



Isle of Man

Ellan Vannin

AT 10 of 2021

**SEXUAL OFFENCES AND OBSCENE
PUBLICATIONS ACT 2021**

The text of this Act is shown “as amended” by amendments found within the Justice Reform Act 2021, and any additional amendments set out within the Justice and Home Affairs (Reform and Miscellaneous Amendments) Bill 2025 once these take effect.



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Ellan Vannin

SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021

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**Isle of Man***Ellan Vannin*

SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021

<i>Signed in Tynwald:</i>	<i>20 July 2021</i>
<i>Received Royal Assent:</i>	<i>20 July 2021</i>
<i>Announced to Tynwald:</i>	<i>20 July 2021</i>

AN ACT to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts; to amend the Prohibition of Female Genital Mutilation Act 2010; to provide for the detention and forfeiture of land vehicles, ships and aircraft in connection with trafficking in persons; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Sexual Offences and Obscene Publications Act 2021.

2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Department of Home Affairs may by order appoint.¹
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Department of Home Affairs considers necessary or expedient.

3 Interpretation

- (1) In this Act —

“**child**” means a person under the age of 16, unless specified otherwise;

“**Constabulary**” means the Isle of Man Constabulary within the meaning of section 1 of the *Police Act 1993*;

“**Department**” means the Department of Home Affairs;

“**vulnerable adult**” means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment, through old age or otherwise.

- (2) In this Act, words referring to a person of one gender include persons of other genders and, to avoid doubt, include persons who describe themselves as transgender, gender neutral, gender fluid or non-binary.
- (3) Subsection (2) does not affect section 33 of the *Interpretation Act 2015* (gender).
- (4) In this Act, the number in the following expressions means the years of age of the relevant person —
 - (a) age of 18;
 - (b) age of 16;
 - (c) under 18;
 - (d) under 16;
 - (e) under 13;
 - (f) aged under 18;
 - (g) 18 or over;
 - (h) aged 18 or over;
 - (i) 16 or over; and
 - (j) aged 16 or over.

PART 2 – SEXUAL OFFENCES

DIVISION 1 - RAPE

4 Rape

P2003/42/1, IOM1992/6/1(4)&(5)&39A and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally penetrates the vagina, anus or mouth of another person (B) with A’s penis;
 - (b) B does not consent to the penetration; and
 - (c) A does not reasonably believe that B consents.

- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) A person shall not be taken as consenting to sexual intercourse with the person's spouse or civil partner (B) by reason only of being married to or in a civil partnership with B.
- (4) Sections 92 and 93 apply to an offence under this section.
Maximum penalty (on information) — custody for life.

DIVISION 2 - ASSAULT

5 Assault by penetration

P2003/42/2

- (1) A person (A) commits an offence if —
 - (a) A intentionally penetrates the vagina or anus of another person (B) with a part of A's body or anything else;
 - (b) the penetration is sexual;
 - (c) B does not consent to the penetration; and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 92 and 93 apply to an offence under this section.
- (4) Maximum penalty (on information) — custody for life.

6 Sexual assault

P2003/42/3

- (1) A person (A) commits an offence if —
 - (a) A intentionally touches another person (B);
 - (b) the touching is sexual;
 - (c) B does not consent to the touching; and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 92 and 93 apply to an offence under this section.
- (4) Maximum penalty —
 - (a) (on information) — 10 years' custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 3 - CAUSING SEXUAL ACTIVITY WITHOUT CONSENT

7 **Causing a person to engage in sexual activity without consent**

P2003/42/4

- (1) A person (A) commits an offence if —
 - (a) A intentionally causes another person (B) to engage in an activity;
 - (b) the activity is sexual;
 - (c) B does not consent to engaging in the activity; and
 - (d) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) Sections 92 and 93 apply to an offence under this section.
- (4) This subsection applies to an offence under this section, if the activity caused involved —
 - (a) penetration of B's anus or vagina;
 - (b) penetration of B's mouth with A's penis;
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
 - (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (4) applies — (on information) — custody for life.

Maximum penalty (unless subsection (4) applies) —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 4 - RAPE AND OTHER OFFENCES AGAINST CHILDREN UNDER 13

8 **Rape of a child under 13**

P2003/42/5

A person (A) commits an offence if —

- (a) A intentionally penetrates the vagina, anus or mouth of another person with A's penis; and
- (b) the other person is under 13.

Maximum penalty (on information) — custody for life.

9 Assault of a child under 13 by penetration

P2003/42/6

A person (A) commits an offence if —

- (a) A intentionally penetrates the vagina or anus of another person with a part of A's body or anything else;
- (b) the penetration is sexual; and
- (c) the other person is under 13.

Maximum penalty (on information) — custody for life.

10 Sexual assault of a child under 13

P2003/42/7

A person (A) commits an offence if —

- (a) A intentionally touches another person;
- (b) the touching is sexual; and
- (c) the other person is under 13.

Maximum penalty —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

11 Causing or inciting a child under 13 to engage in sexual activity

P2003/42/8

(1) A person (A) commits an offence if —

- (a) A intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual; and
- (c) B is under 13.

(2) This subsection applies to an offence under this section, if the activity caused or incited involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (2) applies — (on information) — custody for life.

Maximum penalty (unless subsection (2) applies) —

- (a) (on information) — 14 years' custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 5 - CHILD SEX OFFENCES

12 Sexual activity with a child

P2003/42/9

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A intentionally touches another person (B);
 - (b) the touching is sexual; and
 - (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) This subsection applies to an offence under this section, if the touching involved —
 - (a) penetration of B's anus or vagina with a part of A's body or anything else;
 - (b) penetration of B's mouth with A's penis;
 - (c) penetration of A's anus or vagina with a part of B's body or anything else; or
 - (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (3) applies — (on information) — 14 years' custody.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

13 Causing or inciting a child to engage in sexual activity

P2003/42/10

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A intentionally causes or incites another person (B) to engage in an activity;
 - (b) the activity is sexual; and

- (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) This subsection applies to an offence under this section, if the activity caused or incited involved —
 - (a) penetration of B's anus or vagina;
 - (b) penetration of B's mouth with a person's penis;
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
 - (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (3) applies — (on information) — 14 years' custody.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

14 Engaging in sexual activity in the presence of a child

P2003/42/11

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person (B) is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it; and
 - (d) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed

that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

15 Causing a child to watch or listen to a sexual act

P2003/42/12 and drafting

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (B) to watch a third person engaging in an activity, to look at an image of any person engaging in an activity or to listen to any person engaging in an activity;
 - (b) the activity is sexual; and
 - (c) either —
 - (i) B is under 16 and A does not reasonably believe that B is 16 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 10 years custody;
- (b) (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

16 Child sex offences committed by a child or young person

P2003/42/13

A person under 18 (A) commits an offence if A does anything which would be an offence under any of sections 12 to 15 if A were aged 18 or over.

Maximum penalty —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

17 Arranging or facilitating commission of a child sex offence

P2003/42/14

- (1) A person (A) commits an offence if —

- (a) A intentionally arranges or facilitates something that A intends to do, intends another person to do, or believes that another person will do, in any part of the world; and
 - (b) doing it will involve the commission of an offence under any of sections 12 to 16.
 - (2) A does not commit an offence under this section if —
 - (a) A arranges or facilitates something that A believes another person will do, but that A does not intend to do or intend another person to do; and
 - (b) any offence within subsection (1)(b) would be an offence against a child for whose protection A acts.
 - (3) For the purposes of subsection (2), a person acts for the protection of a child if the person acts for the purpose of —
 - (a) protecting the child from sexually transmitted infection;
 - (b) protecting the physical safety of the child;
 - (c) preventing the child from becoming pregnant; or
 - (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it.
- Maximum penalty —
- (a) (on information) — 14 years custody;
 - (b) (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

18 Meeting a child following sexual grooming etc

P2003/42/15

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A has met or communicated with another person (B) on one or more occasions and subsequently —
 - (i) A intentionally meets B;
 - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world; or
 - (iii) B travels with the intention of meeting A in any part of the world;
 - (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence;
 - (c) B is under 16; and

- (d) A does not reasonably believe that B is 16 or over.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) In subsection (1) —
- (a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;
- (b) “**relevant offence**” means —
- (i) an offence under this Part;
- (ii) anything done outside the Island which is not an offence within sub-paragraph (i) but would be an offence within sub-paragraph (i) if done in the Island.
- Maximum penalty —
- (a) (on information) — 10 years’ custody;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

19 Sexual communication with a child

P2003/42/15A

- (1) A person aged 18 or over (A) commits an offence if —
- (a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B);
- (b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual; and
- (c) B is under 16 and A does not reasonably believe that B is 16 or over.
- (2) Where in proceedings for an offence under this section it is proved that B was under 16, the defendant is to be taken not to have reasonably believed that B was 16 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) For the purposes of this section, a communication is sexual if —
- (a) any part of it relates to sexual activity; or
- (b) a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider any part of the communication to be sexual,

and in paragraph (a) “**sexual activity**” means an activity that a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider to be sexual.

Maximum penalty —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 6 - ABUSE OF POSITION OF TRUST

20 Abuse of position of trust: sexual activity with a child or vulnerable adult

P2003/42/16 & 21 and drafting

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A intentionally touches another person (B);
 - (b) the touching is sexual;
 - (c) A is in a position of trust in relation to B; and
 - (d) subsection (2) applies.
- (2) This subsection applies if B is —
 - (a) under 18 and A does not reasonably believe that B is 18 or over;
 - (b) under 13; or
 - (c) a vulnerable adult.
- (3) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 15 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

21 Abuse of position of trust: causing or inciting a child or vulnerable adult to engage in sexual activity

P2003/42/17 and drafting

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) A intentionally causes or incites another person (B) to engage in an activity;
 - (b) the activity is sexual;
 - (c) A is in a position of trust in relation to B; and
 - (d) subsection (2) applies.
- (2) This subsection applies where —
 - (a) B is under 18 and A does not reasonably believe that B is 18 or over;

- (b) B is under 13; or
 - (c) B is a vulnerable adult.
- (3) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 15 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

22 Abuse of position of trust: sexual activity in the presence of a child or vulnerable adult

P2003/42/18 and drafting

- (1) A person aged 18 or over (A) commits an offence if —
- (a) A intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person (B) is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
 - (d) A is in a position of trust in relation to B; and
 - (e) subsection (2) applies.
- (2) This subsection applies where —
- (a) B is under 18 and A does not reasonably believe that B is 18 or over;
 - (b) B is under 13; or
 - (c) B is a vulnerable adult.
- (3) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 11 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

23 Abuse of position of trust: causing a child or vulnerable adult to watch or listen to a sexual act

P2003/42/19 and drafting

- (1) A person aged 18 or over (A) commits an offence if —
 - (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (B) to watch a third person engaging in an activity, to look at an image of any person engaging in an activity or to listen to any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) A is in a position of trust in relation to B; and
 - (d) subsection (2) applies.
- (2) This subsection applies where —
 - (a) B is under 18 and A does not reasonably believe that B is 18 or over;
 - (b) B is under 13; or
 - (c) B is a vulnerable adult.
- (3) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 11 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

24 Positions of trust

RSC1985/46/153 and drafting

- (1) For the purposes of sections 20 to 23, a person (A) is in a position of trust in relation to another person to whom subsection (2) applies (B), if A —
 - (a) is responsible for or in a position of authority towards B;
 - (b) is a person with whom B is in a relationship of dependency; or
 - (c) is in a relationship with B that is exploitative of B.
- (2) This subsection applies to —
 - (a) a person under the age of 18; and
 - (b) a vulnerable adult.
- (3) For the purposes of subsection (1)(c), a court may infer that A is in a relationship with B that is exploitative of B from the nature and circumstances of the relationship, including —
 - (a) the age of B;
 - (b) the age difference between A and B;

- (c) where B is a vulnerable adult, the degree of B's vulnerability;
 - (d) the degree of B's vulnerability in any case where B is under the age of 18 and his or her ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through intellectual, physiological or psychiatric impairment or otherwise;
 - (e) the evolution of the relationship; and
 - (f) the degree of control or influence by A over B.
- (4) The Department may issue guidance about the meanings of "**position of authority**" and "**relationship of dependency**".
 - (5) Regard must be had to guidance issued under subsection (4) in interpreting references in this Act to those expressions.
 - (6) The Department may revise guidance issued under subsection (4) and a reference to guidance includes a reference to revised guidance.
 - (7) Guidance or revised guidance issued under subsection (4) or (6) must be laid before Tynwald.

25 Sections 20 to 23: exception for spouses and civil partners

P2003/42/23 and drafting

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 20 to 23 against another person (B) is not an offence under that section if at the time —
 - (a) B is 16 or over; and
 - (b) A and B are lawfully married or civil partners of each other.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

26 Sections 20 to 23: sexual relationships which pre-date position of trust

P2003/42/24 and drafting

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 20 to 23 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at that time sexual activity between A and B would have been unlawful.
- (3) In proceedings for an offence under any of sections 20 to 23 it is for the defendant to prove that such a relationship existed at that time.

