

**Domestic Abuse Bill 2019 –
Consideration of clauses commenced**

Miss August-Hanson to move.

The President: Now, I just want to confirm with Hon. Members that they have a concatenated list of amendments which was circulated. Also proposals for running order for thematic clauses as proposed by the mover and the Department: this piece of paper. It is the evident wish of the mover to proceed with the Domestic Abuse Bill by grouping clauses according to themes which will not necessarily be in the numerical order of the Bill. She is certainly entitled to do this if that is her wish.

We will see what progress we are able to make today through the clauses. As we come to the various clauses there might be various options open to Council as to how to best deal with them in light of the amendments before us.

So we will start with clause 1. I call on the mover, Miss August-Hanson. Clause 1 and any preliminary remarks, please.

Miss August-Hanson: Thank you, Mr President.

Before discussing the clauses of the Bill by examining five distinct themes I propose, with your consent, to move clauses 1 and 2 together, as they provide the foundation to the Bill.

Clause 1 provides that the short title of the Bill is the 'Domestic Abuse Act'.

Clause 2 provides that the Act will be brought into operation by Appointed Day Order on such day or days as the Department determines.

The Act may be brought into operation all at once or different elements at different times. In any event, it is not anticipated that the Act will be brought fully into force until such a time as the guidance that underpins it and the regulations or orders that it gives effect to have been prepared to support this.

Mr President, I beg to move that clauses 1 and 2 do stand part of the Bill.

The President: Mrs Maska.

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

The President: Now, we have an amendment to clause 1 in the name of Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

This is a purely tidying-up amendment to reflect the fact that the Act will be known as the 'Domestic Abuse Act 2020'.

I beg to move:

Amendment to clause 1

2. Page 9, line 6 for 'Bill 2019' substitute 'Act 2020'.

The Attorney General: Mr President, I am happy to second that amendment.

The President: Thank you.

Yes, Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

Before we get into the substance of the clauses, I would wish to comment on the pace and the readiness for clauses at this stage. Our last sitting on the Bill was highly beneficial, as we took evidence from leading UK experts in the field of domestic abuse and child and adolescent

psychiatry. This was an unusual but valuable step for Legislative Council, but were not the only efforts made in the examination and scrutiny of this Bill.

135 We also reached out, not only to other experts and stakeholders, but other areas of Government aside from the Department of Home Affairs, specifically Public Health and Children and Families in DHSC. We made efforts to get the consultation results, which were not hitherto available or published, and I thank the mover and the legislative officer for their work on this. We put forward various lines of enquiry and queries which have been put to the Law Society and helpfully answered by Jane Gray and Hazel Smith.

140 I have certainly pressed the Department of Home Affairs for answers to various matters in the past few weeks when it did not seem apparent that there was perhaps a well-thought-out policy basis. Perhaps the absence still of a domestic abuse strategy is part of this.

145 It was helpful to look back at the previous work done and previous representations made since 2018 to see if the Bill was on-track given its origins or had gone awry. I know the mover had dedicated significant effort with this Bill, but the reason for raising this now is that although all this has undoubtedly helped to inform and test assessment of this important Bill, and hopefully improve it, this has all been done, I feel, in haste. So I feel I must say on the record that this has not been an ideal way of handling and still may not be ideal today for Hon. Members.

150 For example, despite best efforts, and I must thank hugely our Clerk, Dr King, and the drafter, Howard Connell, for pushing this over the line, but we have been in a position where not only did amendments not make the timetable for the original Order Paper last week, but it was not possible to finalise and circulate all amendments until Friday evening.

155 By way of illustration of this potentially being an issue, there has been little time to discuss amendments and we may see today that some amendments may perhaps fall or not be able to be moved because there are some particular small issues that if we would have had more time we could have dealt with. We may find that those amendments then have to meet, perhaps, who knows, a higher threshold at a later date. As I say, it is not ideal.

160 There were still in fact important developments until Thursday last week that should now thankfully be resolved by way of a Department-supported amendment. The written evidence from local advocates as mentioned was also received Friday around five o'clock as clearly they needed a lead-time in to produce this, let alone consider it.

165 The amendments, of which there are now some 46 I think, have not all been publicly available on the Tynwald website for the usual amount of time, at least until only recently perhaps, let alone a chance to discuss properly with Members in this place and the other. That is a matter of concern for me.

170 I have been disappointed, not with the mover, but with the Department's response to the flagging of some of these points about readiness for this week and, indeed, the initial response to scrutiny in the first place from some officers, where we were told, essentially, that the Bill is fine and has already had lots of scrutiny. That will, in future, become a warning signal of the highest order for me. To this I say, let the Legislative Council do its job. It is the Members in this place, not Government officers, not the politicians in the Department, who decide the pace and the progress of a Bill in this Branch, especially when there is no clear or critical urgency.

175 A number of us have been working very hard to ensure this legislation is not only fit for purpose, but fit for expectation and fit for the adults and children that it will affect and hopefully protect. This being the case, it is not for us to ask permission to pause and consider or request more time. It is simply for us to decide via our existing procedures and powers. If there are concerns voiced through the passage of a Bill, it is usually wise to listen.

180 So to that end, Mr President, I have prepared what I can to speak to the amendments that I will move. There has been little time in the past week or even the past few days for any of this. If any Member here feels also slightly off-kilter with the way all this has progressed and the small amount of time afforded when it was needed, or who has perhaps not had time to absorb

developments or amendments, I would absolutely support a move to adjourn clauses today so we can have more time. We did have Tynwald and the Budget only last week.

185 Given how last minute this has all been, right up until last Friday evening and right up until yesterday evening in terms of the running order of matters, to adjourn would be a sane and sensible option. This whole approach should not be the norm, Hon. Members, especially for significant social legislation. It is most undesirable and I would quite understand if any Member did not feel up-to-speed or ready for the fullness of the debate of clauses today.

190 I would also understand if matters appear disordered or uncommunicated from the outside or on the record. Equally, if we do progress today, then it should be seen as being very good of us to do so and as a result of much effort, dedication and willingness on our part; not that we have given into a departmental dim view on a slight or understandable possible delay on a piece of legislation that we know will not be implemented until a good number of months down the line.

195 I thank the mover and everyone who has engaged with Legislative Council on this Bill. It is appreciated. As I said, I would support a move to adjourn, but clearly at this stage, having had the amendments prepared, I will be glad to see things move along and progressed and I am glad that some key aspects might be fixed by the Legislative Council.

Thank you, Mr President.

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The President: I call on the mover to reply.

Miss August-Hanson: Permission to move on to themes, Mr President?

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The President: No, you are replying to the debate on clauses 1 and 2, if you wish.

Miss August-Hanson: I am content to continue.

210 **The President:** Thank you very much. Then we will move to a vote. First of all, the amendment in the name of Mrs Poole-Wilson to clause 1: those in favour of the amendment, say aye; against, no. The ayes have it. The ayes have it.

Clause 1 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2: those in favour, say aye; against, no. The ayes have it. The ayes have it.

215 Just before we move on, in terms of procedure, if in progressing through the Bill we come to a particular clause, it is open to Council by consensus, including the agreement of the mover, to defer consideration of that clause to the next sitting. If no consensus is reached and the mover wishes to proceed, then a procedural motion to adjourn and a vote can be taken. But clearly, the first step is the possibility of consensus in respect of when that clause is considered, along with any amendments. So if that is helpful, we can move on.

220 Now, Miss August-Hanson, I understand clauses 3 to 6, according to the proposed running order, would be taken towards the end of the Bill, but you wish to speak about them at this stage before we turn to clause 7.

Miss August-Hanson: I will. I will begin with the themes, thank you, Mr President.

225 I have previously discussed moving this Bill through the clauses stage by examining the distinct themes within the Bill and intend to do so. I would note, however, that there are several topics which I know are of particular interest to Members that do not have associated clauses. These may well be discussed further within our deliberations on various amendments coming forward. In particular, I am thinking of the concerns around access to accommodation for all parties, including the potential aggressor within any case of domestic abuse, and those issues surrounding children and any safeguarding matters.

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I note that these points in general terms do not really fit within the defined themes that practically allow for the movement of clauses. Therefore, I will move the defined themes which

235 have clauses aligned with them, allowing that these clauses be outlined, moved, debated, and
then, where it is the case that amendments are moved, allowing for detailed consideration as is
appropriate. Should other matters be considered then this can be alongside the defined content
of the Bill as it stands.

240 Theme 1: turning to the themes, I do feel that it is helpful to start on the first theme by
looking at the definitions and terms used within the Bill. As indicated at an earlier stage of
consideration in this Chamber, I do not intend to move clauses 3 through to 6 at this stage, but
to formally do so when the other themes and clauses have been considered, moved and
determined.

245 As this Bill is about domestic abuse, it is clearly important to define what is meant by the
term ‘domestic abuse’ and this is done through clause 4. The term is wide and in drafting this
provision we drew on the English Bill now before the Westminster Parliament, with insights from
the Scottish Domestic Abuse Act and consideration of the legislation in other jurisdictions.

250 The definition requires two primary elements. Firstly, that the behaviour exhibited must be
by at least one person towards another person where these individuals are personally
connected – and we do elaborate on that term later; and secondly, that the behaviour must be
abusive.

255 The concept of ‘abusive behaviour’ is deliberately wide and is set out in subsection (3) of
clause 4. It captures both physical and sexual abuse, along with violent or threatening behaviour
and also psychological, emotional or other abuse. It specifies controlling or coercive behaviour
along with economic abuse. Controlling or coercive behaviour is not further defined and
therefore takes dictionary meaning. Subsection (5) of clause 4 further defines economic abuse
and subsection (6) expands on what we might constitute psychological, emotional or other
abuse. These definitions are purposely not meant to be limiting or exclusive, as explained by
subsection (8). What subsection (9) does is to make clear that abuse can be undertaken against a
260 person, either by getting another person to behave abusively, or for the perpetrator to behave
abusively towards someone or something that they know is important to the victim, such as a
child, a pet or property.

The Department believes that the definition of ‘abusive behaviour’ is sufficiently wide so as
to encompass all possible forms and permutations of abuse that may be inflicted by one person
against another within the domestic setting.

265 Within clauses 3 and 6 are terms and definitions that set the broad boundaries of who is the
perpetrator and who is meant to be protected by the Bill. Clause 3 defines the terms ‘home
address’, ‘relative’ and ‘vulnerable adult’. The Bill is clear that the home address is the sole or
main residence in the Island of the person in question and if there is no such residence then it is
the address or location in the Island where that person can regularly be found. This is important,
270 because in the 21st century it may shock some to realise that there are more people than we
might like to imagine that are living on the Island who have no permanent or secure residence or
place to call home.

