



HOUSE OF KEYS

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VOTES AND PROCEEDINGS

Reaghyssyn as daaltyn

DOUGLAS

Tuesday 16th December 2019

at 10.00am

PRESENT: Mr Speaker and twenty-two other Members present, Mr Thomas having leave of absence.

1. QUESTIONS FOR ORAL ANSWER

Questions 1, 2, 4 and 5 answered orally. Question 3 not asked.

2. QUESTIONS FOR WRITTEN ANSWER

Questions 1 answered in writing.

3. LEAVE TO INTRODUCE

Motion made –

That leave be given to introduce a Private Member's Bill to amend the Tynwald Proceedings Act 1876 to provide for immunity from compulsion to give evidence, produce documents or supply information relating to proceedings in Tynwald; and for connected purposes.

Mr Robertshaw

Motion carried.

Motion made –

That Standing Orders, and in particular Standing Orders 4.4(3), 4.6, 4.7, and 4.11, be suspended to permit all stages be taken at this sitting.

Mr Robertshaw

Motion carried.

Bill read the first time.

Bill read the second time.

Clauses 1 to 3 stand part.

Amendments 1 and 2 made.

Clause 4, as amended, stand part.

Bill read the third time.

4. CONSIDERATION OF CLAUSES

4.1 Regulation of Care (Amendment) Bill 2019

Mr Ashford

Clauses 1 to 3 stand part.

4.2 Sexual Offences and Obscene Publications Bill 2019

Dr Allinson

Amendment 2 made.

New Clause 2 (as amended) stand part.

Amendment 4 made.

New Clause 3 (as amended) stand part.

Amendments 5 and 6 made.

Clause 98 (as amended) stand part.

Amendments 14 and 15 made.

Clause 150 and Schedule 3 (as amended) stand part.

Amendment 7 made.

Clause 151 (as amended) stand part.

Clauses 152 to 157 stand part.

Amendment 8 made.

Clause 158 (as amended) stand part.

Clauses 159 to 162 stand part.

Amendment 9 made.

Clause 163 (as amended) stand part.

Clause 164 stand part.

Amendment 10 made.

Clause 165 (as amended) and Schedule 4 stand part.

Clauses 166 to 191 stand part.

Amendment 11 made.

Clause 192 (as amended) stand part.

Clauses 193 to 203 stand part.

Amendments 12 and 13 made.

Clause 204 (as amended) stand part.

Clauses 205 to 226 stand part.

Amendment 16 made.

Clauses 227 to 233 and Schedules 5 and 6 (as amended) stand part.

4.3 Domestic Abuse Bill 2019

Mr Malarkey

Amendment 2 made.

New Clauses 3 and 4 (as amended) stand part.

Motion made –

That Standing Orders, and in particular Standing Order 4.11 (1), be suspended to permit Third Reading of the Domestic Abuse Bill 2019 to be taken at this sitting.

Mr Malarkey

Motion carried.

Bill read the third time.

The House adjourned at 11.38 pm
to 10.30 am on Tuesday 21st January 2020 in Tynwald Court.

Jonathan King

Deputy Secretary of the House

SEXUAL OFFENCES AND OBSCENE PUBLICATIONS
BILL 2019

**CONSIDERATION OF CLAUSES SECOND
DAY –CONCATENATED LIST OF
AMENDMENTS**

SUBSTITUTION OF CLAUSE 64

1. Page 88, on lines 33 to 39, omit the existing clause 64 and substitute –

“NC2 Allowing persons under 18 or vulnerable adults to be in brothels

IOM1966/5/3 and drafting

A person (A) commits an offence if –

- (a) A allows another person (B) for whom A is responsible, to reside in, or to frequent, a brothel; and
- (b) B is –
 - (i) under the age of 18; or
 - (ii) a vulnerable adult.

Maximum penalty – (summary) – 12 months’ custody or a fine not exceeding level 5 on the standard scale or both.”. (Mrs Barber)

**AMENDMENT TO THE NEW CLAUSE 2 MOVED BY
MRS BARBER**

2. In the new clause 2 moved by Mrs Barber, for paragraph (b)(i) and (ii) substitute –

- “(i) under the age of 16 years;
- (ii) aged 16 or 17 years, in any case where B’s ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment or otherwise; or
- (iii) a vulnerable adult.”. (Mr Robertshaw)

INSERTION OF NEW CLAUSE 3

3. Page 104, after line 20, before the heading for Division 18, insert the following new clause (as clause 87 of the Bill) –

“NC3 Conversion therapy

- (1) It is an offence for any person to practise, or to offer to practise conversion therapy.
 - (2) In this section, “conversion therapy” –
 - (a) is any form of therapy which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other and attempts to –
 - (i) change a person’s sexual orientation or gender identity; or
 - (ii) suppress a person’s expression of sexual orientation or gender identity; but
 - (b) does not include services which are for the purpose of assisting a person to explore, develop and affirm the person’s sexual orientation or gender identity.
 - (3) The Department may issue guidance about the meanings of expressions used in subsection (2).
 - (4) Regard must be had to guidance issued under subsection (3) in interpreting references in this section to those expressions.
 - (5) The Department may revise guidance issued under subsection (3) and a reference to guidance includes a reference to revised guidance.
 - (6) Guidance issued under subsection (3) or (5) must be laid before Tynwald.
- Maximum penalty –
- (a) (on information) – 2 years’ custody or a fine;
 - (b) (summary) – 12 months’ custody or a fine of level 5 on the standard scale or both.”.

