DOUGLAS
Tuesday 26th November 2019
at 10.00am

PRESENT: Mr Speaker and twenty-one other Members present, Mr Baker and Mr Skelly having leave of absence.

1. QUESTIONS FOR ORAL ANSWER

Questions 1 to 6 answered orally.

2. QUESTIONS FOR WRITTEN ANSWER

Questions 1 and 2 answered in writing.

3. BILLS FOR SECOND READING

3.1 Regulation of Care (Amendment) Bill 2019

Bill read the second time. Mr Ashford

4. BILL FOR THIRD READING

4.1 Children and Young Persons (Amendment) Bill 2019

Bill read the third time. Mr Ashford

4.2 Limitation (Childhood Abuse) Bill 2019

Bill read the third time. Mr Thomas
5. **CONSIDERATION OF CLAUSES**

5.1 Domestic Abuse Bill 2019

Clauses 1 and 2 stand part.

Motion made, that Clause 3 stand part.

Amendments 1 to 4 made.

Clause 3, as amended, stand part.

Motion made, that Clause 4 stand part.

Amendment 5 made.

Clause 4, as amended, stand part.

Motion made, that Clause 5 stand part.

Motion made, that Amendment 6 be made.

Motion made, that debate on the clause be adjourned to the next sitting.

Motion not seconded.

House divided.

**Ayes 20, Noes 1**

For: Mr Ashford, Mr Moorhouse, Dr Allinson, Mrs Barber, Mr Boot, Mrs Caine, Mr Callister, Mrs Corlett, Miss Costain, Mr Cregeen, Mr Harmer, Mr Hooper, Mr Malarkey, Mr Peake, Mr Perkins, Mr Quayle, Mr Robertshaw, Mr Shimmins, Mr Speaker, Mr Thomas

Against: Ms Edge

Amendment 6 made.

Clause 5, as amended, stand part.

Clause 6 stand part.
Motion made, that Clause 7 stand part.  
Mr Malarkey

Amendment 7 made.  
Mrs Barber

Amendment 8 made.  
Dr Allinson

Clause 7, as amended, stand part.  
Mrs Barber

Motion made, that Clauses 8, 9 and 10 stand part.  
Mr Malarkey

Motion made, that Amendments 9 to 14 be made.  
Mrs Barber

Amendment to Amendment 9 (Clause 8) made, with the leave of the House, as follows:  
“In paragraph (c) of the inserted subsection (3) after “joint” insert “tenant”.”  
Mrs Corlett

Amendment 9 (Clause 8), as amended, made.

Amendments 10 to 12 (Clause 9) and 13 and 14 (Clause 10) made.  
Mrs Barber

Clauses 8, 9 and 10, as amended, stand part.  
Mr Malarkey

Motion made, that Clauses 11, 12 and 13 stand part.  
Mrs Barber

Amendments 15 (Clause 12) and 16 (Clause 13) made.  
Mr Malarkey

Clauses 11 and Clauses 12 and 13, as amended, stand part.  
Mrs Barber

Motion made, that Clauses 14 to 19 stand part.  
Mrs Barber

Motion made, that Amendments 17 and 18 (Clause 14), 19 (Clause 15), 20 (Clause 16), 21 to 23 (Clause 17), 24 (Clause 18), 25 and 26 (Clause 19) be made.  
Mrs Corlett

Amendment to Amendment 17 made, with the leave of the House, as follows:  
“For “this Part” substitute “this Division”.”  
Mrs Corlett

Amendments 17, as amended, and 18 (Clause 14), 19 (Clause 15), 20 (Clause 16), 21 to 23 (Clause 17), 24 (Clause 18), 25 and 26 (Clause 19) made.

Clauses 14 to 19, as amended, stand part.  
Mr Malarkey

New Clause 1 stand part.
Motion made, that Clauses 20 to 25 stand part.  
Mr Malarkey

Amendments 28 and 29 (Clause 21) and 30 to 34 (Clause 22) made.  
Mrs Barber

Clauses 20, 21 and 22, as amended, and 23 to 25 stand part.  

Mrs Barber

Motion made, That New Clause 2 (Substituting Clause 26) and Schedule stand part.  

Amendments 42 to 47 made.

