tools as right and proper as we can.

He also touches on, I suppose, the challenge of our times which is the role of the internet and the amazing good things that have come out of that, but the inherent dangers at the same time, and again getting that balance.

1780 Only last week, the United Kingdom backed down on one of their policies which was trying to bring in age verification for pornographic sites, because they had just found out it was unworkable in a global internet industry, where it was crossing through *many* jurisdictions. I think it is a challenge whether any individual government, however big, can regulate the internet or whether they can put pressure on the internet providers to do so.

1785 What I would say to him is, as part of this Bill, certainly the Department of Home Affairs is looking at the ability for the Police to gain access to electronic devices where a person is under investigation for pornography and who refuses access to those devices because they are encrypted. So there will be a consultation on a draft Bill which will be classed as the Investigatory Powers Data Encryption Bill, which will give the Police on this Island the ability to look more at online services.

1790 But that will not deal with the wider issue of the internet and how we deal with that. I would advocate that part of that *has* to be down to education. I mean, not just for younger people but also slightly older people. We need to take responsibility for what we view online and how that has been produced. What I hope from the Education Bill, when it is presented to this House, is an overall concept about relationships and sex education, and the role of education about domestic abuse, education about consent and how key it is that we get that throughout our society from a very young age.

1800 The Hon. Member, Mrs Caine wonders why pardons are automatic but people have to apply for disregards. A very good question. Disregards are about a particular conviction for a particular act and one of the issues involved in historical sexual offences is that they may have been classified under a whole range of different terms. The Department has felt that the only way to try to deal with this is to do it on an individual case, and for every person who wants their conviction disregarded, for the Department to look at that offence and to go through it with the individual, and to make sure that it is an offence that would no longer be illegal now.

1805 But the experience of the United Kingdom has shown that sometimes offences are far more nebulous, they include a variety of different offences, and one conviction may encompass a whole range of behaviours, some of which is illegal some of which is now legal. I think the only way we can do that is on an individual basis; but the willingness from the Department is genuinely there, and the willingness from the Constabulary to try to get those records and try to get those convictions and let justice be done.

1810 She also talked quite a lot about the balance we, as parliamentarians, need to get between anonymity and the public right to know; and this idea of where the human interest and the ability for justice is seen to be done, how that links in with an idea of open justice. Again, we live in an age where the tabloid press, in a previous decade, were vilified for publicising cases and now it all goes straight online – sometimes by the same people, sometimes otherwise. But that is a difficult balance to make.

1815

What the Department is very keen on is trying to get that anonymity in terms of sexual offences. I think the Hon. Member for Garff is right that sexual offences are inherently different to a lot of other crimes in terms of their severity and their impact.

1820 Is this part of a mission creep towards anonymity for lots of other offences? No. It is a proposition that the effect of being put on trial for sexual offences can be devastating for that person, particularly on a small island; and whether we, as parliamentarians, feel that anonymity should be there as default. However, where the Police, the prosecution or the judge themselves feel that anonymity should be waived, the case will be made and that will be done.

1825 She wonders whether this could lead to one law for the rich and one for the rest of the population. I think we have probably already seen that in the United Kingdom where people who can apply for injunctions get them and people who cannot afford them, do not. In fact I would argue we are doing it the other way round: we are giving that protection to everyone and then saying it can be removed as the case warrants.

1830 Anonymity can be very important already with defendants where it is involving a familial sexual offence, because if you mention the perpetrator you are automatically flagging up the victim. So we do use this but – and it is a clause to be debated – it is whether we need to extend that and have that anonymity on the Island.

1835 I thank her very much for her comment because it is very valid. She asks about whether any of the media organisations have fed into the public consultation. We did ask about this idea of anonymity in the consultation and whether it should be extended and got some responses for it. Unfortunately, the media did not feed into that, but I hope that by her comments today we can trigger this debate and we can think about it in a bit more detail. Because, as the Hon. Member, Mr Hooper says this Bill does deserve the proper consideration and the proper time to do so.

1840 I would like to thank Mr Peake for his comments, and very much they were about trust and I suppose that is trust in the criminal justice system. But also trusting people and saying to people who have been victims of sexual offences, ‘We believe you; come forward and talk to us; you will be heard’.