In addressing domestic abuse, it is important to define ‘relatives’ and subsection (3) of clause
3 cross-refers to clause 5. That defines ‘personally connected’. The definition of a relative
275 includes all the relationships of full and half-relatives, and in the event that there are great
grandparents and great grandchildren, one would expect those relationships by extension to be
included. Relationships include marriage, civil partnerships, cohabitees and adoptive relatives.

280 ‘Personally connected’ in clause 5 includes eight categories, including marriage, civil
partnerships, agreements, parental relationships, other relatives and fostering. These definitions
are meant to include the widest possible range of strictly domestic relationships.

Simply being in the same house or larger premises as others does not of itself mean
‘domestic’. In other words, lodgers who are sharing a house or those living singly within
accommodation provided are not covered. This is to ensure the definition of domestic is not
made so wide that it loses its significance in context.

285 The point of the Bill is that a domestic relationship is materially different to general relationships occurring amongst neighbours, work colleagues or indeed strangers. Therefore, any abuse of this domestic relationship merits a more severe punishment, as we will discuss later. The definition in clause 5(1)(e) covers close relationships that may or may not be sexual relationships and where the parties may or may not necessarily live together for any length of time in any particular place but to all intents and purposes the relationship could, at least in theory, be termed a warm personal relationship.

290 The restriction to 10 years after the end of the relationship was inserted in the Keys on the basis that there must be a time when an ex-relationship is no longer covered by the Act. Clause 6 simply states that if it is said two people are personally connected then that is so, unless the matter is challenged before a plea or an indication of a plea is taken. In other words, if facts are disputed then say so early on.

295 Mr President, that ends my opening remarks and I invite Members, through you, to enter into any discussion on any matter relating to this theme.

300 **The President:** Does any Member wish to speak at this point?

Yes, Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

305 I am mindful that I have an amendment tabled to clauses that have just been touched on in this theme. I would be grateful for your guidance as to whether or not it is appropriate to speak to the amendment at this point or wait until the amendment is picked up when the clauses are formally moved at the end?

310 **The President:** Clearly you would move the amendment at the appropriate time, but it might be helpful to Council just to have a preliminary view, in the context of what the mover has set out.

Mrs Poole-Wilson: Okay, thank you, Mr President.

315 In which case, I am happy to explain the rationale for the amendment tabled later in the list of concatenated amendments, which is that the words ‘within the last 10 years’, which appear in the definition in clause 5(1)(e) ... I am happy to explain the rationale for the proposal that these words are removed.

320 As I understand it, and as the mover has explained in discussing the themes, those words were inserted in another place to make it clear that a former relationship should come out of the remit of this Bill’s provisions, so that relationships that go back quite a long way would not be covered – in this case, further than 10 years.

325 I raised a question about this, because it seems to me that the material language to determine whether a relationship that is not one of marriage, civil partnership or involving a child for which both parties have parental responsibility or are relatives, or are captured by any of the other subsections of clause 5, whether it is appropriate to put a time bar on that, considering that this is likely to be a relationship of cohabitation where the parties have chosen not to marry or enter into a civil partnership or perhaps it is not cohabitation, but it is, as described, an intimate personal relationship.

330 My question really was surely it is about assessing whether a relationship meets the test of the definition ‘intimate personal relationship’. If it meets that test, then there should not be a time bar in this Bill in terms of the Bill’s provisions applying to such relationships. I think the converse is that if the intention is to avoid a fleeting association being captured by this Bill, you could have such fleeting associations that have taken place within the last 10 years.

335 So the test still comes back to: is a relationship one that is enduring enough or of a nature that would meet the definition of ‘intimate personal relationship’? The time bar – the, ‘within

the last 10 years' – to my mind does not seem to be necessary, and for that reason, I would propose to have those words removed from the Bill.

340 **The President:** Thank you, Hon. Member.
Mrs Maska?

Mrs Maska: Thank you, Mr President.
Relating to the same clause, clause 5(1)(e), I welcome the fact that 'within the last 10 years' is to be omitted from the Bill. I was very insecure about that being inserted. The research I have
345 done and my own experience have led me to the view that a relationship may not be intimate within the last 10 years for a domestic abuse situation still to exist. So the omission of that wording I do welcome.
Thank you, Mr President.

350 **The President:** Hon. Member.
Miss August-Hanson, you may of reply.

Miss August-Hanson: Thank you. I would just like to state that the omission of the words 'within the last 10 years' has been very much accepted and welcomed by the Department.
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The President: Thank you.
We move now then to your moving of clause 7.

Miss August-Hanson: On the second theme, Mr President.
360 This is where we begin to get into the clauses in detail. It is the second theme, and it is important because this is how the Police and the courts may take measures to protect people from abuse and to, where possible, prevent further abuse. These measures do not preclude prosecuting the perpetrator for either or both of the domestic abuse offences which are covered in the next theme and can be imposed before, during or after proceedings for those offences.
365 The following clauses cover this theme: clauses 7 to 11; 14 to 25; 28 to 30; and 32 to 34. I will formally move these clauses at the conclusion of my opening remarks on this theme.

These clauses provide the power for the Police to give Domestic Abuse Protection Notices (DAPNs), the Police and others to apply for and/or make Domestic Abuse Protection Orders (DAPOs) with the object of protecting victims and vulnerable people such as dependent children and/or vulnerable adults within the domestic setting.
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Clauses 7 to 11 empower the Police to give a person a DAPN. The point of these provisions is that the Police have long had to attend domestic incidents without having really the appropriate legal powers to deal with some of the situations they are called out to. What I mean is that currently it is the case that unless an offence of some kind has been committed and the Police have the necessary evidence, such as a complainant willing to testify, there has been very little they could do to address the situation.
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Changes made in Keys provide that a DAPN may only be issued if the consent of another police officer above the rank of sergeant has been given and give further detail to cater for alternative living arrangements and the various permutations of tenancy and home ownership arrangements that there may be. For example, where the perpetrator owns the house and/or pays the mortgage or the rent, provision is made so as to ensure that the perpetrator cannot do, or fail to do, anything that would have the effect of forcing the victim out of the premises.
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The changes in the Keys also address arrangements whereby the tenancy is held by more than one person jointly or in common and deal with how DAPNs and DAPOs could be fully applied in relation to the myriad accommodation arrangements to be found in the property law of our Island. These include joint ownership situations where the perpetrator owns the premises
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or where the premises the couple live in is in name only, although the mortgage is paid out of a joint fund or so forth.

390 In the UK draft Bill, on which these provisions have been based, it is presumed that the perpetrator would be living at the premises at the time of the Notice or Order. But that is not necessarily always so, which is why some amendments were identified and made in the Keys. The other issue resolved in the Keys was where the tenancy is held in common with others who are not part of the domestic relationship in question.

395 There are other matters to be considered by the Police before giving a Notice, including the welfare of any person under the age of 18 and again, as a result of a change in the Keys, any vulnerable adult. The views of the victim, the perpetrator and any other tenant or tenant in common must also be considered. These changes were also made to the DAPOs. The Notice may be given for up to 14 days during which a DAPO must be applied for or notification given that an Order will not be sought or else the Notice will expire after 14 days if no other action is taken.

400 Clauses 14 to 25 deal with the power of the Police and others to apply to a court for a DAPO and for the court to make a DAPO. One of the unique features of a DAPO is that it may be applied for and made regardless of whether this is by a criminal court or a civil court dealing with matrimonial and other family matters. The idea being that wherever a case is being dealt with where domestic abuse appears to be a factor, the person affected and/or the relevant court that they are before may address the case in hand and the domestic abuse at the same time. A DAPO may make the same basic provisions as a DAPN, but with the difference that a DAPO is not necessarily time bound.

405 Clause 22 says that a court may impose any requirements it considers necessary to protect a person from the risk of domestic abuse and gives some examples, but then says that a court is not limited by those examples. Part of the protective provisions of a DAPO is that the perpetrator is immediately subject to notification requirements as set out in clauses 28 to 31 and that the court may impose an electronic monitoring requirement as set out in clauses 22(6) and 24. The purpose of these two measures would be to ensure it is known where a perpetrator is living and if they have left or indeed returned to the Island. The electronic monitoring requirement would also be useful so action can be taken if it is clear that the perpetrator is deliberately breaching any requirement not to go to or within a certain radius of any location.

415 Clause 25 provides that a DAPO takes effect from the day on which it is made either for a specified period, for example, until the occurrence of a specified event, or until further Order.

420 Clause 18 deals with the conditions necessary to be met before an Order is made and clauses 19 and 20 deal with matters that are to be considered before either making an Order against the perpetrator or against a joint tenant or a tenant in common, referred to in the Bill as 'T'.

425 The conditions are straightforward. Firstly, the court has to be satisfied that a person has been abusive towards a person to whom they are personally connected. Secondly, the court must believe it is necessary and proportionate to protect the other party from abuse or the risk of abuse from that person. It does not matter, for the purposes of this Bill, if the abuse took place in the Island or elsewhere, or happened before the Act receives Royal Assent and section 18 comes into operation. Presently, the court may only make a DAPO, in the Bill, against a person aged 16 years or over and the abuse must have been against a person aged 16 years or over.

430 Clause 14 defines a DAPO and clauses 15, 16 and 17 deal with the practical matters in terms of getting a DAPO made. An application under clause 15 may be made by the person for whose protection the Order is sought: a police officer, a person specified in regulations made by the Department or any other person with the consent of the court. Regulations could specify children or step-children etc. of either party.

435 Subsection (5) is important, as well as clause 17, because taken together they empower the person for whose protection an Order is sought to apply for the Order in any family or civil proceedings where the person and the perpetrator are parties. Clause 16 deals with the technical aspect of an application where a DAPN has previously been given by a police officer.

440 The remaining clauses in this theme, clauses 32, 33 and 34, deal with the variation and discharge of Orders and for appeals. In the case of appeals, almost any party can appeal against the granting of an Order or the failure to make an Order.

445 I would like to also note here in some detail the changes that were made in the Keys in relation to accommodation. As alluded to earlier in my opening statement, I am aware that the accommodation is a topic which may bear further discussion. However, at this time, I would note that a key component of the Bill is the ability to remove perpetrators from their accommodation in order to ensure that the victim of alleged abusive behaviour is able to stay and be safe in their existing accommodation.