New Clause 2 (Substituting Clause 26) and Schedule, as amended, stand part.  

Motion made, that Clauses 27 to 30 stand part.  
Mr Malarkey

Amendments 36 and 37 (Clause 29) made.  
Dr Allinson

Clauses 27 and 28, 29, as amended, and 30 stand part.  

Mr Malarkey

Motion made, that Clauses 31 to 33 stand part.  

Amendment 38 (Clause 31) made.  
Dr Allinson

Clauses 31, as amended, 32 and 33 stand part.  

Clauses 34 to 41 stand part.  

Mrs Barber

New Clauses 3 and 4 agreed in principle (further debate on clauses stand part postponed).  

Motion made, that Clauses 42 to 47 stand part.  
Mr Malarkey

Amendment 40 (Heading to Division) made.  
Mrs Barber

Clauses 42 to 47 stand part.  

5.2 Income Tax Bill 2019  
Mr Cannan

Not moved.  

5.3 Property Service Charges (Amendment) Bill  
Mr Harmer

Clauses 1 to 4 stand part.
5.4  Registration of Business Names (Amendment) Bill 2019

Mr Cannan

Clauses 1 to 4 stand part.

Resolved, that Standing Orders, and in particular Standing Order 4.11 (1), be suspended to permit Third Reading of the Registration of Business Names (Amendment) Bill 2019 to be taken at this sitting.

Mr Cannan

Bill read the third time.

The House adjourned at 12.25 pm to 10.30 am on Tuesday 3rd December 2019.

Roger Phillips  Secretary of the House
AMENDMENTS TO CLAUSE 3

1. Page 9, line 17 for “34(1)” substitute «35(1)».

2. Page 10 for lines 19 to 30 substitute—
   «“relative” is to be construed in accordance with subsection (2);».

3. Page 10, after line 32 insert—
   «“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or distress, or otherwise; and for that purpose, the reference to being impaired is to being temporarily or indefinitely impaired.».

4. Page 10, after line 32 (and after the preceding amendment if successful) insert—
   «(2) In this Act “relative”, in relation to a person, means—
   (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or
   (b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner,
   and includes, in relation to a person (“A”) who is cohabiting or has cohabited with another person (“B”), any person who would fall within paragraph (a) or (b) if A and B were (or had been) married to each other.»
For the purposes of this subsection, treat any person who has been adopted as the legitimate child of his or her adoptive parent and also as the child of his or her natural parents.

Renumber the succeeding subsection of Clause 3. (Mrs Barber)

AMENDMENT TO CLAUSE 4

5. Page 11, line 3 omit “are each aged 16 or over and”. (Mrs Barber)

AMENDMENT TO CLAUSE 5

6. Page 12, line 16 at the end add “within the last 10 years”. (Dr Allinson)

AMENDMENT TO CLAUSE 7

7. Page 13, line 15 for “prevention” substitute «protection». (Mrs Barber)

8. Page 13, for lines 30 to 32 substitute—

“(5) Condition C is that the police officer must, before giving the notice, obtain the consent of another police officer who is of, or above, the rank of sergeant.”. (Dr Allinson)

AMENDMENT TO CLAUSE 8

9. Page 14 after line 22 insert—

«(3) If P owns premises in the Island (whether alone or as a joint tenant or a tenant in common with another), and the person for whose protection the notice is given resides in those premises, but P does not, the notice may also contain provision—

(a) prohibiting P (or any other joint tenant or tenant in common) from evicting the person for whose protection the notice is given from the premises;

(b) prohibiting P, or any other joint tenant or tenant in common from entering the premises;

(c) prohibiting P or any other joint or tenant in common from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the premises.». (Mrs Barber)

Renumber the succeeding subsection.
AMENDMENTS TO CLAUSE 9

10. Page 14, line 28 after “welfare of” insert «any vulnerable adult and that of». (Mrs Barber)

11. Page 14, line 31 after “the person for whose protection the notice would be given” insert «, and of any person who is a joint tenant or tenant in common with P who would be affected by the notice.». (Mrs Barber)

12. Page 15, for lines 2 to 5 substitute —

«(b) who is personally connected to P or to the person for whose protection the notice would be given.». (Mrs Barber)

AMENDMENT TO CLAUSE 10

13. Page 15, line 13 after “person” insert «suspected of domestic abuse». (Mrs Barber)

14. Page 15, for lines 27 to 29 substitute —

«(4) If a domestic abuse protection notice includes provision which relates to a person who is a tenant in common with P, or a joint tenant with P of the relevant premises, (such person being referred to as “T”) and which prohibits T—

(a) from evicting or excluding the person for whose protection the notice was given from the premises;

(b) from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the relevant premises (for example, by surrendering the tenancy of the relevant premises),

a copy of the notice must be served personally on T by a police officer.