27 Offences committed by a child or young person: meeting a child following sexual grooming etc, sexual communications with a child and offences when in a position of trust

A person under 18 (A) commits an offence if A does anything which would be an offence under any of sections 18 to 23, if A were aged 18 or over.

Maximum penalty —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 7 - FAMILIAL CHILD SEX OFFENCES

28 Sexual activity with a child family member

P2003/42/25 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally touches another person (B);
 - (b) the touching is sexual;
 - (c) the relation of A to B is within section 30;
 - (d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and
 - (e) either —
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to B was of a description falling within section 30, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant's relation to B was of that description unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know that it was.
- (4) This subsection applies to an offence under this section, if the guilty person was aged 18 or over at the time of the offence.
- (5) This subsection applies where the touching involved —
 - (a) penetration of B's anus or vagina with a part of A's body or anything else;
 - (b) penetration of B's mouth with A's penis;

- (c) penetration of A's anus or vagina with a part of B's body or anything else; or
- (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (4) applies —

- (a) where subsection (5) applies — (on information) — 14 years' custody;
- (b) unless subsection (5) applies —
(on information) — 14 years' custody;
(summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty (unless subsection (4) applies) —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

29 Inciting a child family member to engage in sexual activity

P2003/42/26 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally incites another person (B) to touch, or allow himself or herself to be touched by, A;
 - (b) the touching is sexual;
 - (c) the relation of A to B is within section 30;
 - (d) A knows or could reasonably be expected to know that A's relation to B is of a description falling within that section; and
 - (e) either —
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to B was of a description falling within section 30, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant's relation to B was of that description unless sufficient evidence is adduced to raise an issue as to whether he or she knew or could reasonably have been expected to know that it was.
- (4) This subsection applies to an offence under this section, if the guilty person was aged 18 or over at the time of the offence.

(5) This subsection applies where the touching to which the incitement related involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body or anything else; or
- (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (4) applies —

- (a) where subsection (5) applies - (on information) — 14 years' custody;
- (b) unless subsection (5) applies —
(on information) — 14 years' custody;
(summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty (unless subsection (4) applies) —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

30 Family relationships

P2003/42/27 and drafting

- (1) The relation of one person (A) to another (B) is within this section if —
 - (a) it is within any of subsections (2) to (4); or
 - (b) it would be within one of those subsections but for section 29 of the *Adoption Act 1984* (status conferred by adoption).
- (2) The relation of A to B is within this subsection if —
 - (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle; or
 - (b) A is or has been B's foster parent.
- (3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and —
 - (a) one of them is or has been the other's step-parent;
 - (b) one of them is or has been the other's stepbrother or stepsister; or
 - (c) the parent or present or former foster parent of one of them is or has been the other's foster parent.
- (4) The relation of A to B is within this subsection if —
 - (a) A and B live in the same household; and

- (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.
- (5) For the purposes of this section —
 - (a) “**aunt**” means the sister or half-sister of a person’s parent, and “**uncle**” has a corresponding meaning;
 - (b) a person is a child’s foster parent if —
 - (i) he or she is a person with whom the child has been placed under section 24A of the *Children and Young Persons Act 2001* (fostering service);
 - (ii) he or she is a person with whom the child has been placed under section 23 of that Act (functions of Department of Health and Social Care in relation to children in danger or need – provision by voluntary organisation); or
 - (iii) he or she is a person who privately fosters the child under Part 7 of that Act;
 - (c) a person is another’s partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
 - (d) “**step-parent**” includes a parent’s partner and “**stepbrother**” and “**stepsister**” include the child of a parent’s partner.

31 Sections 28 and 29: exception for spouses and civil partners

P2003/42/28

- (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if at the time —
 - (a) B is 16 or over; and
 - (b) A and B are lawfully married or civil partners of each other.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

32 Sections 28 and 29: sexual relationships which pre-date family relationships

P2003/42/29

- (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if —
 - (a) the relation of A to B is not within subsection (2) of section 30;
 - (b) it would not be within that subsection if section 29 of the *Adoption Act 1984* did not apply; and

- (c) immediately before the relation of A to B first became such as to fall within section 30, a sexual relationship existed between A and B.
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(c) sexual activity between A and B would have been unlawful.
- (3) In proceedings for an offence under section 28 or 29 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

33 Sections 28 and 29: sexual relationships which pre-date the coming into operation of those sections

P2003/42/33 & drafting

- (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if at the time —
 - (a) B is 16 or over; and
 - (b) A and B are, on the date sections 28 and 29 come into operation, living as partners in an enduring family relationship.
- (2) Subsection (1) does not apply if at the time referred to in subsection (1)(b) sexual activity between A and B would have been unlawful.
- (3) In proceedings for such an offence it is for the defendant to prove that A and B were at the time living as partners in an enduring family relationship.

**DIVISION 8 - OFFENCES AGAINST PERSONS WITH A MENTAL DISORDER
IMPEDING CHOICE**

34 Sexual activity with a person with a mental disorder impeding choice

P2003/42/30, P2005/9/2 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally touches another person (B);
 - (b) the touching is sexual;
 - (c) B is unable to refuse because of or for a reason related to a mental disorder; and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if —
 - (a) B lacks the capacity to choose whether to agree to the touching (whether because he or she lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
 - (b) B is unable to communicate such a choice to A.

- (3) This subsection applies to an offence under this section, if the touching involved —
- (a) penetration of B's anus or vagina with a part of A's body or anything else;
 - (b) penetration of B's mouth with A's penis;
 - (c) penetration of A's anus or vagina with a part of B's body or anything else; or
 - (d) penetration of A's mouth with B's penis.

- (4) For the purposes of this Division, a person (A) lacks capacity in relation to a matter if at the material time A is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain regardless of whether the impairment or disturbance is permanent or temporary.

Maximum penalty for an offence to which subsection (3) applies — (on information) — custody for life.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

35 Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

P2003/42/31

- (1) A person (A) commits an offence if —
- (a) A intentionally causes or incites another person (B) to engage in an activity;
 - (b) the activity is sexual;
 - (c) B is unable to refuse because of or for a reason related to a mental disorder; and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if —
- (a) B lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he or she lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or
 - (b) B is unable to communicate such a choice to A.
- (3) This subsection applies to an offence under this section, if the activity caused or incited involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (3) applies — (on information) — custody for life.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

36 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

P2003/42/32

- (1) A person (A) commits an offence if —
 - (a) A intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person (B) is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
 - (d) B is unable to refuse because of or for a reason related to a mental disorder; and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if —
 - (a) B lacks the capacity to choose whether to agree to being present (whether because he or she lacks sufficient understanding of the nature of the activity, or for any other reason); or
 - (b) B is unable to communicate such a choice to A.

Maximum penalty —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

37 Causing a person, with a mental disorder impeding choice, to watch or listen to a sexual act

P2003/42/33 and drafting

- (1) A person (A) commits an offence if —
- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (B) to watch a third person engaging in an activity, to look at an image of any person engaging in an activity or to listen to any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) B is unable to refuse because of or for a reason related to a mental disorder; and
 - (d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.
- (2) B is unable to refuse if —
- (a) B lacks the capacity to choose whether to agree to watching, looking or listening to (whether because he or she lacks sufficient understanding of the nature of the activity, or for any other reason); or
 - (b) B is unable to communicate such a choice to A.

Maximum penalty —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 9 - INDUCEMENTS ETC. TO PERSONS WITH A MENTAL DISORDER**38 Inducement, threat or deception to procure sexual activity with a person with a mental disorder**

P2003/42/34

- (1) A person (A) commits an offence if —
- (a) with the agreement of another person (B) A intentionally touches B;
 - (b) the touching is sexual;
 - (c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose;
 - (d) B has a mental disorder; and
 - (e) A knows or could reasonably be expected to know that B has a mental disorder.

- (2) This subsection applies to an offence under this section, if the touching involved —

- (a) penetration of B's anus or vagina with a part of A's body or anything else;
- (b) penetration of B's mouth with A's penis;
- (c) penetration of A's anus or vagina with a part of B's body or anything else; or
- (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (2) applies — (on information) — custody for life.

Maximum penalty (unless subsection (2) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

39 Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

P2003/42/35

- (1) A person (A) commits an offence if —

- (a) by means of an inducement offered or given, a threat made or a deception practised by A for this purpose, A intentionally causes another person (B) to engage in, or to agree to engage in, an activity;
- (b) the activity is sexual;
- (c) B has a mental disorder; and
- (d) A knows or could reasonably be expected to know that B has a mental disorder.

- (2) This subsection applies to an offence under this section, if the activity caused or agreed to involved —

- (a) penetration of B's anus or vagina;
- (b) penetration of B's mouth with a person's penis;
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
- (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (2) applies — (on information) — custody for life.

Maximum penalty (unless subsection (2) applies) —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

40 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

P2003/42/36

A person (A) commits an offence if —

- (a) A intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person (B) is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
- (d) B agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (e) B has a mental disorder; and
- (f) A knows or could reasonably be expected to know that B has a mental disorder.

Maximum penalty —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

41 Causing a person with a mental disorder to watch or listen to a sexual act by inducement, threat or deception

P2003/42/37 and drafting

A person (A) commits an offence if —

- (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (B) to watch a third person engaging in an activity, to look at an image of any person engaging in an activity or to listen to any person engaging in an activity;
- (b) the activity is sexual;
- (c) B agrees to watch, look or listen because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement;
- (d) B has a mental disorder; and
- (e) A knows or could reasonably be expected to know that B has a mental disorder.

Maximum penalty —

- (a) (on information) — 10 years' custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

DIVISION 10 - CARE WORKERS FOR PERSONS WITH A MENTAL DISORDER

42 Care workers: interpretation

P2003/42/42 and drafting

- (1) For the purposes of sections 43 to 46, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.
- (2) This subsection applies if —
 - (a) B is accommodated and cared for at a care service or children's home; and
 - (b) A has functions to perform in the care service or home in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.
- (3) This subsection applies if B is a patient for whom services are provided by or on behalf of the Department of Health and Social Care or an independent medical agency and A has functions to perform for that Department or agency in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.
- (4) This subsection applies if A —
 - (a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder; and
 - (b) as such, has had or is likely to have regular face to face contact with B.
- (5) In this section —

"care service" means an establishment within the meaning of sections 8 to 12 of the *Regulation of Care Act 2013*;

"children's home" has the meaning given by section 22 of that Act;

"employment" means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;

"independent medical agency" has the meaning given in section 28 of the *Regulation of Care Act 2013*.

43 Care workers: sexual activity with a person with a mental disorder

P2003/42/38

- (1) A person (A) commits an offence if —

- (a) A intentionally touches another person (B);
 - (b) the touching is sexual;
 - (c) B has a mental disorder;
 - (d) A knows or could reasonably be expected to know that B has a mental disorder; and
 - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that B had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that B had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know it.
- (3) This subsection applies to an offence under this section, if the touching involved —
- (a) penetration of B's anus or vagina with a part of A's body or anything else;
 - (b) penetration of B's mouth with A's penis;
 - (c) penetration of A's anus or vagina with a part of B's body or anything else; or
 - (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (3) applies — (on information) — 14 years' custody.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

44 Care workers: causing or inciting sexual activity

P2003/42/39

- (1) A person (A) commits an offence if —
- (a) A intentionally causes or incites another person (B) to engage in an activity;
 - (b) the activity is sexual;
 - (c) B has a mental disorder;
 - (d) A knows or could reasonably be expected to know that B has a mental disorder; and
 - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that B had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that B had a mental disorder

unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know it.

- (3) This subsection applies to an offence under this section, if the activity caused or incited involved —
- (a) penetration of B's anus or vagina;
 - (b) penetration of B's mouth with a person's penis;
 - (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else; or
 - (d) penetration of a person's mouth with B's penis.

Maximum penalty for an offence to which subsection (3) applies — (on information) — 14 years' custody.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

45 Care workers: sexual activity in the presence of a person with a mental disorder

P2003/42/40

- (1) A person (A) commits an offence if —
- (a) A intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, A engages in it —
 - (i) when another person (B) is present or is in a place from which A can be observed; and
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in it;
 - (d) B has a mental disorder;
 - (e) A knows or could reasonably be expected to know that B has a mental disorder; and
 - (f) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that B had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that B had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know it.

Maximum penalty —

- (a) (on information) — 7 years' custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

46 Care workers: causing a person with a mental disorder to watch or listen to a sexual act

P2003/42/41 and drafting

- (1) A person (A) commits an offence if —
 - (a) for the purpose of obtaining sexual gratification, A intentionally causes another person (B) to watch a third person engaging in an activity, to look at an image of any person engaging in an activity or to listen to any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) B has a mental disorder;
 - (d) A knows or could reasonably be expected to know that B has a mental disorder; and
 - (e) A is involved in B's care in a way that falls within section 42.
- (2) Where in proceedings for an offence under this section it is proved that B had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that B had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know it.

Maximum penalty —

- (a) (on information) — 7 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

47 Sections 43 to 46: exception for spouses and civil partners

P2003/42/43

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 43 to 46 against another person (B) is not an offence under that section if at the time —
 - (a) B is 16 or over; and
 - (b) A and B are lawfully married or civil partners of each other.
- (2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married or civil partners of each other.