450 I would also like to set out the Department's thinking, as I have been party to it, in terms of the preventative and protective measures that involve removing a party from their accommodation. The Department is well aware that the power of the Police to give a Notice requiring a person to leave premises is a significant power. That concern was naturally raised in the Keys. However, as someone said in discussions, why are we so worried about the rights of the perpetrator and where that person will live, when there is another party who has, on the basis of the information before the police officers they called to assist, been the one who has suffered abuse? What about the rights of the victim and their dependants, whether children or vulnerable adults, to live in their own accommodation in safety?

460 The reality is that sometimes it has been simply too dangerous to leave things as they are and consequently the victim has in the past been expected to leave for their own safety. Has anyone worried in the past about where the victim and their dependants might live? Of course they have not. The Bill is about ensuring we have a healthy and safe Island where people live their lives free from crime and danger, and where victims of abuse should not have to leave their homes to get away from danger, particularly from those with whom they should feel safe.

465 In the Keys, account was taken of the fact that all victims do not necessarily own the home or hold the tenancy to the accommodation in which they are living. These may instead be in the name of the perpetrator. Some living arrangements are more diverse, where the tenancy is held in common with others or where there is a lodger. The Bill has tried to ensure that whatever the living arrangement the victim is afforded the opportunity to remain in their accommodation.

470 With Domestic Abuse Protection Orders in particular, the court can put in requirements that ensure that the perpetrator cannot do anything that would have the effect of forcing the victim out of the accommodation. Measures might include ensuring the rent or the mortgage continues to be paid while the DAPO is in effect. How will the measures the court might impose work? Well, the honest answer to that is they will seek to deal with the imperfect human conflict that occurs in difficult situations such as these and to protect the interests of the victim and their dependants.

475 Mr President, that brings me to the end of my opening remarks on this theme dealing with the protective and preventative measures and connected issues provided for in the Bill. I will now formally move the clauses in such a manner as to look to enable the amendments to the clauses to be taken in an orderly fashion.

480 **The President:** You are moving clause 7?

Miss August-Hanson: All of said clauses.

485 **The President:** Let's do them one at a time. Clause 7, you are moving?

Miss August-Hanson: Yes.

The President: Mrs Maska – Mrs Lord-Brennan?

490 **Mrs Lord-Brennan:** It was a query to do with the –

The President: No, I need it seconded first before a debate.

Mrs Maska: I will indeed.

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The President: Mrs Maska.

Mrs Maska: I will be glad to second, Mr President.

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: It is just a query to do with the Orders that the hon. mover has just referred to. There was quite a lot of detail, or potential detail, explained there that is not so specific as to be included in the Bill. Is it envisaged that there is to be guidance on these particular matters and how they might be applied? That is my question.

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Thank you.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

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Yes, it is envisaged that it will be in guidance.

Mrs Lord-Brennan: Thank you.

The President: I call on Mrs Sharpe, Hon. Member.

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Mrs Sharpe: Thank you, Mr President.

I do have an amendment 5, which with your leave, Mr President, I will no longer be moving.

The President: Now, I have two amendments, 5 and 5A.

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Mrs Sharpe: That is correct, sir, and I –

The President: So you are not moving 5, but you are going to move 5A?

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Mrs Sharpe: Yes, I would like to move 5A. Thank you, Mr President
Amendment 5A is to Part 2:

Amendment to clause 7

5A. Page 14, line 10 for '16' substitute '18'.

The rationale behind this amendment is to acknowledge that a 16- or 17-year-old abusing a parent or someone else with whom they are in an intimate relationship requires the help of the Department of Health and Social Care rather than involvement with the Police and the courts, which would inevitably be the case if they are served with Domestic Abuse Protection Notices or Orders.

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This is certainly the case in the UK, where under sections 24 to 33 of the Crime and Security Act 2010, DVPNs and DVPOs cannot be served on anyone under the age of 18. If a young person is displaying abusive behaviour, it is likely that they have either witnessed domestic abuse or been the victim of abuse themselves. They may have mental health or behavioural issues. Either way, I would argue this young person and their family should in the first instance be referred to the Department of Health and Social Care, so that the Children and Families Service can provide

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540 a wraparound service – family therapy, child and adult mental health services, and so on – so that the root cause of the behaviour can be addressed. This is also the opinion of Hazel Smith, an advocate with 40 years’ experience in family law, who presented her observations on this Bill to Hon. Members in the Barrool Suite last week. Ms Smith is also a Panel Deemster and Panel Deputy High Bailiff dealing with family and care cases.

545 As I have said, serving a Notice and then potentially an Order on such a 16- or 17-year-old propels them towards the Police and the courts. If they breach the conditions of the Notice or Order placed upon them, they could, under clauses 12 and 26, face a fine or even custody.

There is also the question of what conditions might be part of a Notice or Order. If, for example, a young person were abusing their parents, the Notice, or later Order, might state that the young person must not re-enter the family home. Potentially then that young person could become homeless.

550 Article 3 of the European Convention on Human Rights, the right to be free from inhumane or degrading treatment, given legal effect in the Isle of Man by the Human Rights Act 1998, should be considered here. It is not inconceivable that preventing a young person from returning to their home could result in their being in a state of inhumane or degrading treatment. In other words, not having adequate shelter from the elements, food, water, basic hygiene facilities, etc. This might be particularly applicable if the young person is mentally ill, has a learning disability, 555 or suffers a medical condition that requires regular treatment.

Preventing a young person from re-entering the family home could also hamper the services provided by Children and Families, which would normally endeavour, above all else, to reunite the family if at all possible and safe to do so.

560 Another reason for not imposing Notices or Orders on 16- and 17-year-olds is that under future Manx legislation, anyone aged 18 or under who commits an offence will come under the auspices of the Children and Families’ Youth Justice Team. Therefore, it seems sensible to only apply Notices and Orders to those aged 18 or over.

565 Having said this, if a 16- or 17-year-old were found by the Police to have been repeatedly abusing a parent or a peer and the Department of Health and Social Care decided there was a need to remove that young person from the family home to protect the parent or peer, then under this Bill the Police have the power to arrest that young person and if necessary make arrangements for the arrested juvenile to be moved to accommodation provided by the Department of Health and Social Care, under Part 3 of the Children and Young Persons Act 2001.

570 Mr President, with your permission I would like to move the amendment 5A in my name.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

575 I am very happy to second this and I welcome very much the mover’s close detailed work in helping the Council understand the other implications of existing provisions that come into play as intervention for 16- and 17-year-olds.

I think what we were looking for was to understand, is there appropriateness of the measures and proportionality? I think that some of these interventions already exist in law that 580 is already available. So I am very happy to support this amendment.

Thank you.

The President: Miss August-Hanson.

585 **Miss August-Hanson:** I would like to thank the mover of the amendment, Mrs Sharpe, and also the seconder as well for all of the questions in relation to this to try and formulate this amendment in so well a fashion that it has been formed. The Department are very much in support of this and any others throughout the rest of the Bill.

Thank you, Mr President.

590

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, thank you, Mr President.

595 I also wanted to express my support for this amendment, following a very helpful briefing
and discussion about how the children and young persons and safeguarding regime that already
exists would interplay with the provisions in this Bill. In particular, I think it would be very helpful
if the mover of the amendment might be able to just confirm that all we are talking about at this
stage is the diversion prevention regime of Notices under this Bill and the reason there is no
600 need for it to apply to 16- and 17-year-olds is because there are adequate prevention and
intervention services already available through the Children and Families services. And, indeed,
there might be a risk if a notice was served on a 16- or 17-year-old under this Bill that those
prevention and intervention services that exist would not then be statutorily brought into play
providing the opportunity for those 16- and 17-year-olds and their families to receive Children
and Families services' support.

605

The President: Thank you. Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

610 I would like to confirm to the Hon. Member, Mrs Poole-Wilson, that all we are talking about
here are the Notices and the Orders and there is adequate service available under the current
children's services.

Thank you.

The President: Thank you, Hon. Members.

615 In that case, we turn to the vote. Let's deal first with the amendment in the name of
Mrs Sharpe numbered 5A. Those in favour of the amendment to clause 7, say aye; against, no.
The ayes have it. The ayes have it.

Clause 7 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Having dealt with clause 7, clauses 8 to 11.

620

Miss August-Hanson: Mr President, I do move that clauses 8 to 11 do stand part of the Bill.

The President: Mrs Maska.

625

Mrs Maska: I am happy to second. Thank you, Mr President.

The President: Thank you. Does any Member wish to speak on clauses 8 to 11?

Mrs Maska.

630

Mrs Maska: Thank you, Mr President.

635 During our consideration of the Bill in its Second Reading and the evidence we took regarding
the provision of notices and the potential for it to make not only a victim homeless but a
perpetrator homeless as well. I would just like to ensure that as the Bill goes forward the
provisions that protect also a perpetrator, who may be a victim themselves, to be also protected
in terms of potential homelessness, and other legislation might be taken forward as a matter of
priority that leaves a substantial gap in our provisions at the moment.

Thank you, Mr President.

The President: Miss August-Hanson, do you wish to reply?

640

Miss August-Hanson: Just that I agree that there is definitely a lack of legislation in terms of homelessness. Not necessarily speaking on behalf of the Department of Home Affairs, but certainly as a Member of this place, I think that it certainly is a gaping hole that perhaps needs to be looked at.

645

The President: I put the motion that clauses 8, 9, 10 and 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12, please.

650

Miss August-Hanson: Mr President, I am moving that clause 14 do stand part of the Bill.

The President: Sorry, my mistake. Clause 14.

Miss August-Hanson: Thank you, Mr President. Mrs Maska?

655

The President: Mrs Maska.

Mrs Maska: I would like to second, sorry, Mr President.

660

The President: Thank you. Mr Attorney.

The Attorney General: Yes, Mr President.

I seek to move an amendment in my name, 7 –

Mrs Sharpe: Point of order, Mr President.

665

I do apologise, but I have an amendment 6, which with your leave, Mr President, I will not be moving.

The President: Yes, I took that as read, thank you.

670

Mrs Sharpe: Ah, sorry Mr President.

The President: Mr Attorney.

675

The Attorney General: Very briefly, Mr President, I seek to move the amendment in my name, number 7 on the Order Paper, which is a technical amendment replacing the word 'part' with the word 'division'.

Amendment to clause 14

7. Page 18, line 29 for 'Part' substitute 'Division'.

The President: Thank you very much.

Mr Cretney: I second that.

680

The President: Mr Cretney.

Mrs Poole-Wilson: Seconded.

685

The President: I put the amendment first, clause 14, in the name of Mr Attorney. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14 as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 15, 16 and 17, Miss August-Hanson.

690

Miss August-Hanson: Thank you, Mr President. I move that clauses 15 to 17 do stand part of the Bill.

The President: Mrs Maska.