1845 He also talks about the damaging effects of sexual offences and I think that goes throughout society. What this Bill is doing is not just concentrating on one person, anyone can be a victim of sexual offences whatever their age or their sexual orientation; whatever their nationality or their culture. We know, as parliamentarians, the increasing evidence about adverse childhood experiences and the way those affect people later on in life. So it is intrinsically right to try to deal with that at the source and try to reduce the risk of people being victims of sexual offences.

1850 My hon. colleague from Ramsey makes a number of very valid points about various clauses in the Bill and these are inherently, some are technical and some are conceptual and I will try to deal with them as much as I can, but obviously we need to revisit these as we go through the various clauses.

1855 He mentions the pardons and disregards and I think I have answered that issue, that with convictions there may be a range of sexual offences there, and we need to look at which ones can be disregarded and which ones cannot. But the automatic pardon is there. I am hoping it will be a line drawn to say that was then, we are in a different place now and we are a different society.

1860 He has concerns about the ages used in the Bill – 16 and 18 – and people falling through the cracks and he mentions a number of different scenarios where two consensual 17-year-olds might be taking images of each other of a sexual nature, or might be in a sexual relationship. And that is a very valid point. We as a Department, and with the drafters, struggled with some of these ages. The age of consent is 16: that went out to public consultation and was very much upheld. But when do we think it is permissible to be a prostitute? Aged 16 and one day? Sixteen and two days? Seventeen?

1865 These are very much value judgements; what resonates with us and what resonates with society. What I would say though and, as I have said at the outset, this is not an exact science.

These are giving the tools to the judiciary and to the Police and to the Attorney General's Office to bring charges.

1870 I believe our Attorney General and the officers there look very closely at what offences they bring to court, in the public good. If two 17-year-olds are in a consensual sexual relationship and something is discovered about them, is it in the public good to bring that to prosecution? The answer is no; and I think we need to have some trust in the Attorney General's Office to do the right thing by that.

1875 I would like to thank the Hon. Member, Mr Hooper, for circulating the papers about the experience of men forced to penetrate women. Again, as we go through this Bill, there are some fairly graphic and blunt offences to be dealt with. He quite clearly states that there has been research into this.

1880 I think this is part of a broader issue in terms of men being the victims of sexual offences. Traditionally, and in fact some of our legislation has made only women being the victims, but we *know* that men are victims of sexual abuse at whatever age they are. We have to make sure that not only the legislation is there to recognise that, but that our criminal justice system allows people – men – to come forward and tell their story, and does it in the right way.

1885 The papers that Mr Hooper circulated are very much of that ilk, that many men do not report because they do not think they are going to be believed, because they do not recognise themselves that they have been raped. We need to break that taboo and break that stigma.

1890 The papers he circulated do describe the problems redefining rape, redefining being forced to engage in sexual activity. He is quite right that the sentences for different offences do vary according to their severity. Rape is up to life imprisonment, whereas being forced to engage in sexual intercourse without your consent is a maximum of 10 years. I do not know necessarily the way around this, because even in the papers he has circulated they are not quite sure. They gave some scenarios but they do make the point that more research is needed. But I still certainly welcome him to come forward with perhaps an amendment during the clauses stage if he wishes, and to discuss that with the drafters so we can reach a resolution, and as he says trying to get the Bill 'as well as possible'.

1895 He also talked about definition of sexual service and the idea that somebody setting up a business here with webcams or chatrooms could be criminalised as being a prostitute. Again, the definition of 'sexual service' is quite deliberately broad to encompass things that we would find distasteful. And again it is a value judgement – what we would find distasteful in our society, and what tools we give to the Attorney General to then take it forward.

1900 In terms of licensing and the classification of films and how much of the internet is licensed and classified by the British Board, I am really not quite sure of that, Mr Speaker. And again, one of the problems we have is defining things that come from all over the world that are streamed on to a phone, and trying to regulate that.