48 Sections 43 to 46: sexual relationships which pre-date care relationships

P2003/42/44

- (1) Conduct by a person (A) which would otherwise be an offence under any of sections 43 to 46 against another person (B) is not an offence under that

section if, immediately before A became involved in B's care in a way that falls within section 42, a sexual relationship existed between A and B.

- (2) Subsection (1) does not apply if at that time sexual activity between A and B would have been unlawful.
- (3) In proceedings for an offence under any of sections 43 to 46 it is for the defendant to prove that such a relationship existed at that time.

DIVISION 11 - SEXUAL EXPLOITATION OF CHILDREN

49 Paying for sexual services of a child

P2003/42/47 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally obtains for himself or herself the sexual services of another person (B);
 - (b) before obtaining those services, A has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment; and
 - (c) either —
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.
- (3) In this section, “**payment**” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (4) This subsection applies to an offence under this section against a person under 13, where subsection (7) applies.
- (5) Unless subsection (4) applies, this subsection applies to an offence under this section against a person under 16.
- (6) This subsection applies unless subsection (4) or (5) applies.
- (7) This subsection applies where the offence involved —
 - (a) penetration of B's anus or vagina with a part of A's body or anything else;
 - (b) penetration of B's mouth with A's penis;
 - (c) penetration of A's anus or vagina with a part of B's body or by B with anything else; or
 - (d) penetration of A's mouth with B's penis.

Maximum penalty for an offence to which subsection (4) applies — (on information) — custody for life.

Maximum penalty for an offence to which subsection (5) applies —

- (a) where subsection (7) applies — (on information) — 14 years' custody;
- (b) unless subsection (7) applies —
 - (i) (on information) — 14 years' custody;
 - (ii) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty for an offence to which subsection (6) applies —

- (a) where subsection (7) applies — (on information) — 14 years' custody;
- (b) unless subsection (7) applies —
 - (i) (on information) — 7 years' custody;
 - (ii) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

50 Causing or inciting sexual exploitation of a child

P2003/42/48 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally causes or incites another person (B) to be sexually exploited, in any part of the world; and
 - (b) either —
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

51 Controlling a child in relation to sexual exploitation

P2003/42/49 and drafting

- (1) A person (A) commits an offence if —

- (a) A intentionally controls any of the activities of another person (B) relating to B's sexual exploitation in any part of the world; and
 - (b) either —
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

52 Arranging or facilitating sexual exploitation of a child

P2003/42/50 and drafting

- (1) A person (A) commits an offence if —
 - (a) A intentionally arranges or facilitates the sexual exploitation in any part of the world of another person (B); and
 - (b) either —
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over; or
 - (ii) B is under 13.
- (2) Where in proceedings for an offence under this section it is proved that B was under 18, the defendant is to be taken not to have reasonably believed that B was 18 or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

Maximum penalty —

- (a) (on information) — 14 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

53 Sections 50 to 52: interpretation

P2003/42/51

- (1) For the purposes of sections 50 to 52, a person (B) is sexually exploited if —
 - (a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person; or

- (b) an indecent image of B is recorded or streamed or otherwise transmitted;

and “**sexual exploitation**” is to be interpreted accordingly.

- (2) In subsection (1), “**payment**” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

DIVISION 12 - EXPLOITATION OF PROSTITUTION

54 **Soliciting and loitering or soliciting for the purposes of prostitution**

P2003/42/51A, P1959/57/1 and drafting

- (1) It is an offence for a person in a street or public place to solicit another (B) for the purpose of obtaining B’s sexual services as a prostitute.

Maximum penalty — (summary) — a fine of level 2 on the standard scale.

- (2) It is an offence for a person aged 18 or over persistently to loiter or solicit in a street or public place for the purpose of prostitution.

Maximum penalty — (summary) — a fine of level 2 on the standard scale.

- (3) The court may deal with a person convicted of an offence under subsection (2) by making an order requiring the offender to attend 3 meetings with the person for the time being specified in the order (“the supervisor”) or with such other person as the supervisor may direct.

- (4) The purpose of an order under subsection (3) is to assist the offender, through attendance at those meetings, to —

- (a) address the causes of the conduct constituting the offence; and
- (b) find ways to cease engaging in such conduct in the future.

- (5) Where the court is dealing with an offender who is already subject to an order under subsection (3), the court may not make a further order under that subsection unless it first revokes the existing order.

- (6) If the court makes an order under subsection (3) it may not impose any other penalty in respect of the offence.

- (7) For the purposes of subsection (2) —

- (a) conduct is persistent if it takes place on 2 or more occasions in any period of 3 months;
- (b) any reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

- (8) In this section “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of

premises abutting on a street (as defined), and any ground adjoining and open to a street, shall be treated as forming part of the street.

- (9) Reference to a person in a street or public place includes a person in a vehicle in a street or public place.

55 Causing or inciting prostitution for gain

P2003/42/52

A person commits an offence if —

- (a) he or she intentionally causes or incites another person to become a prostitute in any part of the world; and
- (b) he or she does so for or in the expectation of gain for himself, herself or a third person.

Maximum penalty —

- (a) (on information) — 7 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

56 Controlling prostitution for gain

P2003/42/53

A person commits an offence if —

- (a) he or she intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world; and
- (b) he or she does so for or in the expectation of gain for himself, herself or a third person.

Maximum penalty —

- (a) (on information) — 7 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

57 Paying for sexual services of a prostitute subjected to force etc

P2003/42/53A.

(1) A person (A) commits an offence if —

- (a) A makes or promises payment for the sexual services of a prostitute (B);
- (b) a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment; and
- (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

- (2) The following are irrelevant —
 - (a) where in the world the sexual services are to be provided and whether those services are provided;
 - (b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.
- (3) C engages in exploitative conduct if —
 - (a) C uses force, threats (whether or not relating to violence) or any other form of coercion; or
 - (b) C practises any form of deception.

Maximum penalty — (summary) — a fine of level 2 on the standard scale.

58 Sections 54 to 57: interpretation

P2003/42/54 and drafting

- (1) In sections 55, 56 and 57, “**gain**” means —
 - (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In sections 54, 55, 56 and 57, “**prostitute**” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “**prostitution**” is to be interpreted accordingly.
- (3) In subsection (2) and section 57, “**payment**” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

DIVISION 13 - SUPPRESSION OF BROTHELS

59 Keeping a brothel used for prostitution

P1956/69/33A & Sch.2 and drafting

- (1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).
- (2) In this section “**prostitution**” has the meaning given in section 58.

Maximum penalty —

- (a) (on information) — 7 years’ custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

60 Landlord letting premises for use as brothel

P1956/69/34 & Sch.2 and drafting

- (1) It is an offence for the lessor or landlord of any premises or his or her agent to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel, or, where the whole or part of the premises is used as a brothel, to be wilfully a party to that use continuing.
- (2) A conviction of an offence punishable under section 61 or 62, or under section 29, 30 or 31 of the *Sexual Offences Act 1992*, shall be taken into account as a previous conviction in the same way as a conviction of an offence punishable under this section.

Maximum penalty — (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

61 Tenant permitting premises to be used as brothel

P1956/69/35 & Sch.2 and drafting

- (1) It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel.
- (2) Where the tenant or occupier of any premises is convicted of knowingly permitting the whole or part of the premises to be used as a brothel, section 64 (rights of landlord where tenant convicted of permitting use of premises as brothel) applies to enlarge the rights of the lessor or landlord with respect to the assignment or determination of the lease or other contract under which the premises are held by the person convicted.
- (3) Where the tenant or occupier of any premises is so convicted, and either —
 - (a) the lessor or landlord, after having the conviction brought to his or her notice, fails or failed to exercise his or her statutory rights in relation to the lease or contract under which the premises are or were held by the person convicted; or
 - (b) the lessor or landlord, after exercising his or her statutory rights so as to determine that lease or contract, grants or granted a new lease or enters or entered into a new contract of tenancy of the premises to, with or for the benefit of the same person, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease or contract,

then, if subsequently an offence under this section is committed in respect of the premises during the subsistence of the lease or contract referred to in paragraph (a) or (where paragraph (b) applies) during the subsistence of the new lease or contract, the lessor or landlord shall be deemed to be a

party to that offence unless he or she shows that he or she took all reasonable steps to prevent the recurrence of the offence.

References in this subsection to the statutory rights of a lessor or landlord refer to his or her rights under section 64.

- (4) A conviction of an offence punishable under section 60 or 62, or under section 29, 30 or 31 of the *Sexual Offences Act 1992*, shall be taken into account as a previous conviction in the same way as a conviction of an offence punishable under this section.

Maximum penalty — (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

62 Tenant permitting premises to be used for prostitution

P1956/69/36 & Sch.2 and drafting

- (1) It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purposes of habitual prostitution.
- (2) A conviction of an offence punishable under section 60 or 61, or under section 29, 30 or 31 of the *Sexual Offences Act 1992*, shall be taken into account as a previous conviction in the same way as a conviction of an offence punishable under this section.

Maximum penalty — (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

63 Sections 59 to 62: powers of search

IOM1992/6/35 and drafting

- (1) Where it is made to appear by complaint on oath before a justice that there is reasonable cause to suspect —
- (a) that any premises or part of premises is used by a person (A) for purposes of prostitution; and
 - (b) that another person (B) residing in or frequenting the premises is living wholly or in part on A's earnings,
- the justice may issue a warrant authorising a constable to enter and search the premises and to arrest B.
- (2) Where it is made to appear by complaint on oath before a justice by a parent, relative or guardian of A, or by any other person who in the justice's opinion is acting in A's interests, that there is reasonable cause to suspect that —
- (a) that A is detained in any place in order that other persons or a particular person may have unlawful sexual activity with A; and
 - (b) A is —
 - (i) so detained against his or her will;

- (ii) under the age of 18; or
- (iii) is a vulnerable adult,

the justice may issue a warrant authorising a constable to search for A and to take and detain A in a place of safety until he or she can be brought before a justice.

- (3) A constable executing a warrant under subsection (2) —
 - (a) may enter (by force, if need be) any premises specified in the warrant and remove A from the premises; and
 - (b) shall be accompanied by the person applying for the warrant, if that person so desires, unless the justice issuing it otherwise directs.
- (4) A justice before whom A is brought under subsection (2) may cause A to be delivered up to A's parent or guardian or otherwise dealt with as circumstances may require.
- (5) The powers conferred by this section are in addition to and not in derogation of those conferred by Part 5 of the *Children and Young Persons Act 2001*.

64 Rights of landlord where tenant convicted of permitting use of premises as brothel

P1956/69/Sch1 and drafting

- (1) Upon the conviction of the tenant or occupier (in this section referred to as "the tenant") of an offence under section 61, the lessor or landlord may require the tenant to assign the lease or other contract under which the premises are held by the tenant to some person approved by the lessor or landlord.
- (2) If the tenant fails to do so within 3 months, the lessor or landlord may determine the lease or contract (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination).
- (3) Where the lease or contract is determined under this section, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the lessor or landlord.
- (4) The approval of the lessor or landlord for the purposes of subsection (1) shall not be unreasonably withheld.

65 Allowing persons under 18 or vulnerable adults to be in brothels

IOM1966/5/3 and drafting

A person (A) commits an offence if —

- (a) A allows another person (B) for whom A is responsible, to reside in, or to frequent, a brothel; and
- (b) B is —

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

Maximum penalty — (summary) — 12 months' custody or a fine not exceeding level 5 on the standard scale or both.

DIVISION 14 - PREPARATORY OFFENCES

66 Administering a substance with intent

P2003/42/61

A person (A) commits an offence if A intentionally administers a substance to, or causes a substance to be taken by, another person (B) —

- (a) knowing that B does not consent; and
- (b) with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

Maximum penalty —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody or a fine of level 5 on the standard scale or both.

67 Committing an offence with intent to commit a sexual offence

P2003/42/62

- (1) A person commits an offence under this section if he or she commits any offence with the intention of committing a relevant sexual offence.
- (2) In this section, "**relevant sexual offence**" means any offence under this Part (other than section 87 (duty to notify police of possible victims of child sexual abuse)) (including an offence of aiding, abetting, counselling or procuring such an offence).
- (3) This subsection applies where an offence under this section is committed by kidnapping or false imprisonment.

Maximum penalty where subsection (3) applies — (on information) custody for life.

Maximum penalty (unless subsection (3) applies) —

- (a) (on information) — 10 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

68 Trespass with intent to commit a sexual offence

P2003/42/63

- (1) A person (A) commits an offence if —
- (a) A is a trespasser on any premises;
 - (b) A intends to commit a relevant sexual offence on the premises; and
 - (c) A knows that, or is reckless as to whether, he or she is a trespasser.

- (2) In this section —

“**premises**” includes a structure or part of a structure;

“**relevant sexual offence**” has the same meaning as in section 67;

“**structure**” includes a tent, vehicle or vessel or other temporary or movable structure.