695

Mrs Maska: I would like to second, Mr President. Thank you.

The President: I put the motion that clauses 15, 16 and 17 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

700

Clause 18.

Miss August-Hanson: Mr President, I move that clause 18 do stand part of the Bill.

The President: Mrs Maska.

705

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

The President: Mrs Sharpe.

710

Mrs Sharpe: Thank you, Mr President. I move the amendment 7A standing in my name, for the reasons I previously gave at length.

Amendment to clause 18

7A. Page 21, line 36 for '16' substitute '18'.

Mrs Lord-Brennan: I beg to second, Mr President, thank you.

The President: Mrs Lord-Brennan.

I put the amendment to clause 18 in the name of Mrs Sharpe. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

715

Clause 18 as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 19 to 25. Miss August-Hanson.

720

Miss August-Hanson: Mr President, I move that clauses 19 to 25 do stand part of the Bill.

The President: Mrs Maska.

Mrs Maska: I would like to second, Mr President. Thank you.

725

The President: I put the motion that clauses 19, 20, 21, 22, 23, 24 and 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn to clause 28.

730

Miss August-Hanson: I move, Mr President, that clause 28 stand part of the Bill.

The President: Mrs Maska.

735 **Mrs Maska:** I would like to second, Mr President.

The President: Mr Attorney.

740 **The Attorney General:** Yes, thank you, Mr President. I would like to move amendments 8, 9 and 10 on the Order Paper standing my name. These again are technical drafting amendments and I so move:

Amendments to clause 28

8. Page 29, after line 14 insert—

'Tynwald procedure — approval required.'

9. Page 29, lines 18 and 23 for '(2), (4) and (5)' substitute '(2), (4), (5) and (6)'.

10. Page 29, lines 26 and 27 for '(2), (4) or (5)' substitute '(2), (4), (5) or (6)'.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second, Mr President.

745 **The President:** I put the amendments in the name of Mr Attorney to clause 28. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29. Miss August-Hanson.

750 **Miss August-Hanson:** I move, Mr President, that clause 29 stand part of the Bill.

The President: Mrs Maska.

Mrs Maska: I would like to second, Mr President.

755 **The President:** I put clause 29. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 30. Miss August-Hanson.

760 **Miss August-Hanson:** Mr President, I move that clause 30 stand part of the Bill.

The President: Mrs Maska.

Mrs Maska: I would like to second, Mr President. Thank you.

765 **The President:** Mr Attorney.

770 **The Attorney General:** Yes, thank you, Mr President. I would like to move the amendment standing in my name at item 11 on the Order Paper, which again is a technical drafting amendment:

Amendment to clause 30

11. Page 30, line 13 for '28(2), (4) or (5)' substitute '28(2), (4), (5) and (6)'.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second.

775 **The President:** I put the amendment in the name of Mr Attorney to clause 30. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Now, turn to clause 32, 33 –

The Clerk: Sorry, did you put clause 30 as amended?

780 **Miss August-Hanson:** No.

The President: I am sorry?

785 **The Clerk:** Sir, would you put clause 30 as amended?

The President: Clause 30 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it. My apologies.
Clauses 32, 33 and 34.

790 **Miss August-Hanson:** Mr President, I move that clauses 32, 33 and 34 be approved and do stand part of the Bill.

The President: Mrs Maska.

795 **Mrs Maska:** I would like to second, Mr President, and reserve my remarks.

The President: I put the motion that clauses 32, 33 and 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
800 We now deal with clauses 12, 13, 26 and 31. Miss August-Hanson.

Miss August-Hanson: Mr President, that completes the clauses and amendments associated with prevention and protection. So moving on, the next theme deals with offences which are addressed through the following clauses ... Oh gosh, I am one down ...

805 I am being asked to hold on a moment, so I do apologise to Members.

Mr President, I ask the indulgence of Legislative Council Members here, in terms of allowing that clauses 12, 13, 26 and 31 are moved within the theme of offences; if that is approved by Council, that is.

810 **The President:** Right, in that case we will turn to your remarks on theme 3, which will include those four clauses and we will start the debate with those clauses thereafter. Is that the way you wish to do it?
Thank you very much.

815 **Miss August-Hanson:** Thank you very much, and I appreciate the patience of Council with that one; my sincerest apologies.

Mr President, that completes the clauses and amendments associated with prevention and protection. Moving on, the next theme deals with offences which are addressed through the following clauses.

820 Clauses 12 and 13 deal with the breach of DAPNs.

Clauses 26, 27 and the schedule, clause 27(7), deal with the breach of DAPOs.

Clause 31 deals with any breach of notification requirements.

Clauses 35 and 36 deal with the substantive domestic abuse offences.

825 Clauses 37 and 39 capture behaviour outside the Island and provide for conviction of an alternative offence.

Clauses 40 to 42 deal with aggravating factors and provide that further aggravating factors may be added by order.

We will not be moving clause 38.

830 In moving these clauses, I will summarise their purpose and effect and then will engage in debate and consider the various amendments.

Clause 12 makes it an offence punishable by 12 months' custody, a level 5 fine or both to breach any condition of a notice. The purpose of the offence is to emphasise the importance and the seriousness of the notice and to discourage those given a notice from breaching its terms and therefore threatening the safety or well-being of the person for whose protection the notice was given.

835 Subsection (2) provides that the person breaching the notice must be remanded in custody and brought before a court within 24 hours. That period of time does not include non-working days. So a person arrested on a Friday would be brought before the court on the following Monday.

840 Clause 13 deals with the necessary technicalities where a person is arrested, brought before a court and then remanded.

Clauses 26 and 27 and the schedule deal with the arrest and the remand for breach of a DAPO. Because DAPOs are a key long-term preventative measure that are meant to secure effective and lasting protective and preventative measures for the victims of domestic abuse and those who live in fear of continuing abuse, the penalty on information for a breach is severe. It is set at a maximum of seven years of custody or 12 months of custody, a level 5 fine or both on summary conviction. The standard of proof is the criminal standard.

845 Clause 31 makes it an offence to fail to comply with notification requirements or to give false information. The penalties are up to five years' custody on information, or 12 months' custody, a level 5 fine or both on summary conviction. The purpose here is straightforward: give true information within the time stipulated or face a criminal penalty.

850 Clauses 35 and 36 deal with the substantive offences relating to domestic abuse that both attract a maximum penalty of 14 years in custody or 12 months' custody, a level 5 fine or both on summary conviction. The domestic abuse offence in clause 35 is more about the direct use or threatened use of force, hence the clarification in subsection (4) that the offence is committed even if no actual physical or psychological harm was caused. This means that it is not necessary, for example, to prove ABH or GBH – actual bodily harm or grievous bodily harm – where actual violence causing identifiable injury occurred; instead pushing/shoving, aggressive eyeballing and so on could constitute the offence. Indeed, where other factors are present that will aggravate the offence.

860 The offence in clause 35 needs only one occurrence to have been committed. For the controlling or coercive behaviour offence in clause 36 to be committed, the behaviour in question by its nature must have occurred on more than one occasion. Control and coercion are terms that take their common dictionary meaning. The clause specifies repeated behaviour and the evidence will show that this has occurred.

865 Two other key factors are that the behaviour has a serious effect on the victim and that the perpetrator ought to know such behaviour will have a serious effect. Subsection (3) says that the words 'ought to know' mean that which a reasonable person in possession of the same facts would know. This is something the courts are well versed in. Would a reasonable person, acting reasonably and in proper respectful understanding of their intimate other, behave in the manner the accused did? If the answer is no and the effect of the behaviour had a serious effect on the other person, then the offence has occurred.

870 In criminal law there must always be clarity as to what the offence is or how it is committed, balanced against the right of an individual to defend him or herself from the allegation that they committed a particular offence. If there are children involved and the abuser uses one or more of them to get at the victim, in effect using the child as a proxy, that will be a further factor in

875

evidence of controlling or coercive behaviour or else will constitute a factor of aggravating the offence.

880 Clause 37 is important because of the mobility by air and sea. It ensures the offences are not restricted by what happens only in the Island.

Clause 38 provided an exception to the domestic abuse offences where the person has responsibility for children, and I am not going to move that clause. The Department will not now be moving this clause on the grounds that it accepts that the exception is not needed, as the defences set out in clauses 35 and 36 should be sufficient.

885 Clause 39 makes provision for the conviction of an alternative offence in the event that the facts elicited in court do not amount to either of the domestic abuse offences but do amount to offences of provoking language or behaviour tending to a breach of the peace, harassment or putting people in fear of violence. These offences would attract a lesser penalty, but would ensure nevertheless that justice is done.

890 Clauses 40, 41 and 42 provide for aggravation of the domestic abuse offences where the victim is under 18, where a child is otherwise involved or where the Department has provided for other aggravating factors by order. The thinking is that the Department could add the use of strangulation during the commission of either of the domestic abuse offences for abuse during or after pregnancy, for stalking, harassment, image-based abuse and indeed the abuse of pets as factors that the prosecution may bring before the court as aggravating the domestic abuse offences.

I mentioned earlier the use of children by proxy for one person to abuse another person. I am aware that there are issues, certainly in UK family courts, raised by 'parental alienation'. That term is used there for the situation where one parent turns or at least attempts to turn a child or the children in the family against another parent. The Department considers such behaviour is covered by subsection (3)(a)(ii) of clause 41 – aggravation of offence where child is otherwise involved – which says that the domestic abuse offence is aggravated if:

- (ii) A made use of the child in directing behaviour at B, or
- (b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour.

905 On another matter relevant to the domestic abuse offences, provision to modernise the existing law in relation to strangulation is within a forthcoming Bill and has been based on the New Zealand Law Commission Report. In the context of this Bill, the ability to include strangulation by order would have the effect of ensuring any penalty imposed on conviction would be nearer the maximum of 14 years in custody than would otherwise be the case.

910 Mr President, that concludes my remarks in relation to offences connected with this Bill and I will now formally move the clauses in such a manner as to enable the amendments to clauses to be taken in an orderly fashion.

Again, Mr President, I beg to move that clauses 12, 13, 26 and 31 do stand part of the Bill.

The President: Mrs Maska.

915 **Mrs Maska:** I beg to second, Mr President. Thank you.

The President: I put the motion that clauses 12, 13, 26 and 31 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We move on to clause 27 and the schedule.

920

Miss August-Hanson: Mr President, I beg to move that clause 27 and the schedule stand part of the Bill.

The President: Mrs Maska.

925

Mrs Maska: I beg to second, Mr President.

The President: Mr Attorney.

930

The Attorney General: Yes, Mr President, I beg to move that the amendment standing in my name to clause 27 and the schedule do pass:

Amendment to the schedule
46. Page 58, line 35 omit «(P)».