Adjust clause numbers and cross references throughout. (Mrs Barber)

AMENDMENT TO THE NEW CLAUSE 3 MOVED BY MRS BARBER

4. In the amendment inserting new clause 3 (Conversion therapy) moved by Mrs Barber –
- (a) omit paragraph (5);

- (b) re-number paragraph (6) as paragraph (5);
- (c) in paragraph (6) (as re-numbered) delete “or (5)”. (Mrs Corlett)

AMENDMENTS TO CLAUSE 98

- 5. Page 112, lines 34 to 38, for subsection (10) substitute —
 - “(10) In this section —
 - (a) an “**image**” includes —
 - (i) a moving or still image (produced by any means);
 - (ii) a three-dimensional image; or
 - (iii) data (stored, transmitted or received by any means) which is capable of conversion into an image within paragraph (i) or (ii);
 - (b) “**relevant act**” means an act within subsection (6)(a) to (c).”.
 - (11) In this section references to being in possession of an image include obtaining access to the image by streaming or any other form of transmission.”. (Mrs Barber)
- 6. Page 113, lines 1 and 2, omit subsection (11). (Mrs Barber)

AMENDMENT TO CLAUSE 151

- 7. Page 152, on line 18, for “sentence of imprisonment” substitute “term of custody”. (Mrs Barber)

AMENDMENT TO CLAUSE 158

- 8. Page 160, lines 14 to 17, omit subsection (2).
Re-number the following subsections accordingly. (Mrs Barber)

AMENDMENT TO CLAUSE 163

- 9. Page 164, on line 18, for “custodial sentence of imprisonment” substitute “term of custody”.(Mrs Barber)

AMENDMENT TO CLAUSE 165

10. Page 166, line 25, after “risk of sexual harm”, insert —
- “which may include evidence of —
- (i) positive changes in the qualifying relevant offender’s lifestyle; and
 - (ii) any relevant treatment programmes the qualifying relevant offender has undertaken.”. (Mrs Barber)

AMENDMENT TO CLAUSE 192

11. Page 188, line 27, after “jurisdiction” insert “(which, for the purposes of this section, must be a court held by a High Bailiff or Deputy High Bailiff)”. (Mrs Barber)

AMENDMENTS TO CLAUSE 204

12. Page 196, on line 19, for “sentence of imprisonment” substitute “sentence to a term of custody”. (Mrs Barber)
13. Page 196, on line 20, for “imprisonment” substitute “custody”. (Mrs Barber)

AMENDMENTS TO SCHEDULE 3

14. Page 243, on line 21, after “he” insert “or she”. (Mrs Barber)
15. Page 246, on line 35, after “he” insert “or she”. (Mrs Barber)

AMENDMENT TO SCHEDULE 6

16. Page 260, on line 11, after “soliciting)” insert —
- “is repealed.
- (4) Section 3 of the Children and Young Persons Act 1966 (allowing persons under 16 to be in brothels) is repealed”. (Mrs Barber)

DOMESTIC ABUSE BILL 2019

CONSIDERATION OF CLAUSES

INSERTION OF NEW PART 4

1. Page 38, after line 9 insert—

**“PART 4 — PROHIBITION OF CROSS-EXAMINATION IN
PERSON**

**DIVISION 1: PROCEEDINGS IN THE COURTS OF SUMMARY
JURISDICTION**

NC1 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

NC2 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—

Section	New Division heading
91	Division 1: Jurisdiction

92	Division 2: Rights to occupy matrimonial or civil partnership home
95	Division 3: Occupation orders
104	Division 4: Non-molestation orders
105	Division 5: Further provision as to molestation orders
115	Division 7: Supplemental.

(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.» (Mrs Barber)

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

AMENDMENT TO NEW CLAUSE 2 MOVED BY MRS BARBER (SET OUT IMMEDIATELY ABOVE)

2. In inserted New Clause 2(4) moved by Mrs Barber (which amends the Matrimonial Proceedings Act 2003), in the inserted section 114B(5), for the definition of “specified offence” substitute –

“specified offence” means an offence which is specified, or of a description specified in rules of court”

(Mrs Corlett)

3.