Maximum penalty —

- (a) (on information) — 10 years’ custody;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

DIVISION 15 - SEX WITH AN ADULT RELATIVE**69 Sex with an adult relative: penetration**

P2003/42/64 and drafting

- (1) Subject to subsection (4), a person aged 16 or over (A) commits an offence if —
- (a) A intentionally penetrates another person’s vagina or anus with a part of A’s body or anything else, or penetrates another person’s mouth with A’s penis;
 - (b) the penetration is sexual;
 - (c) the other person (B) is aged 18 or over;
 - (d) A is related to B in a way mentioned in subsection (2); and
 - (e) A knows or could reasonably be expected to know that he or she is related to B in that way.

- (2) The ways that A may be related to B, are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

- (3) In subsection (2) —

“**parent**” includes an adoptive parent;

“**child**” includes an adopted person within the meaning of Part 3 of the *Adoption Act 1984*;

“**uncle**” means the brother of a person’s parent, and “**aunt**” has a corresponding meaning;

“**nephew**” means the child of a person’s brother or sister, and “**niece**” has a corresponding meaning.

- (4) Where subsection (1) applies in a case where A is related to B as B’s child by virtue of subsection (3), A does not commit an offence under this section unless A is 18 or over.
- (5) Where in proceedings for an offence under this section it is proved that the defendant was related to B in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he or she was related in that way unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know that he or she was.
- (6) Nothing in section 35 of the *Adoption Act 1984* (which disapplies the status provisions in section 29 of that Act for the purposes of this section) is to be read as preventing the application of section 29 of the *Adoption Act 1984* for the purposes of the meaning of “parent” and “child” in subsection (3).

Maximum penalty —

- (a) (on information) — 2 years’ custody;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

70 Sex with an adult relative: consenting to penetration

P2003/42/65

- (1) Subject to subsection (4), a person aged 16 or over (A) commits an offence if —
 - (a) another person (B) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis;
 - (b) A consents to the penetration;
 - (c) the penetration is sexual;
 - (d) B is aged 18 or over;
 - (e) A is related to B in a way mentioned in subsection (2); and
 - (f) A knows or could reasonably be expected to know that he or she is related to B in that way.
- (2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.
- (3) In subsection (2) —

“**parent**” includes an adoptive parent;

“**child**” includes an adopted person within the meaning of Part 3 of the *Adoption Act 1984*;

“**uncle**” means the brother of a person’s parent, and “aunt” has a corresponding meaning;

“**nephew**” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

- (4) Where subsection (1) applies in a case where A is related to B as B’s child by virtue of the meaning of “child” in subsection (3), A does not commit an offence under this section unless A is 18 or over.
- (5) Where in proceedings for an offence under this section it is proved that the defendant was related to B in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he or she was related in that way unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know that he or she was.
- (6) Nothing in section 35 of the *Adoption Act 1984* (which disapplies the status provisions in section 29 of that Act for the purposes of this section) is to be read as preventing the application of section 29 of the *Adoption Act 1984* for the purposes of the meaning of “parent” and “child” in subsection (3).

Maximum penalty —

- (a) (on information) — 2 years’ custody;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

DIVISION 16 – INDECENT PHOTOGRAPHS AND PROHIBITED IMAGES OF CHILDREN

71 Indecent photographs of children

P1978/37/1&6, P1988/33/160 and drafting

- (1) Subject to sections 74 and 75, it is an offence for a person —
 - (a) to have any indecent photograph or pseudo-photograph of a child in his or her possession;
 - (b) to take, or permit to be taken or to make, any indecent photograph or pseudo-photograph of a child; or
 - (c) to distribute or show such an indecent photograph or pseudo-photograph; or
 - (d) to have in his or her possession such an indecent photograph or pseudo-photograph, with a view to its being distributed or shown by himself, herself or others; or
 - (e) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows

such an indecent photograph or pseudo-photograph, or intends to do so.

- (2) Where a person is charged with an offence under subsection (1)(a), it is a defence for the person to prove, —
- (a) that the person had a legitimate reason for having the photograph or pseudo-photograph in his or her possession; or
 - (b) that the person had not seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or
 - (c) that the photograph or pseudo-photograph was sent to the person without any prior request made by him or her or on his or her behalf and that the person not keep it for an unreasonable time.
- (3) Where a person is charged with an offence under subsection (1)(c) or (d), it shall be a defence for the person to prove —
- (a) that the person had a legitimate reason for distributing or showing the photograph or pseudo-photograph or (as the case may be) having them in his or her possession; or
 - (b) that the person had not himself or herself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, them to be indecent.

Maximum penalty for an offence under subsection (1)(a) —

- (a) (on indictment) — 5 years' custody, or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty for any offence under this section (other than subsection (1)(a)) —

- (a) (on indictment) — 10 years' custody, or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

72 Prohibited images of children

P2009/25/62&66 and drafting

- (1) Subject to sections 74 and 75, it is an offence for a person —
- (a) to have a prohibited image of a child in his or her possession;
 - (b) to take, or permit to be taken or to make, any prohibited image of a child;
 - (c) to distribute or show such prohibited images;
 - (d) to have in his or her possession such prohibited images, with a view to their being distributed or shown by himself, herself or others; or

- (e) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such prohibited images, or intends to do so.
- (2) A prohibited image is an image which —
 - (a) is pornographic;
 - (b) falls within subsection (6); and
 - (c) is grossly offensive, disgusting or otherwise of an obscene character.
- (3) An image is “**pornographic**” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person’s possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to —
 - (a) the image itself; and
 - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.
- (5) So, for example, where —
 - (a) an image forms an integral part of a narrative constituted by a series of images; and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.
- (6) An image falls within this subsection if it —
 - (a) is an image which focuses solely or principally on a child’s genitals or anal region; or
 - (b) portrays any of the acts mentioned in subsection (7).
- (7) Those acts are —
 - (a) the performance by a person of an act of intercourse or oral sex with or in the presence of a child;
 - (b) an act of masturbation by, of, involving or in the presence of a child;
 - (c) an act which involves penetration of the vagina or anus of a child with a part of a person’s body or with anything else;
 - (d) an act of penetration, in the presence of a child, of the vagina or anus of a person with a part of a person’s body or with anything else;

- (e) the performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
- (f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child.

Maximum penalty for an offence to under subsection (1)(a) —

- (a) (on information) — 5 years' custody, or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty for any offence under this section (other than subsection (1)(a)) —

- (a) (on information) — 10 years' custody, or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

73 Exclusion of classified film

P2009/25/63 P1984/39/1 and drafting

- (1) Section 72 does not apply to excluded images.
- (2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an “excluded image” if —
 - (a) it is contained in a recording of an extract from a classified work; and
 - (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.
- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to —
 - (a) the image itself; and
 - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images; and section 72(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.
- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to —
 - (a) a defect caused for technical reasons or by inadvertence on the part of any person; or

- (b) the inclusion in the recording of any extraneous material (such as advertisements),
- is to be disregarded.
- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 72 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.
- (7) In this section —
- “**classified work**” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);
- “**classification certificate**” has the same meaning as in the *Video Recordings Act 1995*;
- “**designated authority**” means an authority which has been designated by the Secretary of State under section 4 of the *Video Recordings Act 1984*¹ (of Parliament) ;
- “**extract**” includes an extract consisting of a single image;
- “**pornographic**” has the same meaning as in section 72;
- “**recording**” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means)
- “**video work**” means any series of visual images (with or without sound) —
- (a) produced electronically by the use of information contained on any disc magnetic tape or any other device capable of storing data electronically; and
- (b) shown as a moving picture.
- (8) Section 24(3) of the *Video Recordings Act 1995* (interpretation: effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

74 Exception for spouses and civil partners

P1978/37/1A, P1988/33/160A and drafting

- (1) This section applies where, in proceedings for an offence under section 71(1)(a) to (e) or section 72(1)(a) to (e) the defendant proves that the photograph, pseudo-photograph, image or prohibited image was of the child aged 16 or over, and that at the time of the offence charged the child and the defendant —
- (a) were married or civil partners of each other; or
- (b) lived together as partners in an enduring family relationship.

¹ 1984 c.39

- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 71(1)(c) or (d) or section 72(1)(c) or (d), the defendant proves that the photograph, pseudo-photograph or prohibited image was of the child aged 16 or over, and that at the time when the defendant obtained it the child and the defendant —
- (a) were married or civil partners of each other; or
 - (b) lived together as partners in an enduring family relationship.
- (3) This section applies whether the photograph, pseudo-photograph or prohibited image showed the child alone or with the defendant, but not if it showed any other person.
- (4) In the case of an offence under section 71(1)(a) and (b) or section 72(1)(a) and (b), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph, pseudo-photograph or prohibited image being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.
- (5) In the case of an offence under section 71(1)(c) or section 72(1)(c), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.
- (6) In the case of an offence under section 71(1)(d) or section 72(1)(d), if sufficient evidence is adduced to raise an issue both —
- (a) as to whether the child consented to the photograph, pseudo-photograph or prohibited image being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented; and
 - (b) as to whether the defendant had the photograph, pseudo-photograph or prohibited image in his or her possession with a view to its being distributed or shown to anyone other than the child,
- the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph, pseudo-photograph or prohibited image in his or her possession with a view to its being distributed or shown to a person other than the child.

75 Exception for criminal proceedings, investigations etc

P1978/37/1B and drafting

In proceedings for an offence under section 71(1)(b) or section 72(1)(b) of making an indecent photograph, pseudo-photograph or prohibited image of a child, the defendant does not commit the offence if he or she proves that —

- (a) it was necessary for the defendant to make the photograph, pseudo-photograph or prohibited image for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world; or
- (b) at the time of the offence charged the defendant was a member of the Constabulary and it was necessary for the defendant to make the photograph, pseudo-photograph or prohibited image for the exercise of any of the functions of the Constabulary.

76 Defences

P2009/25/64 & drafting

- (1) Where a person is charged with an offence under section 71(1) or 72(1), it is a defence for the person to prove any of the following matters —
 - (a) that the person had a legitimate reason for being in possession of the photograph, pseudo-photograph or prohibited image concerned;
 - (b) that the person had not seen the photograph, pseudo-photograph or prohibited image concerned and did not know, nor had any cause to suspect, it to be an indecent photograph or pseudo-photograph or a prohibited image of a child;
 - (c) that the person —
 - (i) was sent the photograph, pseudo-photograph or prohibited image concerned without any prior request having been made by or on behalf of the person; and
 - (ii) did not keep it for an unreasonable time.
- (2) In this section “**prohibited image**” has the same meaning as in section 72.

77 Evidence in proceedings relating to indecent photographs and prohibited images of children

P1978/37/2 and drafting

In proceedings under section 71 or 72 relating to indecent photographs, pseudo-photographs and prohibited images of children a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he or she was then under the age of 18.

78 Entry, search and seizure

P1978/37/4 and drafting

- (1) The following applies where a justice of the peace is satisfied by complaint on oath, laid by or on behalf of the Attorney General or by a constable, that there is reasonable ground for suspecting that, in any premises, there is an indecent photograph or pseudo-photograph of a child or a prohibited image of a child.

- (2) The justice may issue a warrant under his or her hand authorising any constable to enter (if need be by force) and search the premises and to seize and remove any articles which the constable believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children or prohibited images of children.
- (3) In this section “premises” has the same meaning as in section 81 of the *Police Powers and Procedures Act 1998*.

79 Special rules relating to providers of information society services

P2009/25/68

Schedule 1 makes special provision in connection with the operation of sections 71 and 72 in relation to persons providing information society services within the meaning of that Schedule.

80 Forfeiture

P1978/37/5 and drafting

Schedule 2 makes provision about the forfeiture of indecent photographs and pseudo-photographs and prohibited images of children.

81 Sections 71 to 80: interpretation

P1978/37/7 P2009/25/65 and drafting

- (1) The following subsections apply for the interpretation of sections 71 to 80.
- (2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.
- (3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children and so as respects pseudo-photographs.
- (4) References to a photograph include —
 - (a) the negative as well as the positive version; and
 - (b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.
- (5) References to a photograph also include —
 - (a) a tracing or other image, whether made by electronic or other means (of whatever nature) —
 - (i) which is not itself a photograph or pseudo-photograph, but
 - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both);and
 - (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a),

and subsection (10) applies in relation to such an image as it applies in relation to a pseudo-photograph.

- (6) “**Film**” includes any form of video-recording.
- (7) “**Child**”, subject to subsection (10), means a person under the age of 18.
- (8) “**Pseudo-photograph**” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.
- (9) References to an indecent pseudo-photograph include —
 - (a) a copy of an indecent pseudo-photograph; and
 - (b) data stored on a computer disc or by other electronic means which is capable of conversion into an indecent pseudo-photograph.
- (10) Where an indecent photograph, an indecent pseudo-photograph, an image or a prohibited image shows a person the indecent photograph, indecent pseudo-photograph, image or prohibited image is to be treated as an indecent photograph, an indecent pseudo-photograph, an image of a child or a prohibited image if —
 - (a) the impression conveyed by the indecent photograph, indecent pseudo-photograph, image or prohibited image is that the person shown is a child; or
 - (b) the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not those of a child.
- (11) “**Prohibited image**” has the meaning given in section 72.
- (12) “Image” does not include an indecent photograph, or indecent pseudo-photograph, of a child.
- (13) References to an indecent photograph, an indecent pseudo-photograph, an image or a prohibited image of a person include references to an indecent photograph, an indecent pseudo-photograph, an image or a prohibited image of an imaginary person.
- (14) References to an indecent photograph, an indecent pseudo-photograph, an image or a prohibited image of a child include references to an indecent photograph, an indecent pseudo-photograph, an image or a prohibited image of an imaginary child.
- (15) References to distribution of an indecent photograph or pseudo-photograph or a prohibited image mean parting with possession of, exposing or offering for acquisition the photograph, pseudo-photograph or image by a person to another person.
- (16) References to being in possession of an image include obtaining access to the image by streaming or by any other form of transmission.