1905 I think at the end of the day we have to have inherent legislation that protects our people, whatever age, from harm. How we do that, I think we are going to have to drill down at the clauses stage, because there is that dichotomy between impeding civil liberties and impeding choice and preventing harm; and sometimes that can be a very narrow line.

1910 Sometimes we have to trust the courts to decide; we have to trust a jury to decide where that line lies. What we can do, as parliamentarians, is draft the legislation to give them that opportunity to bring that prosecution.

1915 He talks about distributing images and obviously one of the parts of this Bill that differs to the United Kingdom is the idea of image-based sexual abuse and the role that now plays, particularly in young people, being able to abuse other people by using images. And he talks very much about how that relates to different people's ages and consent. Again, that comes down to who brings the complaint and how it is then dealt with.

But he also talks about images and streaming and I think one of the issues in this Bill is not dealing with crimes but sometimes the way that crimes can be committed? The internet and new technologies in general give a huge amount of increased routes for criminality, whether

1920 that be financial crime, whether that be pornography, whether that be sexual abuse; and it is sometimes difficult to keep up with those technologies.

But what I can assure him is that the drafters have been working on the idea of streaming. Previously, our laws related to a physical image, a photograph that you had; then it went to an image on a computer disk. Now it is an image in the Cloud – and even my teenagers cannot describe what that is to me.

1925 So we talk about ‘virtual images’ which may be encrypted, which may be in bits, but what the drafters have been trying to do – and hopefully we will bring forward a series of amendments – is look more at the definition of ‘image’ as being a whole or part of the overall picture, but also look at the essence of streaming and how that is involved.

1930 In the Bill there is the clause about mandatory reporting of sexual abuse and questions about why vulnerable adults are not included in this. When various people have done studies, in terms of child abuse and abuse of vulnerable adults there are reporting mechanisms and safeguarding mechanisms involved. However, there has been increasing concern about the reporting of child sexual abuse and how sometimes that reporting is missed.

1935 The recent report looking at the Independent Inquiry into Child Sexual Abuse in the United Kingdom did quite a lot of work in terms of mandatory reporting of child sexual abuse and looked at international comparisons; for instance, in France it is mandatory, and in parts of Canada it is mandatory, and in parts of Australia it is mandatory. There is some good evidence from the documents they have looked at that that has increased the reporting and has also increased the rate of conviction – and increased the rate of comfort and security for those people.

1940 In terms of who is mandated to report again, with the clause, it is very much up to the discretion of the Department to bring that forward. He mentions childminders but I could equally mention religious groups, religious organisations particularly those that have a residential component and whether those should be included. And I look forward to our discussions during the clauses stage on that because these are difficult decisions to make – what we, as parliamentarians, want to do and want to force other people to do, and want to mandate that they do. So I look forward to that discussion because again it is about harm reduction and producing that sense of safety.

1950 The Hon. Mr Hooper also talked about coercive control, and today I was extremely proud that the Domestic Abuse Bill got its First Reading. I mean, it is a very important bit of legislation that the Minister has made a point of highlighting and spearheading. There is that crossover at the moment between sexual offences that we are dealing with here and domestic abuse, and both can happen at the same time.

1955 The Domestic Abuse Bill is very much going on to coercive and controlling behaviour. The Sexual Offences Bill is dealing with a sexual act. I would advocate that they are different: that rape can be due to non-violent threats and can be due to coercion, but there are parts of this Bill that allow that. The evidential proof of consent is written down there and we will go through this I think in a bit more detail when we get to the clauses stage.

1960 But coercion and control and consent can co-exist. So I think we need to be really quite careful in terms of defining sexual offences and I hope, again, when we go through the individual clauses we will do so.

He mentions 16 mm film and that is a historical reference, but it is still probably valid because as we go through the various ways of distributing pornography we need to be inclusive and we need to even include those things that may end up being very retro and coming back.

1965 He talks about definitions of obscenity and how they are classified. Decades of lawmakers have tried to deal with that. What to one person is obscene, to another person is art. And really I think we have various classification mechanisms both here and on the adjacent isle and we rely sometimes on the courts to judge that – the *Lady Chatterley’s Lover* case was a classic where that came to the courts to decide, because the lawmakers could not draw that line.

