

**7. Domestic Abuse Bill 2019 –
Conference Report received and amendments agreed to**

Miss August Hanson to move:

That the Report of the Deputation elected by the Legislative Council on 27th May 2020 [PP No 2020/0136] be received and that the amendments set out at Annex 3 to the report, which have been agreed to by the Keys, be agreed to.

860 **The President:** Now, I have been given a message from the House of Keys that the Domestic Abuse Bill Conference ... the motion there has carried, and I would ask Miss August-Hanson if she would care to deal with Item 7 on our Order Paper at this stage. (**Miss August-Hanson:** Yes.) Otherwise we can come to it later if she wishes.

865 **Miss August-Hanson:** Perfectly content.

The President: Miss August-Hanson, thank you.
Members may remove jackets, if they wish.

870 **Mr Henderson:** Thank you, sir. Gura mie eu.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

875 As we all know, on 15th May Keys agreed with four amendments made by our Council and it resolved to seek a conference to debate these. We all accepted, and myself, Mrs Sharpe and Mrs Maska were elected as members of the Legislative Council delegation. We met with representatives of the Keys – the Hon. Graham Cregeen, the Minister for Home Affairs; Mr Hooper and Mrs Corlett MHKs – for debate on 9th June 2020. The Report before you is what we had agreed.

880 I will make this quite brief. There is no right answer, there is only a sensible compromise here. First we found that establishing minimum ages to fit crimes with an age of criminal responsibility set at 10 is a subjective matter between Departments to begin with, and we all recognise the issues that deal with relationships between Departments and provisions dealing with people at any age need to be improved. It is hoped that this Bill may provide the means to
885 make changes for the better if colleagues on the Council are content.

890 Safeguarding, the Department of Home Affairs, the Department of Health and Social Care's Children and Families Division, Education, Sport and Culture and Cabinet Office all have a role to play here. Quite simply, without agencies, Departments and Offices working cohesively to wrap services around the individual involved and any individual involved in delivering on empowerment for families, rolling out this legislation is just near impossible. So you all must work together.

895 Annex 3 of our Report sets out the compromise. The Conference found the following, after much debate, and from one end to the other of our youth spectrum. So first, the Domestic Abuse Protection Notices (DAPNs) as we know are issued by the Police for a maximum of 14 days. They are used to deal with the immediate incident or the emergency. The outcome of the Conference means that these may be issued as an intervention for persons as young as 14 years old, and that age was tied to the CYP Act 2001 – the Children and Young Persons Act. It is expected that the DAPN provides space for the Police and other agencies to come together for our youngsters, putting them at the centre of service provision, instead of putting the service
900 provision and those working within each silo first.

905 The Domestic Abuse Protection Orders are made by a court – so Summary, General Gaol, Family Court – either on application by the Police or the prosecution following an issuing of DAPN or by the court, and these can be made for people aged 14 years or over. These orders are long term. As the name suggests, they are meant to protect the victim and his or her family. The domestic abuse offence, clause 35, the age the Conference suggests is readjusted back to the age of 16, with the powers for DHA by order to seek Tynwald approval to reduce the age in line with any prospective new age of criminal responsibility or such the like. In practice, I have some assurance from the Department that it would not reduce it below 14 years of age. Coercive and controlling behaviour offence, clause 36: the age is adjusted back to 16 with no power to change the age by order – so a slight difference there.

910 It is generally held in criminal justice that the sooner the pattern of behaviour is addressed, the better. It is with this in mind that I make mention of the following for the record. It is important that children are not criminalised. We all talked about this at the Conference – incredibly important, if at all possible. Therefore, it is hoped that when the Police attend a scene, along with prioritising the protection of victims, Notices and Orders are used as a means of taking steps to improve lives, not to set individuals on a more destructive path.

915 I am content in hearing that Department of Home Affairs will look to prepare and consult widely, including with Members of Tynwald Court, on guidance for police, the courts and others involved in such a matter, to assist and cater for the needs of children here. Some of us are more aware of others of the harms that may be done by incidents of domestic abuse. This Report presents us with an opportunity for compromise between Keys and Council and sets the Domestic Abuse Bill one step closer to statute, bringing our community one step closer to tackling this physical and mentally ruinous disease.

920 Thank you, Mr President.

925 **The President:** Mrs Maska.

Mrs Maska: Thank you, Mr President.

930 I welcome the fact that the other House ... that Keys in another place have accepted the compromise that was reached between Members of Legislative Council and Members from that other place. It was a difficult Conference at times, because we as a Council had taken some of the lower age limits to 18, felt quite strongly and debated hard about that. However, one of the dangers might have been, if we had not reached a Conference agreement and if we cannot reach an agreement ourselves today, that it could be taken back to another place – this is what we were advised – and progressed without the consent of this Hon. Council.