(5) On serving a notice on P or T, the police officer must ask that person for an address at which that person may be given notice of the hearing of the application for the domestic abuse protection order.

(6) Where a police officer serves a notice on T, the officer must inform T of the effect of section 12 (breach of notice).». (Mrs Barber)

AMENDMENT TO CLAUSE 12

15. Page 16, line 26 omit “against the person”. (Mrs Barber)
AMENDMENT TO CLAUSE 13

16. Page 16, line 37 at the end add «or a copy of such a notice». (Mrs Barber)

AMENDMENT OF CLAUSE 14

17. Page 17, line 25 after “a person (” insert «referred to in this Part as». (Mrs Barber)

18. Page 17, after line 28 insert —
«(2) A domestic abuse protection order may also contain provision—
(a) prohibiting a person who is P’s tenant in common or a joint tenant with P (such person being referred to in this Part as “T”) from doing either of the things mentioned in section 21(5)(a); or
(b) prohibiting T from acting as mentioned in section 21(5)(d), if the conditions in section [NC1] are satisfied.». (Mrs Barber)

AMENDMENT TO CLAUSE 15

19. Page 17, line 37, for “against a person (“P”)” substitute «against P». (Mrs Barber)

AMENDMENT TO CLAUSE 16

20. Page 18, line 37, for “a person (“P”)” substitute «P». (Mrs Barber)

AMENDMENT TO CLAUSE 17

21. Page 19, line 35 for “a person (“P”)” substitute «P».

22. Page 20, line 1 for “a person (“P”)” substitute «P». (Mrs Barber)

23. Page 20, lines 9 and 10 for “a person (“P”)” substitute «P». (Mrs Barber)

AMENDMENT TO CLAUSE 18

24. Page 20, line 22 for “a person (“P”)” substitute «P» (Mrs Barber)
AMENDMENT TO CLAUSE 19

25. Page 20, line 37 for “a person ("P")” substitute «P». (Mrs Barber)

26. Page 21, line 1 after “welfare of” insert «any vulnerable adult and that of». (Mrs Barber)

INSERTION OF NEW CLAUSE 1

27. Page 21 after line 20 insert the following Clause—

«NC1 Matters to be considered before making an order against T

Before making a domestic abuse protection order which contains provision obliging T to do, or refrain from doing, something the court must, among other things, consider the things specified in section 19(1) and, in addition—

(a) the effect on T of the proposed order so far as it applies to T;
(b) whether the proposed provision (so far as it relates to T) is proportionate in all the circumstances; and
(c) any representations made to the court by T.». (Mrs Barber)

AMENDMENT TO CLAUSE 21

28. Page 22 for lines 25 and 26 substitute—

«(4) A domestic abuse protection order may provide that P—». (Mrs Barber)

29. Page 22 after line 36 insert—

«(d) prohibiting P from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the premises.». (Mrs Barber)

AMENDMENT TO CLAUSE 22

30. Page 23, line 15, for “on a person ("P")” substitute «on P or T». (Mrs Barber)

31. Page 23, line 26, for “P’s compliance with the relevant requirements;” substitute «compliance with the relevant requirements on the part of P or T (as the case requires)». (Mrs Barber)

32. Page 23, line 28, 29 and 32 for “P” substitute «P or T». (Mrs Barber)
33. Page 23, for lines 35 and 36 substitute—
   «(6) If P or T is subject to a requirement imposed by a domestic abuse protection order, then P or T». (Mrs Barber)

34. Page 24, lines 1 and 3 for “P” substitute «P or T». (Mrs Barber)

**SUBSTITUTION OF CLAUSE 26**

35. For clause 26 (page 26, lines 11 to 39) substitute the following New Clause—

«NC2 Arrest for breach of order
HC Bill 2019-20/2/37 and drafting

(1) This section applies where a relevant court has made a domestic abuse protection order.