DIVISION 17 - OTHER OFFENCES

82 Exposure

P2003/42/66

A person (A) commits an offence if —

- (a) A intentionally exposes A's genitals; and
- (b) A intends that someone will see them and be caused alarm or distress.

Maximum penalty —

- (a) (on information) — 2 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

83 Intercourse with an animal

P2003/42/69

(1) A person (A) commits an offence if —

- (a) A intentionally performs an act of penetration with A's penis;
- (b) what is penetrated is the vagina or anus of an animal; and
- (c) A knows that, or is reckless as to whether, that is what is penetrated.

(2) A person (A) commits an offence if —

- (a) A intentionally causes, or allows, A's vagina or anus to be penetrated;
- (b) the penetration is by the penis of an animal; and
- (c) A knows that, or is reckless as to whether, that is what A is being penetrated by.

Maximum penalty —

- (a) (on information) — 2 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

84 Sexual penetration of a corpse

P2003/42/70

A person (A) commits an offence if —

- (a) A intentionally performs an act of penetration with a part of A's body or anything else;
- (b) what is penetrated is a part of the body of a dead person;
- (c) A knows that, or is reckless as to whether, that is what is penetrated; and

(d) the penetration is sexual.

Maximum penalty —

(a) (on information) — 2 years' custody;

(b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

85 Sexual activity in a public place causing harassment, alarm or distress

P2003/42/71, IOM1998/11/3 and drafting

- (1) A person (A) commits an offence if A engages in a sexual activity in a place to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise, within the hearing or sight of a person likely to be caused harassment, annoyance, alarm or distress thereby.
- (2) For the purpose of subsection (1) a person who is likely to be caused harassment, annoyance, alarm or distress does not include a constable on duty.
- (3) For the purpose of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person's purpose, consider it to be sexual.
- (4) It is a defence for the accused to prove that he or she had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, annoyance, alarm or distress.

Maximum penalty — (summary) — a fine of level 3 on the standard scale.

86 Abduction by force

IOM1992/6/15 and drafting

- (1) A person (A) commits an offence if A takes away or detains another person (B) against B's will by force with the intention of committing a relevant sexual offence.
- (2) In this section, "**relevant sexual offence**" means any offence under this Part (other than section 87 (duty to notify police of possible victims of child sexual abuse)) (including an offence of aiding, abetting, counselling or procuring such an offence).

Maximum penalty (on information) — 14 years' custody.

87 Duty to notify police of possible victims of child sexual abuse

HLBill2017-19/39/2&11 and drafting

- (1) A person who works in a regulated profession or works with children in a regulated activity must make a notification under this section (a "**child sexual abuse notification**") if, in the course of his or her work, the person

discovers that a child appears to have been subject to an act which would constitute an offence under this Part regardless of whether —

- (a) a complaint has been made about the offence; or
 - (b) a person has been charged with or convicted of the offence,
- (an “**act of sexual abuse**”).

(2) For the purposes of this section —

- (a) a person works in a “**regulated profession**” if the person is —
 - (i) a health care professional;
 - (ii) a teacher;
 - (iii) a social care worker; or
 - (iv) a person who works for a purpose specified in section 90(1);
- (b) a “**regulated activity**” means any prescribed by order by the Department.

(3) For the purposes of subsection (1), a person (A) discovers that a child (B) appears to have been subject to an act of sexual abuse if —

- (a) B informs A that B has been subject to an act of sexual abuse (however described); or
- (b) A reasonably suspects that B has been subject to an act of sexual abuse.

(4) A child sexual abuse notification —

- (a) is to be made to a constable;
- (b) must identify the child and explain why the notification is being made;
- (c) must be made before the end of the period of 14 days beginning with the day on which the person making the notification discovers that the child appears to have been subject to an act of sexual abuse; and
- (d) may be made orally or in writing.

(5) The duty outlined in this section does not apply so long as, in relation to the discovered act of sexual abuse, that person complies with a safeguarding policy prescribed for the purposes of this section in regulations made by the Department.

(6) A disclosure made in a child abuse notification does not breach —

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information.

(7) The Department may by order amend subsection (2)(a) to add, remove, or otherwise alter the descriptions of persons regarded as working in a

“regulated profession”. An order under this subsection may include consequential, transitional, transitory or saving provisions.

(8) In this section —

“**health care professional**” means a person registered in accordance with the *Health Care Professionals Act 2014*;

“**social care worker**” means a person within the meaning in section 139 of the *Regulation of Care Act 2013*;

“**teacher**” means a person —

- (a) appointed by the Department of Education, Sport and Culture in accordance with section 6 of the *Education Act 2001*;
- (b) performing an equivalent function or role to that of a person specified in paragraph (a); or
- (c) appointed by any person as a teaching assistant.

(9) A person who fails to comply with this section commits an offence.

Maximum penalty —

- (a) (on information) — 2 years’ custody or a fine;
- (b) (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

88 Conversion therapy

(1) It is an offence for any person to practise, or to offer to practise conversion therapy.

(2) In this section, “conversion therapy” —

- (a) is any form of therapy which demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other and attempts to —
 - (i) change a person’s sexual orientation or gender identity; or
 - (ii) suppress a person’s expression of sexual orientation or gender identity; but
- (b) does not include services which are for the purpose of assisting a person to explore, develop or affirm freely the person’s sexual orientation or gender identity.

(3) The Department may issue guidance about the meanings of expressions used in subsection (2).

(4) Regard must be had to guidance issued under subsection (3) in interpreting references in this section to those expressions.

(5) Guidance issued under subsection (3) must be laid before Tynwald.

Maximum penalty —

- (a) (on information) — 2 years’ custody or a fine;

- (b) (summary) — 12 months' custody or a fine of level 5 on the standard scale or both.

DIVISION 18 - OFFENCES OUTSIDE THE ISLAND

89 Offences outside the Island

P2003/42/72, IOM2013/7/18 and drafting

- (1) This section applies if —
 - (a) a person who is —
 - (i) a resident of the Island; or
 - (ii) meets the residency condition, does anything in a country outside the Island; and
 - (b) the act would, if it took place in the Island, constitute an offence under this Act.
- (2) A person meets the residency condition at the relevant time if the person is a resident of the Island at the time when proceedings are brought.
- (3) In such a case —
 - (a) the act constitutes the offence concerned;
 - (b) proceedings for the offence may be taken in the Island;
 - (c) the offence may be treated for incidental purposes as having been committed in the Island.
- (4) The sexual offences to which this section applies are an offence under any of sections 4 to 23, 28 and 29, 34 to 41, 43 to 46, 49 to 52, and 66 to 72.
- (5) In this section —
 - (a) a reference to an offence includes —
 - (i) an attempt, conspiracy or incitement to commit an offence;
 - (ii) aiding, abetting, counselling or procuring the commission of an offence; and
 - (b) “**a resident of the Island**” means an individual who is ordinarily resident in the Island.

DIVISION 19 - SUPPLEMENTARY AND GENERAL

90 Exceptions to aiding, abetting and counselling

P2003/42/73

- (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he or she acts for the purpose of —
 - (a) protecting the child from sexually transmitted infection;

- (b) protecting the physical safety of the child;
 - (c) preventing the child from becoming pregnant; or
 - (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.
- (2) This section applies to —
- (a) an offence under any of sections 8 to 10 (offences against children under 13);
 - (b) an offence under section 12 (sexual activity with a child);
 - (c) an offence under section 16 (child sex offences committed by a child or young person) which would be an offence under section 12 if the offender were aged 18 or over;
 - (d) an offence under any of sections 20, 28, 34, 38 and 43 (sexual activity) against a person under 16.
- (3) The Department may by order amend this section to add, remove, or otherwise alter the purposes specified in subsection (1) and for the purposes of making consequential, transitional, transitory or saving provisions.
- (4) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

91 Meaning of “consent” for the purposes of Part 2

P2003/42/74

For the purposes of this Part, a person consents if he or she agrees by choice and has the freedom and capacity to make that choice.

92 Evidential presumptions about consent

P2003/42/75 and drafting

- (1) If in proceedings for an offence to which this section applies it is proved —
- (a) that the defendant did the relevant act;
 - (b) that any of the circumstances specified in subsection (2) existed; and
 - (c) that the defendant knew that those circumstances existed,
- the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he or she consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

- (2) The circumstances are that —
- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him or her;
 - (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
 - (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
 - (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
 - (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
 - (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act;
 - (g) the complainant had taken a substance which was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.
- (3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

93 Conclusive presumptions about consent

P2003/42/76

- (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed —
- (a) that the complainant did not consent to the relevant act; and
 - (b) that the defendant did not believe that the complainant consented to the relevant act.
- (2) The circumstances are that —
- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

94 Sections 92 and 93: relevant acts

P2003/42/77

In relation to an offence to which sections 92 and 93 apply, references in those sections to the relevant act and to the complainant are to be read as follows —

Offence

Relevant Act

An offence under section 4 (rape).	The defendant intentionally penetrating, with penis, the vagina, anus or mouth of another person (“the complainant”).
An offence under section 5 (assault by penetration).	The defendant intentionally penetrating, with a part of his or her body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under section 6 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 7 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.

95 “Sexual”

P2003/42/78

For the purposes of this Part, penetration, touching or any other activity is sexual if a reasonable person would consider that —

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual; or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

96 Part 2: General interpretation

P2003/42/79

- (1) The following apply for the purposes of this Part.
- (2) Penetration is a continuing act from entry to withdrawal.
- (3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).
- (4) “Image” includes —
 - (a) a moving or still image (produced by any means);
 - (b) a three-dimensional image; or

- (c) data (stored, transmitted or received by any means) which is capable of conversion into an image within paragraph (a) or (b).
- (5) References to an image of a person include references to an image of an imaginary person.
- (6) “**Mental disorder**” has the meaning given by section 1 of the *Mental Health Act 1998*.
- (7) References to observation (however expressed) are to observation whether direct or by looking at an image.
- (8) Touching includes touching —
 - (a) with any part of the body;
 - (b) with anything else;
 - (c) through anything,and in particular includes touching amounting to penetration.
- (9) “**Vagina**” includes vulva.
- (10) In relation to an animal, references to the vagina or anus include references to any similar part.

PART 3 – INDECENT DISPLAYS

97 Indecent displays

P1981/42/1, P2003/17/Sch1/14&15 and drafting

- (1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made commits an offence.
- (2) Any matter which is displayed in or so as to be visible from any public place shall, for the purposes of this section, be deemed to be publicly displayed.
- (3) In subsection (2), “**public place**”, in relation to the display of any matter, means any place to which the public have or are permitted to have access (whether on payment or otherwise) while that matter is displayed except —
 - (a) a place to which the public are permitted to have access only on payment which is or includes payment for that display; or
 - (b) a shop or any part of a shop to which the public can only gain access by passing beyond an adequate warning notice,but the exclusions contained in paragraphs (a) and (b) shall only apply where persons under the age of 18 years are not permitted to enter while the display in question is continuing.
- (4) Nothing in this section applies in relation to any matter —

- (a) included by any person in a programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*);
 - (b) included in the display of an art gallery or museum and visible only from within the gallery or museum; or
 - (c) displayed by or with the authority of, and visible only from within a building occupied by, a Department, Statutory Board or office of the Isle of Man Government or any local authority; or
 - (d) included in a performance of a play;
 - (e) included in an exhibition of a film —
 - (i) given in a place which as regards that exhibition is required to be licensed under section 1 of the *Cinematograph Act 1977* or by virtue only of sections 8 and 14 of that Act is not required to be so licensed; or
 - (ii) which is an exempted exhibition as defined in section 9 of that Act.
- (5) In this section “**matter**” includes anything capable of being displayed, except that it does not include an actual human body or any part thereof; and in determining for the purpose of this section whether any displayed matter is indecent —
- (a) there shall be disregarded any part of that matter which is not exposed to view; and
 - (b) account may be taken of the effect of juxtaposing one thing with another.
- (6) A warning notice shall not be adequate for the purposes of this section unless it complies with the following requirements —
- (a) The warning notice must contain the following words, and no others —

“WARNING

Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age.”.
 - (b) The word “WARNING” must appear as a heading.
 - (c) No pictures or other matter shall appear on the notice.
 - (d) The notice must be so situated that no one could reasonably gain access to the shop or part of the shop in question without being aware of the notice and it must be easily legible by any person gaining such access.
- (7) In this section —
- an “**exhibition of a film**” means any exhibition of moving pictures;
- a “**performance of a play**” means a performance of any dramatic piece, whether involving improvisation or not, —

- (a) which is given wholly or in part by one or more persons actually present and performing; and
- (b) in which the whole or a proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role; and

“**performance**” includes rehearsal (and “performing”) is to be construed accordingly.