935 In my own mind, whilst I feel the compromise and the Conference agreement is not perfect, it goes an awful long way to enabling this important legislation to become an Act and to be there and available, 99% perfect, not quite there, but be available to assist all those who may be suffering from the offences which are included within the Bill. On that basis, I would recommend to hon. colleagues that we do accept the recommendations as contained in the Report from the Conference.

940 Thank you, Mr President.

The President: And you are seconding?

945 **Mrs Maska:** I will second. I would be glad to.
Thank you, Mr President.

The President: Yes, thank you.
Mrs Lord-Brennan.

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

955 There was a great deal of thought that went into everything that has actually led to this Conference Report. So the top thing I would like to say is, isn't it good that we had this Conference happen, to further examine these issues? I will now outline the reasons why I am happy to support the proposed compromise and also flag a couple of other matters.

960 What many of us were looking for, in examining deeply these matters to do with those under 16 and whether they were perpetrators or whether they have come from abusive households, was this complexity of the entire issue around having an offence linked to under-16-year-olds and a whole range of complexity that we have already examined; that we do not need to go into now. That was set against the accepted notion that what needs to happen is: de-escalation; positive intervention. Those two things are what needed to happen, rather than the idea that through a criminal process we would hope that those people would get help along the way. So I regard the setting of a minimum age of 14 for the Notices and the Orders as being not only a compromise, but something that would hopefully de-escalate and protect, that is separate to the domestic abuse effect offences.

970 Now, there is a further reason for why I think that this approach might be helpful. It is the fact that what we are advised is, actually, you cannot really know how much of an issue this is until you get to the point where you are arresting somebody for an offence. Now, what it will mean is that where there are these areas of, they might be child-to-parent abuse, or it could be teenage intimate relationship abuse, those sorts of areas, we need to be really sure what it is that we are dealing with, and I think that, first of all, this policy has not been brought out, the handling across the spectrum of intervention has not been settled or apparent. But if we have the Orders and the Notices in place, then we will know by demand – that is a horrible word to use but – we will know by their use and the information around that as to whether, *seriously*, we are seriously going to think about putting forward a domestic abuse offence for under-16s. That is something that should be handled very thoughtfully and would need to be justified if it is to be brought forward. I believe that the proposed approach that it could only be brought forward – it is possible – but it would need to be further justified to Tynwald, and therefore I would expect to see proper justification as to why that is needed and also understanding of the proper help and the proper interventions that you would need to see alongside that.

980 So I am happy to support it. I am grateful to the members of the delegation wrestling with these issues. There could well be things that I have not picked up on in the rush to see the positive outcome of a compromise. We know already that the entire approach to domestic abuse has been referred to the Social Affairs Policy Review Committee. I am very grateful to the mover in her handling of this and I am *very* grateful to Minister Cregeen and his listening, his involvement and his will to seek something that is going to work on both sides; very grateful for that and I am happy to support it.

Thank you, Mr President.

990 **The President:** Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

995 I would like to take this opportunity to thank Members in another place for agreeing to ask a delegation from this Hon. Council to meet their delegation for a Conference regarding the four amended clauses disputed in another place. So we have the compromise before us and I cannot bring myself to say that I am happy with it. I did agree to it and I have to repeat, for the purposes of the record, only because primarily I absolutely do not wish to hold up the passage of this much-needed Bill.

1000 I think it was clear that the House of Keys' delegation was not going to budge on a lower age threshold of 14 for the imposition of Notices and Orders, because that is what the Department of Home Affairs believes it needs in order, primarily, to protect parents – mostly single mothers – from abusive older children. They did give the example of, what can a constable do in an emergency at 3 a.m. when they are called to a house to try and deal with this very

1005 complicated situation? The Department argued that imposing a Notice or an Order on such a
child is a softer option than arresting the child and the subsequent threat of a child being
charged with, for example, assault, in that kind of scenario, and potentially ending up with a
criminal record. The truth of the matter, Mr President, is that I believe that not enough
discussion has taken place between the Department, the Constabulary, the DHSC and the
1010 Safeguarding Board into really working out what is most needed, what is working in our current
system, what is not working and what do we need to fix.