(2) In this section—

“relevant court” means—

(a) the High Court,
(b) a Court of General Gaol Delivery, or
(c) a court of summary jurisdiction; and

“the relevant judge” means—

(a) where the order was made by the High Court, a judge of that court;
(b) where the order was made by a Court of General Gaol Delivery, a Deemster; or
(c) where the order was made by a court of summary jurisdiction, the High Bailiff or a justice of the peace.

(3) A person mentioned in subsection (4) may apply to the relevant judge for the issue of a warrant for the arrest of P or T if the person considers that P or T (as the case requires) has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(4) The persons referred to in subsection (3) are—

(a) the person for whose protection the order was made;
(b) where the order was made under section 15, the person who applied for the order (if different);
(c) any other person with the leave of the relevant judge.

(5) The relevant judge may issue a warrant on an application under subsection (3) only if—

(a) the application is substantiated on oath, and
the relevant judge has reasonable grounds for believing that P or T (as the case requires) has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) A relevant court may remand P or T if—
(a) that person is brought before a relevant court as a result of a warrant issued under this section, and
(b) the court does not immediately dispose of the matter.

(7) The Schedule contains further provision about remand under this section.

In the Schedule “the relevant person” means P or T as the case requires.

(8) For the power of a constable to arrest P or T without warrant for breach of a domestic abuse protection order, see section 27 of the Police Powers and Procedures Act 1998.”. (Mrs Barber)

Adjust cross-references to subsections of Clause 26 as necessary.

AMENDMENTS TO CLAUSE 29

36. Page 28, for lines 26 to 30 substitute —
“by giving a notification to such person and in such manner as the Department may prescribe by regulations.

The regulations must prescribe, in addition to other means, a means of electronic communication (within the meaning of the Electronic Transactions Act 2000).

Tynwald procedure — approval required.”. (Dr Allinson)

37. Page 28, line 36 after “given” insert “attend at a police station specified by that person and”. (Dr Allinson)

AMENDMENT TO CLAUSE 31

38. Page 29, after line 29 insert—
“(e) a person acting on behalf of a child for whom either the person for whose protection the order was made or P has parental responsibility, but only with the leave of the court.”. (Dr Allinson).
Page 38, after line 9 insert—

“PART 4 — PROHIBITION OF CROSS-EXAMINATION IN PERSON

DIVISION 1: PROCEEDINGS IN THE COURTS OF SUMMARY JURISDICTION

NC3 Summary Jurisdiction Act 1989 amended

(1) The Summary Jurisdiction Act 1989 is amended as follows.

(2) For the italic cross-heading preceding section 48 substitute—

«DIVISION 1: DOMESTIC PROCEEDINGS».

(3) After section 53 insert—

«DIVISION 2: THE PROHIBITION ON CROSS-EXAMINATION

53A Prohibition of cross-examination in person: introductory

In this Division “witness”, in relation to any proceedings, includes a party to the proceedings.

53B Prohibition of cross-examination in person: victims of offences

(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of, or given a caution for, or is charged with, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 2001 unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
(5) In this section—

“caution” means—

(a) a caution given by a police officer on the Island in respect of an offence which, at the time the caution is given, the person to whom it is given has admitted;

(b) a conditional caution given under section 22 of the Criminal Justice Act 2003 (of Parliament);

(c) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998 (of Parliament);

(d) any other caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time the caution is given, that person has admitted;

(e) anything corresponding to a caution falling within paragraph (a), (b), (c) or (d) (however described) which is given to a person in respect of an offence under the law of Scotland;

“conviction” means—

(a) a conviction before a court in the Island;

(b) a conviction before a court in England and Wales, Scotland or Northern Ireland;

(c) a conviction in service disciplinary proceedings (in the Island or elsewhere);

(d) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

(a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (of Parliament) (except proceedings before a civilian court within the meaning of that Act);

(b) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 (of Parliament);
“specified offence” means an offence which is specified, or of a description specified, in rules of court.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) section 6 of the Criminal Justice Act 1963;

(b) section 14 of the Powers of Criminal Courts (Sentencing) Act 2003 (of Parliament);

(b) section 187 of the Armed Forces Act 2006 (of Parliament);

or any corresponding earlier Manx or Parliamentary enactment.