Maximum penalty —

- (a) (on information) — 2 years’ custody, or a fine or both;
- (b) (summary) — a fine of level 5 on the standard scale.

98 Powers of arrest, seizure and entry

P1981/42/2 and drafting

- (1) A constable may seize any article which he or she has reasonable grounds for believing to be or to contain indecent matter and to have been used in the commission of an offence under this Part.
- (2) A justice of the peace, if satisfied on complaint on oath that there are reasonable grounds for suspecting that an offence under this Part has been or is being committed on any premises and, may issue a warrant authorising any constable to enter the premises specified in the information (if need be by force) to seize any article which the constable has reasonable grounds for believing to be or to contain indecent matter and to have been used in the commission of an offence under this Part.

99 Code of conduct

- (1) The Department may after consulting such persons as it considers appropriate make a code of conduct relating to the display of material to which subsection (2) applies in public places.
- (2) This subsection applies to material which is not indecent matter within the meaning of section 97, but which the Department considers may be offensive including adult titles and lifestyle magazines.
- (3) The Department may, from time to time, revise a code of conduct made under subsection (1).
- (4) The Department must arrange for any code of conduct made or revised under this section to be published in such manner as the Department considers appropriate.

PART 4 — EXTREME PORNOGRAPHIC IMAGES

100 Possession of extreme pornographic images

P2008/4/63& 67, S1982/45/51A and drafting

- (1) It is an offence for a person to be in possession of an extreme pornographic image.
- (2) An “**extreme pornographic image**” is an image which is all of the following —
 - (a) obscene (within the meaning of section 104);
 - (b) pornographic; and
 - (c) extreme.
- (3) An image is “**pornographic**” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person’s possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to —
 - (a) the image itself; and
 - (b) where the series of images is such as to be capable of providing a context for the image, its context within the series of images,and reference may also be had to any sounds accompanying the image or the series of images.
- (5) So, for example, where —
 - (a) an image forms an integral part of a narrative constituted by a series of images; and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.
- (6) An image is extreme if it depicts, in an explicit and realistic way any of the following, —
 - (a) an act which takes or threatens a person’s life;
 - (b) an act which results, or is likely to result, in a person’s severe injury;
 - (c) rape or other non-consensual penetrative sexual activity;
 - (d) sexual activity involving (directly or indirectly) a human corpse;
 - (e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).

- (7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to, —
- (a) how the image is or was depicted (whether the depiction is part of the image itself or otherwise);
 - (b) any sounds accompanying the image;
 - (c) where the image forms an integral part of a narrative constituted by a series of images —
 - (i) any sounds accompanying the series of images;
 - (ii) the context provided by that narrative.
- (8) This subsection applies if the offence relates to an image that portrays any relevant act (with or without other acts).
- (9) This subsection applies if the offence relates to an image that does not portray any relevant act.
- (10) In this section —
- (a) an “**image**” includes —
 - (i) a moving or still image (produced by any means);
 - (ii) a three-dimensional image; or
 - (iii) data (stored, transmitted or received by any means) which is capable of conversion into an image within paragraph (i) or (ii);
 - (b) “**relevant act**” means an act within subsection (6)(a) to (c).
- (11) In this section references to being in possession of an image include obtaining access to the image by streaming or any other form of transmission.

Maximum penalty where subsection (8) applies —

- (a) (on information) — 3 years' custody or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

Maximum penalty where subsection (9) applies —

- (a) (on information) — 2 years' custody, or a fine or both;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

101 Extreme pornography: excluded images

S1982/45/51B P1984/39/1and drafting

- (1) An offence is not committed under section 100 if the image is an excluded image.
- (2) An “**excluded image**” is an image which is all or part of a classified work.
- (3) An image is not an excluded image where —

- (a) it has been extracted from a classified work; and
 - (b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.
- (4) In determining whether (as found in the person's possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to —
 - (a) how the image was stored;
 - (b) how the image is or was described (whether the description is part of the image itself or otherwise);
 - (c) any sounds accompanying the image;
 - (d) where the image forms an integral part of a narrative constituted by a series of images —
 - (i) any sounds accompanying the series of images;
 - (ii) the context provided by that narrative.
- (5) In this section —

“classified work” means a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

“classification certificate” has the same meanings as in the *Video Recordings Act 1995*;

“designated authority” means an authority which has been designated by the Secretary of State under section 4 of the *Video Recordings Act 1984*² (of Parliament);

“extract” includes an extract of a single image;

“image” is to be construed in accordance with section 100;

“video work” means any series of visual images (with or without sound) —

- (a) produced electronically by the use of information contained on any disc magnetic tape or any other device capable of storing data electronically; and
 - (b) shown as a moving picture.
- (6) Section 24(3) of the *Video Recordings Act 1995* (interpretation: effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

² 1984 c.39

102 Defences: general

P2008/4/65S, S1982/45/51C and drafting

- (1) Where a person (A) is charged with an offence under section 100, it is a defence for A to prove —
 - (a) that —
 - (i) A directly participated in the act depicted; and
 - (ii) subsection (2) applies; or
 - (b) any of the matters mentioned in subsection (3).
- (2) This subsection applies —
 - (a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person's life;
 - (b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person's severe injury;
 - (c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity;
 - (d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse;
 - (e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcase of an animal) was not in fact an animal (or a carcase).
- (3) The matters referred to in subsection (1)(b) are —
 - (a) that the person had a legitimate reason for being in possession of the image concerned;
 - (b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;
 - (c) that the person —
 - (i) was sent the image concerned without any prior request having been made by or on behalf of the person; and
 - (ii) did not keep it for an unreasonable time.
- (4) The defence under subsection (1) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.
- (5) In this section "image" is to be construed in accordance with section 100.

103 Special rules relating to providers of information society services

P2008/4/68

Schedule 1 makes special provision in connection with the operation of section 100 in relation to persons providing information society services within the meaning of that Schedule.

PART 5 – OBSCENE PUBLICATIONS AND INDECENT ADVERTISEMENTS**104 Test of obscenity**

P1959/66/1

- (1) For the purposes of this Part an article shall be deemed to be obscene if its effect or (where the article comprises 2 or more distinct items) the effect of any one of its items is, if taken as a whole, ~~such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.~~ **such as to tend to deprave and corrupt persons if they read, saw or heard the matter contained or embodied in it.**
- (2) In this Part “**article**” means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.
- (3) For the purposes of this Part a person publishes an article who –
 - (a) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or
 - (b) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it, or, where the matter is data stored electronically, transmits that data.
- (4) For the purposes of this Part a person also publishes an article to the extent that any matter recorded on it is included by him or her in a programme included in a programme service.
- (5) Where the inclusion of any matter in a programme so included would, if that matter were recorded matter, constitute the publication of an obscene article for the purposes of this Part by virtue of subsection (4), this Part shall have effect in relation to the inclusion of that matter in that programme as if it were recorded matter.
- (6) In this section “**programme**” and “**programme service**” have the same meaning as in the *Broadcasting Act 1993*.

105 Negatives etc for production of obscene articles

P1964/74/2 and drafting

- (1) This Part applies in relation to anything either alone or as one of a set, which is intended to be used for the reproduction or manufacture of articles containing or embodying matter to be read, looked at or listened to, as if it were an article containing or embodying that matter so far as that matter is to be derived from it or from the set.
- (2) For the purposes of this Part, an article shall be deemed to be had or kept for publication if it is had or kept for the reproduction or manufacture of articles for publication and the question whether an article so had or kept is obscene shall —
 - (a) for purposes of section 106 be determined as if any reference there to publication of the article were a reference to publication of articles reproduced or manufactured from it; and
 - (b) for purposes of section 110 be determined on the assumption that articles reproduced or manufactured from it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

106 Prohibition of publication of obscene article

P1959/66/2 and P1964/74/1 and drafting

- (1) Any person who —
 - (a) whether for gain or not, publishes an obscene article; or
 - (b) has an obscene article for publication for gain (whether gain to that person or gain to another)

commits an offence.

This subsection is subject to subsections (2) to (6).

- (2) For the purpose of any proceedings for an offence under subsection (1)(b), a person shall be deemed to have an article for publication for gain if with a view to such publication the person has the article in his or her ownership, possession or control.
- (3) A prosecution for an offence under this section must not be commenced more than 2 years after the commission of the offence.
- (4) A person shall not be convicted of an offence —
 - (a) under subsection (1)(a) if that person proves that he or she had not examined the article in respect of which he or she is charged and had no reasonable cause to suspect that it was such that the publication of it would make him or her liable to be convicted of an offence under that provision;
 - (b) under subsection (1)(b) if that person proves that he or she had not examined the article and had no reasonable cause to suspect that it

was such that his or her having it would make him or her liable to be convicted of an offence under that provision.

- (5) The question whether an article is obscene shall be determined in any proceedings against a person —
- (a) under subsection (1)(a), without regard to any publication by another person unless it could reasonably have been expected that the publication by the other person would follow from publication by the person charged;
 - (b) under subsection (1)(b) by reference to such publication for gain of the article as in the circumstances it may reasonably be inferred the person had in contemplation and to any further publication that could reasonably be expected to follow from it, but not to any other publication..
- (6) In this section, “**exhibition of a film**” has the meaning given in section 97.
- Maximum penalty —
- (a) (on information) — 5 years’ custody or a fine or both;
 - (b) (summary) — 12 months’ custody or a fine of level 5 on the standard scale or both.

107 Defence of public good

P1959/66/4 and drafting

- (1) Subject to subsection (2) of this section a person shall not be convicted of an offence under section 106, and an order for forfeiture shall not be made under section 110, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.
- (2) Subsection (1) does not apply where the article in question is a moving picture film or soundtrack, but —
- (a) a person shall not be convicted of an offence under section 106 in relation to any such film or soundtrack; and
 - (b) an order for forfeiture of any such film or soundtrack shall not be made under section 110,
- if it is proved that publication of the film or soundtrack is justified as being for the public good on the ground that it is in the interests of drama, opera, ballet or any other art, or of literature or learning.
- (3) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Part either to establish or to negative the said ground.

- (4) In this section “**moving picture soundtrack**” means any sound record designed for playing with a moving picture film, whether incorporated with the film or not.

108 Printing, selling etc indecent or obscene publications

IOM/1907/2/2 and drafting

A person commits an offence if the person —

- (a) prints, manufactures, keeps, or causes to be printed, manufactured, or kept, for the purposes of sale, distribution, exhibition for purposes of gain or lending upon hire;
- (b) knowingly permits to be printed, manufactured, or kept upon premises of which he or she is the occupier; or
- (c) sells, distributes or exhibits, or offers to sell, distribute or exhibit, any indecent or obscene book, paper, writing, print, picture, drawing, photograph, image, figure, or other representation.

Maximum penalty —

- (a) (on information) — 5 years’ custody, a fine or both;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

109 Classified video recordings

IOM1907/2/2A

- (1) A person does not commit an offence under section 108 in respect of a video recording containing a video work in respect of which a classification certificate (within the meaning given by section 24(1) of the *Video Recordings Act 1995*) has been issued.
- (2) In this section “**video work**” means any series of visual images (with or without sound) —
 - (a) produced electronically by the use of information contained on any disc magnetic tape or any other device capable of storing data electronically; and
 - (b) shown as a moving picture.

110 Powers of search and seizure

P1959/66/3 and drafting

- (1) If a justice of the peace is satisfied by complaint on oath that there is reasonable ground for suspecting that, in or on any premises specified in the information, obscene articles are, or are from time to time, kept for publication, sale, distribution or exhibition for gain, the justice may issue a warrant empowering any constable to enter (if need be by force) and search the premises and to seize and remove any articles found there

which the constable has reason to believe to be obscene articles and to be kept for publication, sale, distribution or exhibition for gain.

- (2) A warrant under subsection (1) shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in or on the premises which relate to a trade or business carried on at the premises.
- (3) Any articles seized under subsection (1) shall be brought before a justice of the peace, who may issue a summons to the occupier of the premises to appear on a day specified in the summons before a court of summary jurisdiction to show cause why the articles or any of them should not be forfeited; and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication sale, distribution or exhibition for gain, the court shall order those articles to be forfeited.

This subsection is subject to subsection (4) and (5).

- (4) If the person summoned under subsection (3) does not appear, the court shall not make an order unless service of the summons is proved.
- (5) Subsections (3) and (4) do not apply in relation to any article seized under subsection (1) which is returned to the occupier of the premises in or on which it was found.
- (6) Where articles are seized under this section and a person is convicted under section 106(1)(b), the court on the person's conviction shall order the forfeiture of those articles.
- (7) An order under subsection (6) shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be commenced or, where such an appeal is duly commenced, until the appeal is finally decided or abandoned and for this purpose —
 - (a) an application for a case to be stated or for leave to appeal shall be treated as the commencement of an appeal; and
 - (b) where a decision on appeal is subject to a further appeal, the appeal shall not be deemed to be fully decided until the expiration of the ordinary time within which a further appeal may be commenced or, where a further appeal is duly commenced, until the further appeal is finally decided or abandoned.
- (8) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.
- (9) Subject to subsections (6) and (7) where an order is made under this section for the forfeiture of any articles, any person who appeared, or was

entitled to appear, to show cause against the making of the order may appeal to the Staff of Government Division, and no such order shall take effect until the expiration of the period within which notice of appeal to the Staff of Government Division may be given against the order, or, if before the expiration of that period notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.