The President: This is amendment 46, which is right at the end of the paper.

Miss August-Hanson: Indeed.

935

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second, Mr President.

940

The President: I put the amendment in the name of the Attorney to clause 27 and the schedule. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

I put clause 27 and the schedule as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 35.

945

Miss August-Hanson: Mr President, I beg to move that clause 35 do stand part of the Bill.

The President: Mrs Maska.

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

950

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

955

I beg to move amendment 12 standing in my name, with the proviso that a person aged 16 or over can be liable for the offence of domestic abuse.

Amendment to clause 35
12. Page 34, line 34 after 'person' insert 'aged 18 or over'.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

960

I am happy to second and I am grateful for the work done by the hon. mover, most especially in facilitating the conversations between the Head of Children and Families. I would like to thank on the record Debbie Brayshaw and the Department of Home Affairs. Last Thursday that meeting was held with some MLCs in attendance.

965

From that point, it was 100% clear that the existing powers and processes interventions as they relate to those under 16 and are provided for elsewhere in the legislation should effectively take precedence and it should be ensured that these play out without confusion for the welfare and the best interests of the child and indeed the family. I am relieved to see that this amendment has the support of the Department.

970 Hon. Members will be aware that the striking and the significant evidence, given to this Council about the complexities of teenage domestic abuse situations and intimate partner abuse, a child that grows up in an abusive home is more likely to become abusive. The teenage brain develops and responds differently when they are in stressful and abusive situations and the impact of and mental capacity for court proceedings for young alleged offenders was very concerning.

975 I was initially concerned that a way to de-escalate and intervene positively rather than criminalise was a preferred route. It was therefore far too complex to be dealt with in the manner that the Bill came to us, especially when existing provisions apply, for example, in the case of the offence of assault, anyway. Furthermore, amidst this complexity, in terms of child-to-parent abuse, it was established that in any case this existing offence of assault would be relevant and can apply to those aged 10 upwards, as our age of criminal responsibility, like the UK, is 10. In terms of teenage intimate relationship abuse, some aspects of this will be dealt with in the upcoming Sexual Offences Bill.

I feel also that the latest approach that we have, as proposed by this amendment, will sit more comfortably from a Public Health perspective and based on previous information from them and further to their work alongside the safeguarding on the Domestic Abuse Bill in 2018.

985 Additionally, as mentioned before, we should be cognisant of the rights of the child, particularly the United Nations' Convention on the Rights of the Child, a treaty which extends to us here on the Isle of Man. A child is by that someone who is under 18 and I believe that there will be possibly changes to recognise that age change here in other legislation.

I am very happy, Mr President, to second and I thank the mover for resolving this.
990 Thank you.

The President: Mrs Sharpe or Miss August-Hanson, if you wish to reply you may.

Mrs Sharpe: Thank you. I would just like to thank the Hon. Member for her comments. Thank you.
995

The President: Thank you.

Therefore I put in respect of clause 35, first the amendment in the name of Mrs Sharpe. Those in favour of the amendment, say aye; against, no. The ayes have it. The ayes have it.

1000 Clause 35 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36. Miss August-Hanson.

Miss August-Hanson: Mr President, I beg to move that clause 36 do stand of the Bill.

1005 **The President:** Mrs Maska.

Mrs Maska: I beg to second, Mr President.

The President: We deal with the amendments, first Mrs Sharpe.

1010 **Mrs Sharpe:** Thank you, Mr President.

I beg to move amendment 13 in my name. As for the previous amendment, a person age 16 or over can be liable for the offence of domestic abuse.

Amendment to clause 36

13. Page 34, line 34 after 'person' insert 'aged 18 or over'.

The President: Mrs Lord-Brennan.

1015

Mrs Lord-Brennan: I beg to second.

The President: Thank you.

Now, I call Mrs Lord-Brennan. You have amendments 14 and 15.

1020

Mrs Lord-Brennan: I think I have alluded to the fact that there has not been much time for discussion. I would therefore propose that this amendment is considered at the next sitting of the Legislative Council. *(Interjection by Mr Henderson)*

1025

The President: Thank you.

Mrs Poole-Wilson.

Mrs Poole-Wilson: I am not sure ... Was that Mr Henderson seconding?

1030

The President: Mr Henderson has seconded.

Now, can I ask for the response of the mover if clause 36 were to be considered at the next sitting with the amendments and the votes taken at that time?

The alternative is to have a formal motion to adjourn.

1035

The alternative for that is to go ahead with a vote in the knowledge that amendments could be tabled at the next sitting to the clause. But I would recommend not doing that, but it would amount to the same thing.

Miss August-Hanson: No, I am quite content, thank you, Mr President, for what the mover has suggested to happen.

1040

The President: Right.

Miss August-Hanson: Thank you.

1045

The President: Is there a consensus then that clause 36 and the amendments be deferred to the next sitting? Is that agreed?

Members: Agreed.

1050

The President: Agreed. Thank you. That will hopefully give the necessary time for the consideration that has been referred to.

Clause 38 is not to be moved.

Clauses 37 and 39. Miss August-Hanson.

1055

Miss August-Hanson: Mr President, I beg to move that clauses 37 and 39 do stand part of the Bill.

The President: Mrs Maska.

1060

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

The President: I put the motion that clauses 37 and 39 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 40 and 41. Miss August-Hanson.

1065

Miss August-Hanson: Thank you, Mr President.

I beg to move that clauses 40 and 41 stand part of the Bill.

The President: Mrs Maska.

1070

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

The President: I put the motion that clauses 40 and 41 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1075

Before we move to clause 42, we note there is an amendment for the insertion of a new clause, which would come in at this point, in the name of Mrs Lord-Brennan.

Insertion of new clause 1. Mrs Lord-Brennan.

1080

Mrs Lord-Brennan: Mr President, the amendment was available for Members on Friday. I have this morning had a couple of queries that I think could be resolved. I do not want to do those spontaneously, so on the basis that I think there are a couple of Members that would require more clarification or maybe an adjustment to this particular amendment, I would ask that Council also considers this clause at the next sitting to have the full benefit of the drafted amendment.

1085

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Mr President, as one of the Members who did raise a query on the drafting, I would happily second that this particular new clause is deferred to our next sitting.

1090

The President: Is that agreed, Hon. Members? (**Members:** Agreed.) We defer the consideration of insertion of new clause 1 to the next sitting. Thank you very much.

Clause 42. Miss August-Hanson.

1095

Miss August-Hanson: Thank you, Mr President.

I beg to move that clause 42 be approved and do stand part of the Bill.

The President: Mrs Maska.

1100

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

The President: I put clause 42. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

1105

We turn now to the next set of clauses, which fall under theme 4, 'Abusive Cross-examination in Court.'

Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1110

Clauses 43 and 44 are designed to empower the courts to prohibit the abusive cross-examination in person of a witness who is a victim or alleged victim of a specified offence. The provisions were inserted in Keys and represent a significant public policy statement promoting the message that proceedings will be fair for all parties, but that there will be no tolerance of abusive questioning in court.

1115

Clause 43 inserts seven new sections, 53A through to 53G, into Part 5 of the Summary Jurisdiction Act 1989, which is headed 'Domestic proceedings'. The purposes of the new sections are as follows.

Section 53A ensures references to a 'witness' include a party to proceedings.

1120 In effect, section 53B prohibits the cross-examination of a witness by their abuser in family proceedings where the ‘abuser’ has been cautioned or convicted of a ‘specified offence’ and provides necessary definitions for this section – for example, ‘specified offence’, ‘caution’, ‘conviction’, ‘service disciplinary proceedings’.

1125 A specified offence is an offence specified in rules of court. It is reasonable to imagine that the rules the court may make may specify the domestic abuse offences, any conviction for breaching a DAPN or a DAPO – the alternative offences set out in clause 39 – offences under the Protection from Harassment Act and the offence, including strangulation, set out in the Criminal Code 1872 at the outset. Other offences would no doubt be specified as the courts have further opportunity to consider relevant matters.

1130 Section 53C provides that in the case of ‘witnesses’ who are party to or the subject of an on-notice protective injunction, they may not cross-examine in person another party to that same protective injunction.

1135 Section 53D makes provision where the party or parties do not fulfil the criteria outlined in sections 53B and 53C, but the court nevertheless finds it necessary to stop a person from cross-examining or from continuing to cross-examine a witness. This applies where the quality of the evidence given by a witness diminishes or is likely to be diminished by a party to the proceedings continuing in an abusive manner.

Section 53E is supplementary.

1140 Section 53F sets out how the court will explore alternatives to any cross-examination in person. It gives the court necessary powers in the event a party to the proceedings against whom direction has been received cannot or will not seek an advocate.

1145 Section 53G gives the power for the Treasury to make regulations in connection with the cost for a legal representative appointed in these circumstances.

After this insertion of 53A to 53G, a small change to the cross-heading preceding section 54 is made.

1145 In clause 44, subsection (2) substitutes new division numbering to division headings in the Matrimonial Proceedings Act for the sake of greater clarity in reading that Act. The changes to that Act inserted by subsection (4) as new sections 114A to 114G are a mirror image of the changes outlined in connection with Summary Jurisdiction Act 1989 and summarised by me in respect of clause 43.

1150 Mr President, the Department believes clauses 43 and 44 strike the right balance between the rights of the parties in domestic and family proceedings to put their respective points of view, whether in person or when represented, and the equal rights of all parties to proceedings to be able to put forward or defend their case by having a fair hearing. The courts are not established to become another arena for abusers to continue their behaviour. They exist to provide an arena for justice to be done.

1155 Mr President, there are a significant number of amendments to clauses 43 and 44, so I will move them separately. Accordingly, I beg to move that clause 43 do stand part of the Bill.

The President: Mrs Maska.

1160 **Mrs Maska:** I beg to second and reserve my remarks, Mr President. Thank you.

The President: Mr Attorney.

The Attorney General: Yes, thank you, Mr President.

1165 I have two amendments to propose to clause 43, which are at items 18 and 22 on the Order Paper. They are both technical amendments and I so move:

Amendments to clause 43

18. Page 40, line 27 for ‘section 7(2)’ substitute ‘section 5(2)’.

22. Page 42, line 8 for '2003' substitute '2000'.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second.

1170

The President: Mrs Poole-Wilson; amendments.

Mrs Poole-Wilson: Thank you, Mr President.

1175 I have four amendments on the Order Paper in my name. I think it is safe to say that we can characterise them all as also technical in their nature. But if it is helpful to Members of Council, I can explain the rationale, particularly for amendment 19.