I do not necessarily believe that imposing Domestic Abuse Notices or Orders on children is
the answer, for many reasons that I have outlined in the past. I find the age of 14 quite arbitrary.
It was argued during the Conference that this dovetails with the Children and Young Persons Act
2001, in which a young person is defined as a person over the age of 14. But I have never been
1015 able to find that reference in that Act. To be fair to the delegation, the Children and Young
Persons Act 2001 does have a lot of restrictions in it which would make it very difficult for a
constable to remove an abusive older child from their home in order to protect a vulnerable
parent, other than arrest. But that is the purpose of that particular Act, which was passed
primarily to protect children and I hope that perhaps what we might see in future is an
1020 amendment to the Act which might acknowledge that when a child is a perpetrator of abuse,
they are a victim at the same time as being a perpetrator.

So to conclude, I can live with the current compromise, so as not to hold up the passage of
the Bill, and for that reason I would encourage fellow Members of Council to support the
compromise. But at the same time, I look forward to doing my best, along with colleagues in this
1025 Hon. Chamber, and also in another place, to try and help resolve in future this complex area.

Thank you.

The President: Mrs Poole-Wilson.

1030 **Mrs Poole-Wilson:** Thank you, Mr President; and thank you to the members of the
delegation and for their contributions thus far.

I do not want to repeat the comments that Mrs Lord-Brennan made, but I do agree with
them. I do understand the perspective that by being able to issue a Notice or an Order to
someone of 14 or above, that is a more light-touch means of intervention than arrest for an
1035 offence, even if it is not the offence of domestic abuse.

I think what I would very much want to see though is, whilst we put this legislative
framework in place, the matters that have been raised by contributors so far is, what is the
holistic approach to dealing with this complex and difficult problem? So it is my hope that this
mechanism, once the Bill becomes law ... there is monitoring, there is review and there is clarity
1040 about how these Notices and Orders are being used in practice. If it is appropriate to use them
to de-escalate and provide for intervention, is that intervention taking place; in what form and
whose responsibility is it? That is the part that I would like to make sure we see and understand
in practice, so that we understand that the legislation is fit for purpose.

A final point, which is a matter I raised with the delegation which I would just be interested in
1045 having an answer to, if not today, then at some point, is obviously once a 14-, 15-, 16- or 17-
year-old becomes subject to a Notice or Order, there are notification provisions within the Bill.
We have similar notification provisions in the Sexual Offences and Obscene Publications Bill, but
in that Bill, if you are under 18 it is your parents' responsibility to comply with those notification
provisions. I would like to understand whose responsibility it will be to comply with notification
1050 provisions under the Domestic Abuse Bill, given the circumstances will often be that the child
has been removed due to abuse against the parent. So will it be the corporate parent? Whose
responsibility will it be to step up and observe those notification provisions?

Thank you, Mr President.

1055 **The President:** Does any other Member wish to speak or speak for a second time?

Mrs Sharpe.

1060 **Mrs Sharpe:** Just to answer the Hon. Member's question, it would fall to Children and Families Services to make sure that that young person did comply with the details within a Notice or an Order.

The President: Mrs Lord-Brennan.

1065 **Mrs Lord-Brennan:** Thank you, Mr President.
Just to say that I think what we are hearing here, and what we have heard throughout the whole consideration of the Domestic Abuse Bill – and I think it is going to come up again – is that things fall between the gaps between different Departments, and it is certainly an area concerning, broadly, children and families; and not just Children and Families within the DHSC, but broadly, as a society, how we deal with children and families; that feels that it needs greater oversight and a greater line of accountability that supersedes the individual silos of Departments and operational handling. I think that that is an observation we should all keep in our minds and think about how that might be better handled, because what we have had is a really good, close examination of ... but it is barely touching the surface of the depth of issues. So I think that as Members we need to keep our eye and be aware of ... It is a gap. I think we need to be aware of that gap.

1075 Thank you, Mr President.

The President: Mrs Maska.

1080 **Mrs Maska:** Thank you, Mr President.

Just to offer some words of reassurance in a way, in that the spirit that I detected within the Conference was exactly as my hon. colleague, Mrs Lord-Brennan, has pointed out, that matters do fall between the cracks and we do need a more joined-up way of dealing with these serious matters as we go forward.

1085 I understand that there is a will as well to revisit the Children and Young Persons Act and look at the age of criminal responsibility that would actually then inform the compromise that we have reached at Conference. And I know that members of the other delegation were really very supportive of taking this more joined-up and holistic consideration, as is required in other matters across Government that Tynwald has debated in recent weeks. I just offer that as a comfort.

1090 Thank you, Mr President.

The President: Thank you. Miss August-Hanson to reply.

1095 **Miss August-Hanson:** Thank you very much.

I appreciate all the contributions from Council Members, so thank you very much. And thank you to Mrs Maska for seconding.

Just to try and get round. Mrs Maska has been somewhat of a voice of reason, I think, because we all had so many opinions around this Conference. So I do thank her for that.