- (10) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose complaint the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.
- (11) For the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.
- (12) In this section —
 - (a) “**obscene articles**” includes publications referred to in section 108;
 - (b) “**premises**” includes a vehicle or stall; and
 - (c) references to publication, sale, distribution or exhibition for gain shall apply to publication, sale, distribution or exhibition with a view to gain, whether the gain is to accrue by way of consideration for the publication, sale, distribution or exhibition or in any other way.

PART 6 – VOYEURISM AND IMAGE BASED SEXUAL ABUSE

111 Voyeurism

P2003/42/67 and drafting

- (1) A person (A) commits an offence if —
 - (a) for the purpose of obtaining sexual gratification, A observes another person (B) engaged in a private act; and
 - (b) A knows that B does not consent to being observed for A’s sexual gratification.
- (2) A person (A) commits an offence if —
 - (a) A operates equipment with the intention of enabling A or another person to observe, for the purpose of obtaining sexual gratification, a third person (B) engaged in a private act; and

- (b) A knows that B does not consent to A operating equipment with that intention.
 - (3) A person (A) commits an offence if —
 - (a) A operates equipment beneath the clothing of another person (B) with the intention of enabling A or another person to observe, for the purpose of obtaining sexual gratification the private parts of B; and
 - (b) A knows that B does not consent to A operating equipment with that intention.
 - (4) For the purposes of subsections (2) and (3), A is taken to be operating equipment if A enables or secures its activation by B or any other person without B's or that other person's consent.
- Maximum penalty —
- (a) (on information) — 3 years' custody;
 - (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

112 Voyeurism: interpretation

P2003/42/68

For the purposes of section 111, a person is engaged in a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and —

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;
- (b) the person is using a lavatory; or
- (c) the person is engaged in a sexual act that is not of a kind ordinarily done in public.

113 Recording intimate image without consent

NSW2017/29/91P and drafting

- (1) A person (A) commits an offence if A intentionally records an intimate image of another person (B) —
 - (a) without the consent of B; and
 - (b) knowing B did not consent to the recording or being reckless as to whether B consented to the recording.
- (2) A person (A) commits an offence if A installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to commit an offence under subsection (1).

Maximum penalty —

- (a) (on information) — 3 years' custody;

- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

114 Distributing intimate image

NSW2017/29/91Q and drafting

- (1) A person (A) commits an offence if the person intentionally distributes an intimate image of another person (B)—
 - (a) without the consent of B; and
 - (b) knowing B did not consent to the distribution or being reckless as to whether B consented to the distribution.

- (2) A person (A) who intentionally distributes an intimate image of A commits an offence.

Maximum penalty —

- (a) (on information) — 3 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

115 Threatening to record or distribute intimate image

NSW2017/29/91R and drafting

- (1) A person (A) commits an offence if A threatens to record an intimate image of another person (B) —
 - (a) without the consent of B; and
 - (b) intending to cause B to fear that the threat will be carried out.

- (2) A person (A) commits an offence if A threatens to distribute an intimate image of another person (B) —
 - (a) without the consent of B; and
 - (b) intending to cause B to fear that the threat will be carried out.

- (3) A threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

- (4) A person may threaten to distribute an image whether or not the image exists.

- (5) In proceedings for an offence under this section, the prosecution is not required to prove that the person alleged to have been threatened actually feared that the threat would be carried out.

Maximum penalty —

- (a) (on information) — 3 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

116 Court may order rectification

NSW2017/29/91S

- (1) A court that finds a person guilty of an offence under section 113 or 114 may order the person to take reasonable actions to remove, retract, recover, delete or destroy any intimate image recorded or distributed by the person in contravention of the section within a period specified by the court.
- (2) A court that finds a person guilty of an offence under section 115 may order the person to take reasonable actions to remove, delete or destroy any intimate image in the possession of the person, in respect of which the person had threatened to record or distribute, within a period specified by the court.
- (3) A person who, without reasonable excuse, contravenes an order made under this section commits an offence.

Maximum penalty — (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

117 Exceptions

NSW2017/29/91S and drafting

- (1) A person does not commit an offence under section 113 or 114 if —
 - (a) the conduct alleged to constitute the offence was done for a genuine medical or scientific purpose;
 - (b) the conduct alleged to constitute the offence was done by a law enforcement officer for a genuine law enforcement purpose;
 - (c) the conduct alleged to constitute the offence was required by a court or otherwise reasonably necessary to be done for the purpose of legal proceedings; or
 - (d) a reasonable person would consider the conduct of the accused person acceptable, having regard to each of the following (to the extent relevant) —
 - (i) the nature and content of the image;
 - (ii) the circumstances in which the image was recorded or distributed;
 - (iii) the age, vulnerability or other relevant circumstances of the person depicted in the image;
 - (iv) the degree to which the accused person's actions affect the privacy of the person depicted in the image;
 - (v) the relationship between the accused person and the person depicted in the image.

- (2) In this section “**law enforcement officer**” means a police officer or other person who exercises law enforcement functions under an enactment of the Island.

118 Meaning of consent in intimate image offences

NSW2017/29/91O and drafting

- (1) This section applies to all offences under sections 113 to 116.
- (2) A person consents to the recording of an intimate image if the person freely and voluntarily agrees to the recording of the intimate image.
- (3) A person consents to the distribution of an intimate image if the person freely and voluntarily agrees to the distribution of the intimate image.
- (4) A person who consents to the recording or distribution of an image on a particular occasion is not, by reason only of that fact, to be regarded as having consented to the recording or distribution of that image or any other image on another occasion.
- (5) A person who consents to the distribution of an image to a particular person or in a particular way is not, by reason only of that fact, to be regarded as having consented to the distribution of that image or any other image to another person or in another way.
- (6) A person who distributes an image of himself or herself is not, by reason only of that fact, to be regarded as having consented to any other distribution of the image.
- (7) A person does not consent to the recording or distribution of an intimate image —
- (a) if the person is under 16 or does not otherwise have the capacity to consent, including because of cognitive incapacity;
 - (b) if the person does not have the opportunity to consent because the person is unconscious or asleep;
 - (c) if the person consents because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person); or
 - (d) if the person consents because the person is unlawfully detained.
- (8) This section does not limit the grounds on which it may be established that a person does not consent to the recording or distribution of an intimate image.

119 Sections 111 to 118: interpretation

NSW2017/29/91N and drafting

- (1) In sections 111 to 118 —
- “**distribute**” includes —

- (a) send, supply, exhibit, transmit or communicate to another person; or
- (b) publish or otherwise make available for viewing or access by another person,

whether in person or by electronic, digital or any other means including streaming.

“engaged in a private act” means —

- (a) in a state of undress;
- (b) using the toilet, showering or bathing;
- (c) engaged in a sexual act of a kind not ordinarily done in public; or
- (d) engaged in any other similar activity;

“image” means a still or moving image, whether or not altered;

“intimate image” means —

- (a) an image of a person’s private parts, or of a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy; or
- (b) an image that has been altered to appear to show a person’s private parts, or a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy;

“private parts” means a person’s genital area, anal area or breasts, whether bare or covered by underwear;

“record an image” means record, take or capture an image, by any means; and

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

- (2) A person may be regarded as having distributed an image to another person whether or not the other person views or accesses the image.

PART 7 — CLOSURE ORDERS

120 Meaning of specified prostitution offence etc.

P2003/42/136A and drafting

- (1) This section applies for the purposes of this Part.
- (2) The **“specified prostitution offences”** are —
 - (a) an offence under section 50 of this Act committed by causing or inciting a child to be sexually exploited within the meaning given by section 53(1)(a);

- (b) an offence under section 51 of this Act committed by controlling the activities of a child in relation to sexual exploitation within the meaning given by section 53(1)(a);
 - (c) an offence under section 52 of this Act committed by arranging or facilitating the sexual exploitation, within the meaning given by section 53(1)(a), of a child;
 - (d) an offence under section 55 of this Act;
 - (e) an offence under section 56 of this Act.
- (3) The “**specified pornography offences**” are —
- (a) an offence under section 50 of this Act committed by causing or inciting a child to be sexually exploited within the meaning given by section 53(1)(b);
 - (b) an offence under section 51 of this Act committed by controlling the activities of a child in relation to sexual exploitation within the meaning given by section 53(1)(b);
 - (c) an offence under section 52 of this Act committed by arranging or facilitating the sexual exploitation, within the meaning given by section 53(1)(b), of a child.
- (4) The “**specified child sex offences**” are —
- (a) an offence against a child under any of the following sections of this Act —
 - (i) sections 8 to 16;
 - (ii) sections 20 to 23;
 - (iii) sections 28 and 29;
 - (iv) sections 49 to 52;
 - (v) section 71;
 - (b) an offence under any of the following sections of this Act committed against a person under 18 —
 - (i) sections 4 to 7;
 - (ii) sections 34 to 41
 - (iii) sections 43 to 46;
 - (iv) section 66;
 - (v) sections 82 and 111.
 - (c) an offence under section 4 of the *Organised and International Crime Act 2010* (trafficking in persons) committed against a person under 18 with a view to exploitation that consists of or includes behaviour within subsection (6)(a) of that section (sexual exploitation).

- (5) Premises are being used for activities related to a specified prostitution offence at any time when the person in respect of whom the offence is committed is providing sexual services as a prostitute on the premises.
- (6) Premises are being used for activities related to a specified pornography offence at any time when the person in respect of whom the offence is committed is doing anything on the premises which enables an indecent image of himself or herself to be recorded.
- (7) Premises are being used for activities related to a specified child sex offence at any time when the premises are used —
 - (a) to commit the offence; or
 - (b) for activities intended to arrange or facilitate the commission of the offence.
- (8) Any reference to an offence under this Act includes a reference to an offence under section 42 of the *Armed Forces Act 2006*³ (of Parliament) as extended to the Island, as respects which the corresponding offence under the law of the England and Wales (within the meaning given by that section) is such an offence.

121 Power to authorise issue of closure notice: prostitution or pornography offences

P2003/42/136B

- (1) A member of the Constabulary not below the rank of inspector (“**the authorising officer**”) may authorise the issue of a closure notice in respect of any premises if 3 conditions are met.
- (2) The first condition is that the officer has reasonable grounds for believing that either subsection (3) or (4) (or both) applies.
- (3) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.
But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).
- (4) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.
- (5) In subsections (3) and (4), “**the relevant period**” means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.
- (6) The second condition is that the officer has reasonable grounds for believing that the making of a closure order under section 124 is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.

³2006 c.52 (as extended under section 384)

- (7) The third condition is that the officer is satisfied that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.
- (8) For the purposes of the second condition, it does not matter whether the officer believes that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).
- (9) An authorisation under subsection (1) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.
- (10) The issue of a closure notice may be authorised whether or not a person has been convicted of any specified prostitution or pornography offence that the authorising officer believes has been committed.
- (11) The Department may by regulations specify premises or descriptions of premises to which this section does not apply.

122 Power to authorise issue of closure notice: child sex offences in the Island

P2003/42/136BA

- (1) A member of the Constabulary not below the rank of inspector (“the authorising officer”) may authorise the issue of a closure notice in respect of any premises in the Island if 3 conditions are met.
- (2) The first condition is that the officer has reasonable grounds for believing that —
 - (a) during the relevant period, the premises were used for activities related to one or more specified child sex offences; or
 - (b) the premises are likely to be used (unless a closure order is made) for activities related to one or more specified child sex offences.
- (3) In subsection (2)(a), “**the relevant period**” means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.
- (4) The second condition is that the officer has reasonable grounds for believing that the making of a closure order under section 124 is necessary to prevent the premises being used for activities related to one or more specified child sex offences.
- (5) For the purposes of the second condition, it does not matter whether the officer believes that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

- (6) The third condition is that the officer is satisfied that reasonable efforts have been made to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.
- (7) An authorisation under subsection (1) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.
- (8) The issue of a closure notice may be authorised whether or not a person has been convicted of any specified child sex offence that the authorising officer believes has been committed.
- (9) The Department may by regulations specify premises or descriptions of premises to which this section does not apply.