1180 Amendment 19 was written to now include the words, as well as police officer, 'or any other person authorised to do so in respect of an offence'. That wording is included because in forthcoming proposed legislation to adapt the changes to the cautioning regime, there will be others aside from police officers who by law will be able to give a caution. The reason for adding that in, using this wording in this clause, is to reflect that change that will be coming in due course.

Amendment 20 in my name is a technical amendment, simply reflecting that each of the legislative provisions is an Act of Parliament.

1185 Amendment 32 on the Order Paper in my name is a technical correction and Amendment 33 in my name makes clear that before making regulations the Treasury should consult the Deemsters.

Thank you, Mr President. I beg to move:

Amendments to clause 43

19. Page 41, for lines 1 to 3 substitute –

'(a) a caution given in the Island by a police officer or any other person authorised to do so in respect of an offence which, at the time the caution is given, the person to whom it is given has admitted'.

20. Page 41, line 32 after '1957' insert '(each an Act of Parliament)'.

32. Page 46, line 1 for 'legal representatives' substitute 'advocates'.

33. Page 46, line 2 for 'The Treasury' substitute 'After consulting the Deemsters, the Treasury'.

The President: Mr Attorney.

1190

The Attorney General: I second those amendments.

The President: Second. Mrs Lord-Brennan; you have a number of amendments also.

1195 **Mrs Lord-Brennan:** Thank you, Mr President.

I do have some amendments tabled relating to cross-examination in person in the family courts. Having finalised the amendments on these late last week, I do need to seek Treasury concurrence and if secured I would intend to move at Third Reading.

1200 I would like to state that the purpose of the amendments is to include the Domestic Abuse Protection Notices in such provisions, to define further the specified offences and to ensure clear protection for witnesses upon satisfaction of the already specified particular conditions, rather than to rely more heavily on court discretion in terms of prohibition of cross-examination in person.

1205 I have written to Treasury, but only yesterday, so it is clearly not reasonable to expect a response. I would ask that I move the amendments at Third Reading.

The President: You are requesting that all the amendments, that is 21 and 23 to 31 be held over?

1210 **Mrs Lord-Brennan:** Yes, all my amendments held over.

The President: On the grounds that you are seeking Treasury concurrence?

1215 **Mrs Lord-Brennan:** Yes, and I would be happy to meet the Third Reading threshold for votes on that basis.

The President: Right. In that case, we are back in this situation where if Council is agreeable we will defer full debate on ... it would apply to clause 44 also?

1220 **Mrs Lord-Brennan:** Yes.

The President: Certainly clause 43 and the amendments that have been tabled and mooted will be dealt with at the next sitting. Is that agreed, Hon. Members? (**Members:** Agreed.)

1225 We will see how we get on with clause 44.
Clause 44. Miss August-Hanson.

Miss August-Hanson: Mr President, I beg to move that clause 44 do stand part of the Bill.

1230 **The President:** Mrs Maska.

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

The President: Thank you.
Mr Attorney.

1235 **The Attorney General:** Yes, thank you, Mr President. I would like to move amendment 34 on our Order Paper, standing my name.

Amendment to clause 44
34. Page 47, line 28 for '7(2)' substitute '5(2)'.

The President: Mrs Poole-Wilson.

1240 **Mrs Poole-Wilson:** I beg to second.

The Chairman: And now, Mrs Poole-Wilson.

1245 **Mrs Poole-Wilson:** Thank you, Mr President.
I beg to move that the amendments on the Order Paper numbered 35 and 42 in my name do stand apart of the Bill. Again, they are of a technical nature.

Amendments to clause 44.
35. Page 47, for lines 35 to 37 substitute –
'(a) a caution given in the Island by a constable or any other person authorised to do so in respect of an offence which, at the time the caution is given, the person to whom it is given has admitted;'.
42. Page 49, for lines 24 to 26 substitute 'injunction specified, or of a description specified, in rules of court.'.

The President: Mr Attorney. Second?

The Attorney General: Oh sorry, yes, I will second that.

1250 **The President:** Mrs Lord-Brennan, in respect of the amendments to clause 44, for the record can you state whether you wish to move them at this meeting or seek deferral?

Mrs Lord-Brennan: Seek deferral. Thank you, Mr President.

1255 **The President:** Does Council agree? (**Members:** Agreed.) Agreed, thank you. Clauses 43 and 44, and the amendments, are deferred until the next sitting.

We turn now to theme 5 and the clauses that form part of that. Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1260 The fifth and the last theme deals with guidance, consequential and minor amendments. Clauses 45, 46 and 47 deal with regulations, a code of practice and guidance all issued by the Department in dealing with the disclosure of information, the handling of information and data and the fundamental issue of guidance to all parties in how they should exercise their functions under the Act. In other words, these clauses are fundamental to how the Act would be made to
1265 work in practice.

Clause 45 is about the disclosure of information by the Constabulary for the purposes of preventing and mitigating the effects of domestic abuse. The Department is empowered to make regulations to guide and assist the Constabulary and these regulations could be applied, for example, so that the Police could let schools know if there has been an incident that may
1270 have an impact on a pupil attending that particular school. Regulations might also be used in support of what is sometimes known as 'Clare's law'.

Clause 46 requires the Department to make a code of practice in respect of electronic tagging.

Clause 47 is very important because it empowers the Department to issue guidance relating to the exercise by any person of functions under this Bill and requires any such person to have regard to the guidance. It is in the nature of the word 'guidance' that it suggests that people are not thereby required to do what the guidance says or indeed face the consequences of failing to do so. But the requirement to have 'regard' to the guidance means people are in this instance meant to take notice of or pay attention to what is placed within the guidance.
1275

It is envisaged that the guidance would be drawn up with the assistance of the various public and private bodies and persons with a particular interest or responsibility in addressing domestic abuse. This will necessarily take some time and provide a period of wider public consultation to ensure the guidance is sufficiently broad to cover all of the areas that it needs to, whilst at the same time being straightforward to refer to.
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Clauses 48, 49 and 50 make small changes. In the case of the tweaks to the Children and Young Persons Act 1966, these are about ensuring it is possible to convict persons of ill-treating neglecting or abandoning children. Apparently, the problem is that it has generally been found impossible to prove wilful as a standard of proof relating to the ill-treatment neglect or abandonment of children under the age of 16. So inserting the words 'or recklessly' will have the effect of enabling such cases to be proved and dealt with appropriately.
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The other changes in (b), (c) and (d) are again about clarifying the law so it is possible to prove offences involving the ill-treatment of children. This change to the sentencing provision made at (e) is about modernising the language and summary penalty.

Clauses 49 and 50 make consequential and minor amendments to the Land Registration Act 1982 and repeal an amendment contained in the Central Registry Act 2018. These amendments relate to the requirement to keep private the details of the property/address details an
1295

individual would wish to remain hidden from their abusive partner and otherwise find that this information was held within the public domain, such as the matter of a Land Registry record.

1300 Mr President, that concludes my opening remarks on this theme. Turning to the clauses, I beg to move that clauses 45 and 46 do stand part of the Bill.

The President: Mrs Maska.

1305 **Mrs Maska:** I beg to second, Mr President, and reserve my remarks.

The President: I put the motion that clauses 45 and 46 do stand part of the Bill. Those in favour say aye; against, no. The ayes have it. The ayes have it.
Clause 47.

1310 **Miss August-Hanson:** Mr President, I beg to move that clause 47 do stand part of the Bill.

The President: Mrs Maska.

1315 **Mrs Maska:** I beg to second, Mr President, and reserve my remarks.

The President: Amendment in the name of Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1320 The amendment to clause 47, which is 45 on the Order Paper, is simply to insert the words 'laid before Tynwald' to ensure that the guidance is laid before Tynwald. The reason for my suggesting inserting the words into the Bill is that I am advised that guidance is not an instrument of legislative character and is not captured by the Interpretation Act with its automatic provisions for laying before Tynwald.

1325 In this particular case, and following the precedents set with other guidance, particularly around the Equality Act and also in relation to safeguarding, it was my view that it would be very helpful to be absolutely clear that the guidance be published on a Tynwald Order Paper and hence requesting that these additional words are inserted into clause 47.

Amendment to clause 47

45. Page 54, at the beginning of line 23 inset 'laid before Tynwald and'.

The President: Thank you. Mr Attorney.

1330 **The Attorney General:** I am happy to second that, Mr President.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

1335 I think in briefings and also previous sittings and consideration of this Bill, including evidence given to this Council, it is very clear that guidance is incredibly important to this Bill. I think at various stages along the line it probably would be preferable that (a) we have had the chance to take into account some of the information we have received, particularly from Law Society, and (b) an opportunity to seek assurance on the record as to matters in a little bit more detail that would be covered in guidance.

1340 I think in terms of the approach, my thinking, and it may be reflective of the thinking of other Members of Council, was that at clauses we needed to gear up for clauses and amendments. The Third Reading might also be an opportunity to deal with assurance in respect of guidance and having had a bit more time to absorb some significant detail on that; because there is not

1345 the urgency to do that or to bring amendments in respect of guidance., but it is really incredibly important. Therefore, I would actually move that, in terms of clause 47, that is considered and voted on at the next sitting to allow time for us to consider properly the guidance.

1350 The other point I would make is that in the UK, their Bill Committee on their Domestic Abuse Bill had actually required that guidance was available at the second reading of that Bill. I am not proposing that we are going to put things on hold for the guidance. I just say that by way of recognising how important the guidance is.

The President: Thank you. Mrs Poole-Wilson.

1355 **Mrs Poole-Wilson:** Thank you, Mr President.

If I have understood Mrs Lord-Brennan's concerns correctly, it seems to be that she is seeking to defer voting on this particular clause as amended in order to obtain desired reassurances about what will be in the guidance from the Department, but with the benefit of being able to look at all the evidence that we have received, some of it quite late in the day.

1360 I wonder whether that desire for reassurance could also be met simply by the fact that we will also have to vote on a Third Reading of the Bill and that those reassurances about the content of the guidance must be given before the Council is prepared to vote on the Third Reading.

1365 I just put that into the debate to suggest that that is another route to make sure the reassurances that are being sought are provided.

The President: It is certainly frequent practice that queries that come up in respect of particular clauses are offered to be dealt with and answered at the Third Reading stage and quite often the Member concerned is quite happy with that reassurance that there would be a full explanation given at the time. What is being asked for here is actually a deferral of the vote until that happens.

I invite the Member to respond to this particular offer of Mrs Poole-Wilson.

1375 **Mrs Lord-Brennan:** I think it is possible to be handled either way. However, I would just say it focuses the mind, doesn't it? To know that at the next meeting we are going to look at guidance and then people can prepare for that.