1970 What I would say is when we have gone through this Bill – and again a lot of the clauses here have already been in place since 2003 in the United Kingdom. They specify obscenity but they also look at artistic expression through films, through art and through plays and make a clear distinction between those.

1975 In terms of closure orders, I think obviously we will get to that when we go through the clauses stage. Again, I suppose what I and the Department are doing is opening this up to you. It is a work in progress, very much so. Some of these concepts and some of these very technical aspects have to be resolved if there is a difference of opinion. Again, I am very grateful to the drafters for their help in doing this because what we need to do is get something that is right for the Isle of Man but also actually resonates wider, because some of the offences we are talking
1980 about here may straddle several different jurisdictions. So we need to make sure that we have some similarity and some synergy with those other laws.

I would like to thank Mr Thomas, in closing, for a very important point that while I thanked a lot of people in terms of the making of this physical document and the concepts behind it, the passion for change has been led by many people – ordinary people on the Isle of Man, unfortunately sometimes because of their own *personal* experience of sexual offences, or their own personal experience of our criminal justice system in the past.
1985

I very much hope that this Bill, once ready, once finalised by you, can resolve some of those problems in the past and lead to a far better future for our population.

With that, Mr Speaker, I beg to move.

1990

The Speaker: I put the question that the Sexual Offences and Obscene Publications Bill 2019 be read for a second time.

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

5. LEAVE TO INTRODUCE

5.1. A Bill relating to consent for organ donation – Leave to introduce granted

The Hon Member for Garff (Mr Perkins) to move:

That leave be given to introduce a Private Member's Bill to amend the law relating to consent for organ donation; and for connected purposes.

The Speaker: Item 5, Leave to Introduce, and I call on the Hon. Member for Garff, Mr Perkins.
1995

Mr Perkins: Thank you, Mr Speaker.

Hon. Members, I find myself in the somewhat invidious position of having to beg for leave again to introduce the Organ Donation Bill 2019. The large amount of Programme for Government legislation and urgent Brexit legislation somewhat limited the time for drafting that was available.
2000

Also, at the same time, England decided to change their legislation and adopt a similar opt-out Bill. So it was prudent to put ours on hold and await the outcome. The English law has now been passed and comes into being in spring next year. As a result, our drafters have been able to make sure the proposed Isle of Man legislation dovetails with England and Wales, and our donated organs can seamlessly be transferred into the UK transplant service.
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If leave to introduce is given here today, I propose the unofficial title of the Bill to be 'Daniel's Bill', in memory of a young lad who died tragically as the result of a car accident. His donated organs dramatically changed the lives of many recipients. His mum, Diane Taylor, has since

2010 worked tirelessly for Organ Donation Isle of Man and has been part of the driving force behind Noble's Hospital's Organ Donation Memorial Garden.

Hon. Members, I strongly recommend that if you have a minute or two when you are next in Noble's go and experience this little haven of tranquillity. Look closely and you will see that one of our own, former colleague Martin Quayle, is remembered there.

2015 Hon. Members, the Bill is now fully drafted and if leave to introduce is given today I am hoping the First Reading should take place sometime next month providing parliamentary time permits. I believe this is a very important piece of social legislation.

Mr Speaker, I beg to introduce the Organ Donation Bill 2019.

2020 **The Speaker:** Hon. Member for Ramsey, Dr Allinson.

Dr Allinson: Thank you, Mr Speaker, I beg to second.

2025 **The Speaker:** I put the question that leave be given to introduce a Private Member's Bill to amend the law relating to consent for organ donation and for connected purposes. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

6. CONSIDERATION OF CLAUSES

6.1. Property Service Charges (Amendment) Bill 2019 – Not moved

Mr Harmer to move.

The Speaker: Item 6 on our Order Paper is the consideration of clauses of the Property Service Charges (Amendment) Bill 2019 and my understanding is that they are not being moved today.

2030 **Mr Harmer:** That is correct.

The Speaker: Thank you very much.

In which case then, Hon. Members, that completes the business on our Order Paper and we stand adjourned until 29th October at 10 o'clock in our own Chamber.

2035 Thank you.

The House adjourned at 12.31 p.m.