(7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

53C Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section “protective injunction” means an order or injunction specified, or of a description specified, in rules of court.

(5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

53D Direction for prohibition of cross-examination in person: other
cases

(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

(a) neither section 53B nor section 53C operates to prevent the party from cross-examining the witness, and

(b) it appears to the court that—

(i) the quality condition or the significant distress condition is met, and

(ii) it would not be contrary to the interests of justice to give the direction.

(2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this section.

(3) The “significant distress condition” is met if—

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this section may be made by the court—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;

(d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact
has been made in the proceedings or any other family proceedings;

(e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;

(f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;

(g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;

(h) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this section to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose “coherence” refers to a witness's ability in giving evidence to give answers which—

(a) address the questions put to the witness, and

(b) can be understood, both individually and collectively.

53E Directions under section 53D: supplementary

(1) A direction under section 53D has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under section 53D before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(3) The court may revoke a direction under section 53D on an application made by a party to the proceedings only if there has been a material change of circumstances since—

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

(a) giving a direction under section 53D;

(b) refusing an application for a direction under section 53D;

(c) revoking a direction under section 53D;
(d) refusing an application for the revocation of a direction under section 53D

53F Alternatives to cross-examination in person

(1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of section 53B, 53C or 53D.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

(a) invite the party to the proceedings to arrange for an advocate to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether an advocate is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

(a) the party has notified the court that no advocate is to act for the party for the purpose of cross-examining the witness, or

(b) no notification has been received by the court and it appears to the court that no advocate is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the party.

(7) An advocate appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section a reference to cross-examination includes (in a case where a direction is given under section 53D after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination;
53G Costs of legal representatives appointed under section 53F

(1) The Treasury may by regulations make provision for the payment out of the General Revenue of the Island of sums in respect of—
   (a) fees or costs properly incurred by an advocate appointed under section 53F, and
   (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.

(3) The regulations may provide for the amounts paid to be calculated in accordance with—
   (a) a rate or scale specified in the regulations, or
   (b) other provision made by or under the regulations.

Tynwald procedure for regulations under this section — approval required.

(4) For the italic cross-heading preceding section 54 substitute—

«DIVISION 3: ORDERS IN DOMESTIC PROCEEDINGS».

DIVISION 2: PROCEEDINGS UNDER THE MATRIMONIAL PROCEEDINGS ACT 2003

NC4 Matrimonial Proceedings Act 2003 amended

(1) The Matrimonial Proceedings Act 2003 is amended as follows.

(2) For the italic cross-heading in Part 5 before the section specified in column 1 of the table below, substitute the Division heading specified in column 2—

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(3) Before section 106 insert—

«Division 6: Miscellaneous». 
(4) After section 114 (but before the Division heading preceding section 115) insert—

«DIVISION 6A: FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

114A Prohibition of cross-examination in person: introductory

In this Division —

“the court” means the High Court;

“witness”, in relation to any proceedings, includes a party to the proceedings.

Note: This Division applies only for the purposes of proceedings under this Act in the High Court. For corresponding provisions in the courts of summary jurisdiction see Division 2 of Part 5 of the Summary Jurisdiction Act 1989

114B Prohibition of cross-examination in person: victims of offences

(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 2001, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(5) In this section—

“caution” means—

(a) a caution given in the Island by a constable or other authorised person to a person who, at the time it is given, has admitted the offence for which it is given;

(b) a conditional caution given under section 22 of the Criminal Justice Act 2003 (of Parliament);
(c) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998 (of Parliament);

(d) any other caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time the caution is given, that person has admitted;

(e) anything corresponding to a caution falling within paragraph (a), (b), (c) or (d) (however described) which is given to a person in respect of an offence under the law of Scotland;

“conviction” means—

(a) a conviction before a court in the Island;

(b) a conviction before a court in England and Wales, Scotland or Northern Ireland;

(c) a conviction in service disciplinary proceedings (in the Island or elsewhere);

(c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

(a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (of Parliament) (except proceedings before a civilian court within the meaning of that Act);

(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (each an Act of Parliament) (whether before a court-martial or before any other court or person authorised under any of those Acts of Parliament to award a punishment in respect of an offence);

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 (of Parliament);

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Department after consulting the Deemsters.