1380 But to be honest, I am happy either way. I have made the point about how important it is that we think about guidance, we consider what we have been told and that we specifically seek from the Department particular matters of clarification or comfort. So, either way.

The President: Does any other Member have a view?
Miss August-Hanson.

1385 **Miss August-Hanson:** Can I suggest, Mr President, that perhaps Mr Bateman might be able to offer some advice at this point, to Mrs Lord-Brennan's queries.

The President: It is your wish to –

1390 **Mrs Lord-Brennan:** I do not have queries – that is the point.

Miss August-Hanson: Okay.

1395 **The President:** Is it your wish to call Mr Bateman as a witness to deal with specific points? I would ask Mrs Lord-Brennan –

Miss August-Hanson: Only if she wishes.

The President: – are you at this stage in a position to put questions to Mr Bateman?

1400 **Mrs Lord-Brennan:** Mr President, that is exactly the point I think; that, no, I do not think any of us are.

It is recognised that there may well be particular points of clarification, but the point is, given the timescale and everything, I would say that there is probably at least one or two other Members around this table who have got a few queries that they have got earmarked to look at further with guidance, but nothing specific that I would advance now.

1405

The President: So, we have two choices. We can reach consensus to defer this matter on clause 47 to the next sitting, or there could be a formal motion if there was not consensus to adjourn.

1410 Is there a consensus? May we agree to do that? (**Members:** Agreed.) Agreed. Thank you very much. That seems sensible.

Clauses 48, 49 and 50 then.

Miss August-Hanson: Mr President, I beg to move that clauses 48, 49 and 50 do stand part of the Bill.

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The President: Mrs Maska.

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

1420

The President: I put the motion that clauses 48, 49 and 50 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

At this point Mrs Lord-Brennan has tabled an amendment for the insertion of a new Part 5, which is referred to as amendment 44, and linked to it is the amendment to the long title of the Bill at amendment 1.

1425

So I invite Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

Amendment 44 inserts a new Part 5, which are provisions to include stalking and harassment. These are the provisions as presently drafted for the Justice Bill, which we have heard is the legislation which we hope soon will deliver on this aspect of provision.

1430

I think it is now clear that a comprehensive Domestic Abuse Bill should include these provisions, especially as we are either lacking or outdated in this particular area, and perhaps better that these matters are included sooner rather than later. Obviously the Justice Bill or subsequent legislation can amend these if they were to be included, but it would seem an omission not to include these provisions while we can, especially when you look around and look at other cases and indeed, evidence given to Council.

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Furthermore, this matter of the importance of including, particularly, stalking provisions had been raised some time ago, I think, in 2018 when it was the police trainer, John Trott, who also raised this point, not only to Tynwald Members, but also via the consultation to the Department. So it is not a new idea.

1440

Clearly, if the inclusion of these provisions finds support in this Council, then the Keys can have a debate on whether or not to take it out and then include it in another Bill, or further refinements could be made, either at a later stage in the process here perhaps or indeed in the other place.

1445

So I think on the principle that we have been told by many different people in many different ways that it is important, in connection with domestic abuse, to have provisions for stalking/harassment, if they are available to us in some form, why would we not include them

1450 now, even if they need to be revisited or tweaked by way of future legislation which we also know there will be the opportunity to do?

With that, I beg to move:

Insertion of new Part 5

44. Page 53, after line 16 insert—

“PART 5 — HARASSMENT AND STALKING

45 Protection from Harassment Act 2000 amended

The Protection from Harassment Act 2000 is amended as follows.

46 Prohibition of harassment — section 1 amended

(1) Section 1 is amended as follows.

(2) In subsection (1) insert—

(a) after “person” insert “(referred to below as “P”); and

(b) for “he” substitute “P”.

(3) After subsection (1) insert—

“(1A) P must not pursue a course of conduct—

(a) which involves harassment of 2 or more persons,

(b) which P knows or ought to know involves harassment of those persons, and

(c) by which P intends to persuade any person (whether or not one of those mentioned above)—

(i) not to do something that that person is entitled or required to do, or

(ii) to do something that that person is not under any obligation to do.”.

(4) In subsection (2) —

(a) after “this section” insert “or section 2A(2)(c)”;

(b) for “the person whose course of conduct is in question” substitute “P”;

(c) for “that it” substitute “that the conduct in question”

(d) after “amounts to” insert “or involves”;

(e) after “amounted to” insert “or involved”.

(5) In subsection (3) for the words preceding paragraph (a) substitute—

“(3) Neither subsection (1) nor subsection (1A) applies to a course of conduct if P shows—”.

47 Offence of harassment — section 2 substituted

For section 2 substitute—

“2 Offence of harassment

If P contravenes section 1(1) or (1A), P commits an offence.

Maximum penalty (summary) — 6 months’ custody or a level 5 fine.”

48 Stalking — section 2A inserted

After section 2 insert—

“2A Stalking

P1997/40/2A (omitting ss.(5))

(1) A person commits an offence if—

(a) the person pursues a course of conduct in breach of section 1(1), and

(b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) (and section 4A(1)(a)) a person’s course of conduct amounts to stalking of another person if—

(a) it amounts to harassment of that person,

(b) the acts or omissions involved are ones associated with stalking, and

(c) the person whose course of conduct it is known or ought to be known that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—

(a) following a person,

(b) contacting, or attempting to contact, a person by any means,

(c) publishing any statement or other material—

(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(d) monitoring the use by a person of the internet, email or any other form of electronic communication,

(e) loitering in any place (whether public or private),

(f) interfering with any property in the possession of a person,

(g) watching or spying on a person.

(4) This section does not limit the application of section 2.

Maximum penalty (summary) — 12 months' custody or a level 5 fine.

2B Power of entry in relation to offence of stalking

P1997/40/2B

(1) A justice may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice is satisfied that there are reasonable grounds for believing that—

(a) an offence under section 2A has been, or is being, committed,

(b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,

(c) the material—

(i) is likely to be admissible in evidence at a trial for the offence, and

(ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 13, 14 and 17 of the Police Power and Procedures Act 1998), and

(d) either—

(i) entry to the premises will not be granted unless a warrant is produced, or

(ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1).

(3) A constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

(4) In this section—

“justice” has the meaning given by section 114 of the Summary Jurisdiction Act 1989; and

“premises” has the same meaning as in section 81 of the Police Powers and Procedures Act 1998.”.

49 Civil remedy — section 3 amended

(1) Section 3 is amended as follows.

(2) In subsection (1) for “section 1” substitute “section 1(1)”.

(3) In subsections (3)(b), (5)(b) and (6) for “he” substitute “the defendant”.

(4) In subsection (9)(b) for “£5,000” substitute “level 5”.

50 Injunctions to protect persons from harassment within section 1(1A): section 3A inserted

After section 3 insert—

3A Injunctions to protect persons from harassment within section 1(1A)

P1997/40/3A

(1) *This section applies where there is an actual or apprehended breach of section 1(1A) by any person (“the relevant person”).*

(2) *In such a case—*

(a) *any person who is or may be a victim of the course of conduct in question, or*

(b) *any person who is or may be a person falling within section 1(1A)(c),*

may apply to the High Court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) *Section 3(3) to (9) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 3(3)(a).”.*

51 Putting people in fear of violence— section 4 amended

For section 4 substitute—

“4 Putting people in fear of violence

P1994/40/4, reflecting P2012/9/Sch. 9, para 143(3) and P2017/3/175(1)(a).

(1) *A person (“A”) whose course of conduct causes another (“B”) to fear, on at least 2 occasions, that violence will be used against B is guilty of an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions.*

Maximum penalty—

(on information)— 10 years’ custody or a fine.

(summary) — 12 months’ custody or a level 5 fine.

(2) *For the purposes of this section, A ought to know that it will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.*

(3) *It is a defence for A to show that—*

(a) *A’s course of conduct was pursued for the purpose of preventing or detecting crime,*

(b) *A’s course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or*

(c) *the pursuit of A’s course of conduct was reasonable for the protection of A or another or for the protection of the property of A or another.*

(4) *If on A’s trial on information for an offence under this section A is found not guilty of the offence charged, A may nevertheless be found guilty of an offence under section 2 or 2A..*

(5) *A Court of General Gaol Delivery has the same powers and duties in relation to a person who is by virtue of subsection (4) convicted before it of an offence under section 2 or 2A as a court of summary jurisdiction would have on convicting A of the offence.”.*

52 Stalking involving fear of violence or serious alarm or distress — section 4A inserted

P1997/40/41 ins. by P2012/9/111(2) and am. P2017/3/175(1)(b)

After section 4 insert—

“4A Stalking involving fear of violence or serious alarm or distress

(1) *A person (“A”) whose course of conduct—*

(a) *amounts to stalking, and*

(b) *either—*

(i) *causes another (“B”) to fear, on at least 2 occasions, that violence will be used against B, or*

(ii) *causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities,*

commits an offence if A knows or ought to know that A’s course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

Maximum penalty—

(on information) — 10 years’ custody or a fine;

(summary) — 12 months’ custody or a level 5 fine.

(2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that—

- (a) A's course of conduct was pursued for the purpose of preventing or detecting crime,
- (b) A's course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) the pursuit of A's course of conduct was reasonable for the protection of A or another or for the protection of the property of A or another.

(5) If on A's trial on information for an offence under this section, A is found not guilty of the offence charged, A may nevertheless be found guilty of an offence under section 2 or 2A.

(6) A Court of General Gaol Delivery has the same powers and duties in relation to a person who is by virtue of subsection (5) convicted before it of an offence under section 2 or 2A as a court of summary jurisdiction would have on convicting A of the offence.

(7) This section does not limit section 4.”.

53 Restraining orders — section 5 amended

(1) Section 5 is amended as follows.

(2) In the heading to the section at the end insert “on conviction”.

(3) In subsection (1) omit “under section 2 or 4”

(4) In subsection (2) omit “further”.

(5) After subsection (3) insert—

“(3A) In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.”.

(6) After subsection (4) insert—

“(4A) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).”.

(6) In subsection (6)(b) for “£5,000” substitute “level 5”.

(7) At the end insert—

“(7) A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order.”.

54 Restraining orders on acquittal — section 5A inserted

After section 5 insert—

“5A Restraining orders on acquittal

P1997/40/5A

(1) A court before which a person (“the defendant”) is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that section.

(3) Where the Judicial Committee of the Privy Council or the Staff of Government Division allows an appeal against conviction, it may remit the case to the court by which the defendant was convicted to consider whether to proceed under this section.