1100 Mrs Lord-Brennan: in relation to ages, de-escalation, interventions, protection; those are what the Notices and Orders are meant to do. They are supposed to provide this level of intervention. I do think, on very personal level as well, actually, that between Departments and Offices that are involved in the protection of children, there needs to be some stronger thought processes here, and linking in, and taking personalities away from the service provision that we are giving these people, because I think it is *incredibly* important that we get this right. I do not think that we always have gotten it right in the past, but it is time to start looking at that now, making sure that we tie these things together.

1110 Mrs Sharpe: I know that you disagree, and I understand your reasoning behind that. So thank you for your contributions as well, to the Conference. I think it was extraordinarily helpful to try and find a compromise that could work for everybody. Without your contributions, that would not have happened. So thank you for that.

1115 The criminal age of responsibility is obviously set at 10, so a lot of the debate that happened in that Conference was around how do we provide intervention and protection for any of those children that are over the age of criminal responsibility? So 10 all the way up to 18. So where should this sit? Where does that intervention lie? That was incredibly important, so I thank Mrs Poole-Wilson as well for what she has had to say.

1120 The Notices and the Orders: yes, they are supposed to provide a light touch, and they are supposed to prompt and catalyse that movement between agencies to come together and wrap around the individual. Whether or not that can happen presently, I do not personally feel that they are at that place, but I think that those discussions are starting to happen. There was very much a willingness at the Conference as well. We had the right mix of people around the table with the right responsibilities. So I am hoping that those debates are going to start happening and things will start moving.

1125 Clarity on how these are used, where ... Mrs Sharpe is quite right, the Children and Families division are very much involved right the way up until the age of 18.

It is still the responsibility of the parents as well, but I would like, with Mr President's permission, to ask Tom, the Policy Manager, if he would just confirm that on the record for us.

1130 **The President:** Thank you, Mr Bateman, we will bring a microphone.
Would you kindly, for the record, state your name and position, please?

Mr Bateman: Mr President, I am Tom Bateman, Legislation and Policy Manager for the Department of Home Affairs.

1135 May I ask if you would repeat the matter?

Miss August-Hanson: If you would, Mr Bateman, just give us a little bit of clarity on whose responsibility the under-18s might be regarding Notices and Orders in the Domestic Abuse Bill, because we have over in the Sexual Offences Bill, that we will see before us later on in this session of Council, that that would fall to the responsibility of the parents.

1140 So I am asking whose responsibility it will be for Notices and Orders within the Domestic Abuse Bill.

1145 **Mr Bateman:** The Domestic Abuse Bill notification requirements are much briefer in their drafting. I know Mrs Poole-Wilson has studied the Sexual Offences ones in detail, and they go into very much more length. So that is not expressly set out in the Domestic Abuse Bill.

1150 I would anticipate that, notwithstanding any lack of legal provision saying so, that it would be expected, in relation to people under the age of 16, that parents would be involved in notification. I would suggest the situation is different somehow for those over 16 onwards, that they would be expected to be responsible, accepting that in terms of those under the care of the Department of Health and Social Care, that would fall to Children and Families. It may be something for me to look at further.

The President: Miss August-Hanson.

1155 **Miss August-Hanson:** Thank you, Mr President.

I think that that is an important point that perhaps needs bearing out in terms of guidance down the line. So I appreciate Mr Bateman's contribution there.

1160 Mrs Lord-Brennan is quite right. She talks about falling through the departmental gaps and making sure that all of these different services, again, are wrapping around the individual and the individuals are not having to navigate around the services.

Mrs Maska is absolutely bob on in terms of the age of criminal responsibility, and I sincerely hope that this is discussed at length, hopefully down the line when we have got another Bill that perhaps is twinned to this one coming through the Branches.

1165 I would just like to pop on the record though, Mr President, that the Children and Young Persons Act 2001 does have some references to 14-year-olds on a number of different areas, just underneath 'Proceedings involving children and young persons'. They are in section 81(4)(a), and that is just relating to the findings of guilt, where it talks about:

any offence of which he was found guilty while under the age of 14 shall be disregarded for the purposes of ... evidence relating to previous convictions.

1170 We have in the same part in relation to medical or psychiatric examination or treatment and that is in Schedule 9, paragraph 6, (a) – we are talking about the child attaining the age of 14. Also, in the same Schedule, paragraph 10.(9):

Where the supervised person has attained the age of 14 ...

– on page 135 there. So I just want to get that on the record.

With that, Mr President, I beg to move.

1175 **The President:** Hon. Members, the motion before Council is that the Report of the Deputation elected by the Legislative Council on 27th May 2020 be received and that the amendments set out at Annex 3 to the Report which have been agreed to by the Keys be agreed to. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.