Tynwald procedure for regulations under this subsection — approval required.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes
of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) section 6 of the *Criminal Justice Act 1963*;

(b) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (of Parliament);

(c) section 187 of the Armed Forces Act 2006 (of Parliament);

or any corresponding earlier Manx or Parliamentary enactment.

(7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

114C Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section “protective injunction” means an order or injunction specified, or of a description specified, in rules made by the Deemsters.

Tynwald procedure — negative

(5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.
114D  Direction for prohibition of cross-examination in person: other cases

(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

(a) neither section 114B nor section 114C operates to prevent the party from cross-examining the witness, and

(b) it appears to the court that—

(i) the quality condition or the significant distress condition is met, and

(ii) it would not be contrary to the interests of justice to give the direction.

(2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this section.

(3) The “significant distress condition” is met if—

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this section may be made by the court—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;
(d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;

(e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;

(f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;

(g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;

(h) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this section to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which—

(a) address the questions put to the witness, and

(b) can be understood, both individually and collectively.

114E Directions under section 114D: supplementary

(1) A direction under section 114D has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under section 114D before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(3) The court may revoke a direction under section 114D on an application made by a party to the proceedings only if there has been a material change of circumstances since—

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

(a) giving a direction under section 114D
(b) refusing an application for a direction under section 114D;
(c) revoking a direction under section 114D;
(d) refusing an application for the revocation of a direction under section 114D.

114F Alternatives to cross-examination in person

(1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of section 114B, 114C or 114D.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

(a) for the witness to be cross-examined in the proceedings, or
(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

(a) invite the party to the proceedings to arrange for an advocate to act for the party for the purpose of cross-examining the witness, and
(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether an advocate is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

(a) the party has notified the court that no advocate is to act for the party for the purpose of cross-examining the witness, or
(b) no notification has been received by the court and it appears to the court that no advocate is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by an advocate appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint an advocate (chosen by the court) to cross-examine the witness in the interests of the party.

(7) An advocate appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section a reference to cross-examination includes (in a case where a direction is given under section 114D after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination.
114G Costs of advocates appointed under section 114F

(1) After consulting the Deemsters, The Treasury may by regulations make provision for the payment out of the General Revenue of sums in respect of—

(a) fees or costs properly incurred by an advocate appointed under 114F, and
(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.

(3) The regulations may provide for the amounts paid to be calculated in accordance with—

(a) a rate or scale specified in the regulations, or
(b) other provision made by or under the regulations.

Tynwald procedure — approval required».

(Renumber the following Part and subsequent Clauses and adjust cross-references accordingly.)

AMENDMENT OF PART 4

40. Page 38, line 11, for the heading to Division 1 substitute —

"DIVISION 1 — REGULATIONS ETC.».

(Mrs Barber)

AMENDMENT OF THE SCHEDULE

41. Page 41 line 5, for "("P")" substitute «(referred to below in this Schedule as “the relevant person”)».

(Mrs Barber)

42. Page 41, lines 8, 9, 13, 14, 18, 20, 21, 29 and 32, and page 42, lines 2, 5 (in both places) 29, 35 and 37 for “P” substitute «the relevant person». (Mrs Barber)

43. Page 41, line 23 for “P”, where it first occurs, substitute «the relevant person». (Mrs Barber)

44. Page 41, line 23 for “P’s” substitute «that person’s» (Mrs Barber)

45. Page 41, line 24 “P’s” substitute «his or her». (Mrs Barber)
46. Page 41, line 28 for “P’s” substitute «the relevant person’s». (Mrs Barber)

47. Page 42, lines 23 and 24 for “the Court of General Gaol Delivery” substitute «a Court of General Gaol Delivery». (Mrs Barber)

48. Page 42 line 24 for “that section” substitute «that Schedule». (Mrs Barber)

49. Page 42, line 27 omit “(“P”)”. (Mrs Barber)

50. Page 42, lines 30, 36 (in both places) and 38 for “P’s” substitute «the relevant person’s». (Mrs Barber)