(4) Where—

(a) the Judicial Committee of the Privy Council or the Staff of Government Division allows an appeal against conviction, or

(b) a case is remitted to a Court of General Gaol Delivery under subsection (3), the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to the Judicial Committee of the Privy Council, the Staff of Government Division or the court which heard the original matter under appeal (as the case requires).

(5) A person made subject to an order under this section has the same right of appeal against the order as if—

(a) the person had been convicted of the offence in question before the court which made the order, and

(b) the order had been made under section 5.”.

55 Interpretation — section 7 substituted

For section 7 substitute—

“7 Interpretation

P1996/40/7

(1) This section applies for the interpretation of sections 1 to 5A.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A “course of conduct” must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least 2 occasions in relation to that person, or

(b) in the case of conduct in relation to 2 or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

(4) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—

(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other’s knowledge and purpose, and what the other ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(5) “Conduct” includes speech.

(6) References to a person, in the context of the harassment of a person, are references to a person who is an individual.”.

In consequence of this amendment renumber Part 5 as Part 6, consequentially renumber the Clauses of that Part and adjust cross-references throughout the Bill.

The President: Mr Crookall.

1455 **Mr Crookall:** Thank you, Mr President.

I beg to second and echo of the comments of my colleague.

The President: Mrs Poole-Wilson.

1460 **Mrs Poole-Wilson:** Thank you, Mr President.

I absolutely support what my hon. colleague, Mrs Lord-Brennan, has said about the importance of stalking and harassment being a part of a comprehensive legislative package that protects the victims of domestic abuse once the personal connection has ended – so post a relationship. I doubt very much whether any Member of Legislative Council does not see the

1465 importance of stalking and harassment provisions and recognises that the fact that our existing provisions are out of date means that they will need to be updated in any event.

1470 So I do not think there is an issue with the principle that we must legislate in this area in the most up-to-date way. I think the challenge for us is the best route to legislate. I am mindful as I say this that I was one of the people who raised the question as to whether it was better to legislate to include these provisions within this particular Bill, as opposed to wait for them to come through the Justice Reform Bill. I raised it because of any concern that pieces of legislation coming later, if for any reason they do not make the desired progress, you run the risk of having a gap perhaps in the earlier Bill that has already received Royal Assent.

1475 Having reflected on it and actually talked at length with the Department on this particular aspect, in this case I believe that it would be appropriate for these provisions to come along in the Justice Reform Bill, as opposed to taking the draft provisions which form the basis of proposed new clause 1.

1480 The reason I think it would be suitable for them to come in the Justice Reform Bill is a timing one. So we are already fully advised that this Bill is unlikely to be brought into effect through Appointed Day Orders until much later this year, because it is so reliant on the guidance, as we have previously debated. Work has to go on to develop that and put other practical pieces in place, so that the legislation, once it is brought into effect, can actually take effect properly.

1485 So I am mindful that this Bill will not come into being until much later this year, which should allow sufficient time for parliamentary scrutiny – full scrutiny – on the stalking and harassment provisions that are currently in draft in the Justice Reform Bill.

I am also conscious that stalking and harassment of course have wider ramifications than only domestic abuse situations. It is very important in that context and we must get it right, but it also can apply in other situations.

1490 So having weighed up those two matters, I would like to thank Mrs Lord-Brennan for making the case for this and asking for this new clause potentially to go into this Bill, but my own view at this point is that it might be best to allow full parliamentary scrutiny of what are only draft provisions at the moment in the Justice Reform Bill and to see them fully developed into the Justice Reform Bill.

1495 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

1500 I think that what Mrs Poole-Wilson has said is very much echoed by the Department. So just to put its position forward, turning to the question of stalking. At the early stages of the Bill's development, the Department considered whether it would be best to include stalking in this Bill, given the well-documented and recognised links between stalking and domestic abuse. But in the end, it determined that a separate Bill would have been a far better approach.

1505 While 71% of reported stalking is linked to domestic abuse, it still leaves the remainder that is not. Therefore, it was felt by the Department that it was wrong in principle to place provisions in that could potentially have a wider general application.

1510 The changes proposed by the amendments make entirely new legislation, as well as supplementing the harassment legislation, without consultation with other Members of Tynwald. So the Department feels very much against ... in relation to that. In actual fact, the Justice Reform Bill, as Mrs Poole-Wilson has stated, has been circulated to Members already and contains provisions to update stalking legislation, which are the amendments that you see before you.

1515 So the intention of the Department would be to instead continue with progressing to update the legislation in relation to stalking via that route, and continue in the direction that it has already begun taking. So I would encourage Members to consider this before making their vote.

Thank you.

The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

1520 I also commend the mover of this amendment in the motivation behind it; in securing the best protection that we possibly can for the public and those who are victims.

1525 However, I do understand, again, having spoken to the Department and the mover, that the Bill we have before us today is part of a suite of legislation that has an interlinking and there will be other relationships other than those involved in domestic abuse that could be subject to stalking or harassment that I have satisfied myself will best be dealt with in another Bill that will be on its way through the political passage.

Thank you, Mr President.

The President: Mrs Lord-Brennan, do you wish to reply?

1530

Mrs Lord-Brennan: Thank you, Mr President. I do; of course I do.

Well, I suppose it is unsurprising, isn't it really? I would say, in terms of the best route to legislate, as Mrs Poole-Wilson has said, well, the best route to legislate is really to legislate, isn't it? And then consider if it needs to be changed. That is what I am proposing here.

1535 I am not sure how long we feel it is fine to wait on this. For example, we know the Domestic Abuse Bill, despite the urgency and the rush ... which is actually part of the reason for not having had the conversations with other Tynwald Members and the fullness of the chance of proper conversation with others on this is because of the rush – the needless rush. We know that this Bill is not coming in until later this year.

1540 I do not know how long away the Justice Reform Bill will be. I think the original Justice Reform Bill – I know it was probably a few years ago – made First Reading in Keys and then it was gone! So I think to rely on just the reason for something coming forward in another Bill, when there are other routes – there are routes to include, there are routes to reassess, there are routes to amend – I am just not convinced by the argument.

1545 I do not know how long the Justice Reform Bill will be. Would it be then that we have, eventually, a Domestic Abuse Bill here knowing that it is lacking because of the lack of these provisions and is it then going to be ... When? Mid-2020-21? We do not know. So that is my reason for considering including it and also out of recognition that we have been told in various ways that it is important. So I actually do not understand and I am not convinced why the Department has not decided to include it. I understand what I have been told, but I am not convinced by it. So those are my comments on the progress and the timing and how long do we wait.

1555 In terms of parliamentary scrutiny, well, here we are with this Bill, we are making changes because maybe there have been bits missed in parliamentary scrutiny. You could run the other argument, which is that by including it in this Bill it really focuses it in, rather than it just being a massive part of lots of other pieces that are going to be fixed in a huge Justice Reform Bill.

1560 So I do not think that the arguments against, apart from obviously the Department simply not wishing or being prepared to do this, are necessarily that strong. But I am happy to include it on the basis that at least some people are recognising that it is important that we do it and it is important that we include it now, whilst we have the opportunity.

So I beg to move, Mr President.

The President: Hon. Members, I put then the motion, which is an amendment in the name of Mrs Lord Brennan at number 44, which reads:

*Page 53, after line 16 insert—
"PART 5 — HARASSMENT AND STALKING ...*

1565 That is a vote in principle to insert Part 5. If that succeeds I will immediately put amendment 1, which is required to amend the long title.

But first, we deal with amendment 44. Those in favour of the amendment, say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Cretney
Mr Crookall
Mrs Lord-Brennan

AGAINST

Miss August-Hanson
Mr Henderson
Mrs Maska
Mrs Poole-Wilson
Mrs Sharpe
The Lord Bishop

1570 **The President:** There are 3 votes for and 6 against. Therefore, the motion to amend fails to carry.

We turn now to Part 1, clauses 3, 4, 5 and 6, which are to be moved separately. Do you wish to proceed, Miss August-Hanson?

1575 **Miss August-Hanson:** Mr President, we have nearly completed all of the clauses and the themes in light of the Bill. Now I wish to look to move those in Part 1.

So I beg to move that clause 3 do stand part of the Bill, Mr President.

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

1580

The President: I put clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

1585 **Miss August-Hanson:** Mr President, I beg to move that clause 4 do stand part of the Bill.

The President: Mrs Maska.

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

1590

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

With your leave, I will not be moving amendment 2A.

1595

The President: Thank you very much.

Mrs Poole-Wilson.

Mrs Poole-Wilson: Yes, thank you, Mr President.

1600

I beg to move the amendment clause 4, which is numbered 3 on the Order Paper.

This is simply a tidying amendment. The reason for it is that at various parts of the Bill a person directing abusive behaviour is sometimes referenced by the letter 'A' and sometimes referenced by the letter 'P'. If we simply refer to 'a person' then it makes clear that wherever we are talking about a person directing abusive behaviour, that should be read in the light of clause 4.

1605

Amendment to clause 4

3. Page 12, line for 'A's' substitute 'a person'.

The President: Learned Attorney?

The Attorney General: I second that, Mr President.

1610 **The President:** Thank you. Anyone else wish to speak?

I put the amendment in the name of Mrs Poole-Wilson. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 4 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 5.

1615

Miss August-Hanson: Mr President, I beg to move that clause 5 do stand part of the Bill.

The President: Mrs Maska.

1620 **Mrs Maska:** I beg to second, Mr President, and reserve my remarks.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

1625 I beg to move amendment 4 on the Order Paper in my name, which I spoke about at length earlier when we debated the themes.

The President: Thank you. Mr Attorney.

1630 **The Attorney General:** I second that, Mr President.

The President: I put the amendment. Those in favour say aye; against, no. The ayes have it. The ayes have it.

Clause 5 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 6.

1635

Miss August-Hanson: Thank you, Mr President.

Finally, I would like to move that clause 6 do stand part of the Bill.

The President: Mrs Maska.

1640

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

The President: I put clause 6: those in favour, say aye; against, no. The ayes have it. The ayes have it.

1645 Thank you, Hon. Members. Now, that brings us to as far as we can go today on the clauses stage. As agreed, we will consider the outstanding clauses and amendments thereto at our next sitting.

1650 Can I just take the opportunity to thank Hon. Members for the way the debate progressed. It could have been quite complicated, thank you very much; and put on record thanks to our Clerk, Dr King (**Members:** Hear, hear.); also Mr Bateman and Mr Connell from the Department of Home Affairs and the Attorney General's Drafting Division respectively for their assistance in marshalling in a workable form some quite complex arrangements of the amendments. That was very helpful indeed.

So that concludes the business on the Order Paper.