123 Contents and service of closure notice

P2003/42/136C

- (1) A closure notice must —
 - (a) state that no-one other than a person who regularly resides on, or owns, the premises may enter or remain on them;
 - (b) state that failure to comply with the notice amounts to an offence;
 - (c) specify the offence or offences in respect of which the authorising officer considers that the first and second conditions in section 121 or 122 are met;
 - (d) state that an application will be made under section 124 for the closure of the premises;
 - (e) specify the date and time when, and the place at which, that application will be heard; and
 - (f) explain the effects of an order under section 124.
- (2) A closure notice must be served by a constable.
- (3) Service is effected by —
 - (a) fixing a copy of the notice to at least one prominent place on the premises;
 - (b) fixing a copy of the notice to each normal means of access to the premises;
 - (c) fixing a copy of the notice to any outbuildings which appear to the constable to be used with or as part of the premises; and
 - (d) giving a copy of the notice to the persons identified in pursuance of section 121(7) or 122(6) and to any other person appearing to the constable to be a person of a description mentioned in that provision.
- (4) A constable must also serve a copy of the notice on any person who occupies any other part of a building or other structure in which the

premises are situated if, at the time of acting under subsection (3), the constable reasonably believes that the person's access to the other part of the building or structure will be impeded if a closure order is made.

- (5) Subsection (3)(d) or (4) does not require a constable to serve a copy of the notice on a person if it is not reasonably practicable to do so.
- (6) A constable acting under subsection (3) may enter any premises, using reasonable force if necessary, for the purpose of complying with subsection (3)(a) to (c).
- (7) A closure notice has effect until an application for a closure order is determined under section 124.
- (8) But, if the hearing of an application for a closure order is adjourned, the closure notice ceases to have effect unless the court makes an order under section 125.

124 Power to make a closure order

P2003/42/136D

- (1) If a closure notice has been issued, a constable must apply under this section to a court of summary jurisdiction for a closure order.
- (2) A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period not exceeding 3 months as is specified in the order.
- (3) The application must be heard by a court of summary jurisdiction not later than 7 days after the notice was served in pursuance of section 123(3)(a).
- (4) A court of summary jurisdiction may make a closure order if 3 conditions are met.
- (5) The first condition is that the court is satisfied that at least one of subsections (6), (7) and (8) applies.
- (6) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.
But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).
- (7) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.
- (8) This subsection applies if —
 - (a) during the relevant period, the premises were used for activities related to one or more specified child sex offences; or
 - (b) the premises are likely to be used (unless a closure order is made) for activities related to one or more specified child sex offences.

- (9) In subsections (6), (7) and (8)(a), “**the relevant period**” means the period of 3 months ending with the day on which the issue of the closure notice was authorised.
- (10) The second condition is that the court is satisfied that the making of the closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution, pornography or child sex offences during the period to be specified in the order.
- (11) The third condition is that the court is satisfied that —
 - (a) before the issue of the closure notice was authorised, reasonable steps were taken to establish the identity of any person of a description mentioned in section 121(7) or 122(6); and
 - (b) a constable complied with section 123(3)(d) in relation to the persons so identified.
- (12) For the purposes of the second condition, it does not matter whether the court is satisfied that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).
- (13) A closure order may be made whether or not a person has been convicted of any specified prostitution, pornography or child sex offences that the court is satisfied has been committed.

125 Making of closure orders: supplementary provision

P2003/42/136E

- (1) A court of summary jurisdiction may adjourn the hearing of an application for a closure order for a period of not more than 14 days to enable any of the following to show why a closure order should not be made —
 - (a) an occupier of the premises;
 - (b) a person who has control of or responsibility for the premises;
 - (c) any other person with an interest in the premises.
- (2) If the court adjourns the hearing, it may order that the closure notice continues in effect until the end of the period of the adjournment.
- (3) A closure order may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.
- (4) A closure order may be made in respect of the whole or any part of the premises in respect of which the closure notice was issued.

126 Closure order: enforcement

P2003/42/136F

- (1) This section applies if a closure order is made.

- (2) A constable or an authorised person may —
 - (a) enter the premises in respect of which the order is made;
 - (b) do anything reasonably necessary to secure the premises against entry by any person.
- (3) A constable or an authorised person seeking to enter premises for the purposes of subsection (2) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of the constable's or (as the case may be) the authorised person's identity and authority before entering the premises.
- (4) A constable or an authorised person may also enter the premises at any time while the order has effect for the purpose of carrying out essential maintenance of, or repairs to, the premises.
- (5) A constable or an authorised person acting under subsection (2) or (4) may use reasonable force.
- (6) In this section “**authorised person**” means a person authorised by the Chief Constable.

127 Closure of premises: offences

P2003/42/136G and drafting

- (1) A person who remains on or enters premises in contravention of a closure notice commits an offence.
- (2) A person who remains on or enters premises in contravention of a closure order commits an offence.
- (3) A person does not commit an offence under subsection (1) or (2) if the person has a reasonable excuse for remaining on or entering the premises.
- (4) A person who obstructs a constable or an authorised person acting under section 123(3) or (4) or 126(2) or (4) commits an offence.
- (5) In this section “**authorised person**” has the same meaning as in section 126.

Maximum penalty — (summary) — 12 months custody, or a fine of level 5 on the standard scale or both.

128 Applications for extension of closure order

P2003/42/136H and drafting

- (1) At any time before the end of the period for which a closure order is made or extended a constable may make a complaint to a justice of the peace for an extension or further extension of the period for which it has effect.
- (2) A complaint may not be made under subsection (1) unless it is authorised by a member of the Constabulary not below the rank of inspector.

- (3) Authorisation may be given under subsection (2) if the officer has reasonable grounds for believing that it is necessary to extend the period for which the order has effect to prevent the premises being used for activities related to any of the specified prostitution, pornography or child sex offences in respect of which section 124(10) applied.
- (4) If a complaint is made under subsection (1) the justice of the peace may issue a summons directed to —
 - (a) any person on whom the closure notice relating to the closed premises was served under section 123(3)(d) or (4); or
 - (b) any other person who appears to the justice to have an interest in the closed premises but on whom the closure notice was not served, requiring such person to appear before a court of summary jurisdiction to answer to the complaint.
- (5) If a summons is issued in accordance with subsection (4), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on —
 - (a) the persons to whom the summons is directed; and
 - (b) such constable as the justice of the peace thinks appropriate.

129 Orders extending closure orders

P2003/42/136I

- (1) This section applies where a complaint is made under section 128.
- (2) The court may make an order extending the period for which the closure order has effect by a period specified in the order if the court is satisfied that the extension is necessary to prevent the premises being used for activities related to any of the specified prostitution, pornography or child sex offence in respect of which section 124(10) applied.
- (3) The period specified in the order may not exceed 3 months.
- (4) The total period for which a closure order has effect may not exceed 6 months.
- (5) An order under this section may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

130 Discharge of closure order

P2003/42/136J and drafting

- (1) Any of the following persons may make a complaint to a justice of the peace for an order that a closure order be discharged —
 - (a) a constable;
 - (b) a person on whom the closure notice relating to the closed premises was served under section 123(3)(d) or (4);

- (c) any other person who has an interest in the closed premises but on whom the closure notice was not served.
- (2) If a complaint is made under subsection (1) by a person other than a constable the justice may issue a summons directed to such constable as the justice thinks appropriate requiring the constable to appear before a court of summary jurisdiction to answer to the complaint.
- (3) The court may not make an order discharging a closure order unless it is satisfied that the order is no longer necessary to prevent the premises being used for activities related to any of the specified prostitution, pornography or child sex offences in respect of which section 124 applied.
- (4) If a complaint is made under subsection (1), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on —
 - (a) the persons mentioned in subsection (1)(b) and (c) (other than the complainant); and
 - (b) a constable (unless a constable is the complainant).

131 Appeals

P2003/42/136K and drafting

- (1) An appeal against an order under section 124 or 129, or an appeal against a decision not to make an order under section 130, may be made to the Staff of Government Division by —
 - (a) a person on whom the closure notice relating to the closed premises was served under section 123(3)(d); or
 - (b) any other person who has an interest in the closed premises but on whom the closure notice was not served.
- (2) An appeal against a decision of a court not to make an order under section 124 or 129, or an appeal against an order under section 130, may be made to the Staff of Government Division by a constable.
- (3) An appeal under subsection (1) or (2) must be made before the end of the period of 21 days beginning with the day on which the order or decision is made.
- (4) On an appeal under this section the Staff of Government Division may make such order as it thinks appropriate.

132 Access to other premises

P2003/42/136L and drafting

- (1) This section applies to any person who occupies or has an interest in any part of a building or other structure —
 - (a) in which closed premises are situated; and
 - (b) in respect of which the closure order does not have effect.

- (2) A person to whom this section applies may at any time while a closure order has effect apply to —
 - (a) a court of summary jurisdiction in respect of an order made under section 124 or 129; or
 - (b) the Staff of Government Division in respect of an order made under section 131.
- (3) If an application is made under this section notice of the date and time when, and the place at which, the hearing to consider the application will take place must be given to —
 - (a) a constable;
 - (b) each person on whom the closure notice relating to the closed premises was served under section 123(3)(d) or (4); and
 - (c) any other person who appears to the court to have an interest in the closed premises but on whom the closure notice was not served.
- (4) On an application under this section the court may make such order as it thinks appropriate in relation to access to any other part of a building or other structure in which the closed premises are situated.
- (5) It is immaterial whether any provision has been made as mentioned in section 125(3) or 129(5).

133 Reimbursement of costs

P2003/42/136M and drafting

- (1) Where the Constabulary incurs expenditure for the purpose of clearing, securing, repairing or maintaining closed premises it may apply to the court which made the closure order for an order under this section.
- (2) On an application under this section, the court may make such order as it thinks appropriate in the circumstances for the reimbursement (in full or in part) by the owner of the premises of the expenditure mentioned in subsection (1).
- (3) An application under this section must not be entertained unless it is made before the end of the period of 3 months beginning with the day the closure order ceases to have effect.
- (4) An application under this section must be served on the owner of the premises.

134 Exemption from liability for certain damages

P2003/42/136N and drafting

- (1) A constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of the constable's functions under this Part.

- (2) The Chief Constable is not liable for relevant damages in respect of anything done or omitted to be done by a constable in the performance or purported performance of the constable's functions under this Part.
- (3) An authorised person is not liable for relevant damages in respect of anything done or omitted to be done by the authorised person in the performance or purported performance of the authorised person's functions under this Part.
- (4) No person is vicariously liable for anything done or omitted to be done by an authorised person as mentioned in subsection (3).
- (5) Subsections (1) to (4) do not apply —
 - (a) if the act or omission is shown to have been in bad faith;
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the *Human Rights Act 2001*.
- (6) This section does not affect any other exemption from liability for damages (whether at common law or otherwise).
- (7) In this section —
 - (a) “**authorised person**” has the same meaning as in section 126;
 - (b) “**relevant damages**” means damages in proceedings for judicial review under a petition of doleance or for the tort of negligence or misfeasance in public office.

135 Compensation

P2003/42/136O and drafting

- (1) A person who claims to have incurred financial loss in consequence of a closure notice or closure order may apply for compensation.
- (2) The application must be made —
 - (a) to a Court of General Gaol Delivery, if the closure order was made or extended by an order of that court on an appeal under section 131;
 - (b) in any other case, to a court of summary jurisdiction which considered the application for a closure order.
- (3) In a case where a closure notice is issued but a closure order is not made, the application must not be entertained unless it is made before the end of the period of 3 months beginning with —
 - (a) the day a court of summary jurisdiction decides not to make a closure order; or
 - (b) if there is an appeal against that decision, the day the Staff of Government Division dismisses that appeal.

- (4) In a case where a closure order is made, the application must not be entertained unless it is made before the end of the period of 3 months beginning with the day the closure order ceases to have effect.
- (5) The court which hears the application may order the payment of compensation out of money provided by Tynwald if it is satisfied —
 - (a) that the person was not associated with the use of the premises for the activities in relation to which the first condition in section 121 or 122 was met;
 - (b) if the person is the owner or occupier of the premises, that the person took reasonable steps to prevent that use;
 - (c) that the person has incurred financial loss as mentioned in subsection (1); and
 - (d) having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

136 Guidance

P2003/42/136P

- (1) The Department may issue guidance relating to the discharge of any functions under or for the purposes of this Part by a constable or by an authorised person (within the meaning of section 126).
- (2) A person discharging a function to which guidance under this section relates must have regard to the guidance in discharging the function.

137 Issue of closure notices by persons other than police officers

P2003/42/136Q

- (1) The Department may by order amend this Part so as to extend the power to authorise the issue of a closure notice to persons other than members of the Constabulary.
- (2) An order under subsection (1) may make such further amendments of this Part as the Department thinks appropriate in consequence of the extension of that power to persons other than members of the Constabulary.

138 Part 7: interpretation

P2003/42/136R and drafting

- (1) This section applies for the purposes of this Part.
- (2) “A closure notice” means a notice issued under section 121 or 122.
- (3) “A closure order” means —
 - (a) an order made under section 124;
 - (b) an order extended under section 129;

- (c) an order made or extended under section 131 which has the like effect as an order made or extended under section 124 or 129 (as the case may be).
- (4) “**Closed premises**” means premises in respect of which a closure order has effect.
- (5) “**The owner**”, in relation to premises, means —
 - (a) a person who, whether alone or jointly with another person, is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion (apart from a mortgagee not in possession);
 - (b) a person who, whether alone or jointly with another person, holds or is entitled to the rents and profits of the premises under a lease which (when granted) was for a term of not less than 3 years.
- (6) “**Premises**” includes —
 - (a) any land or other place (whether enclosed or not);
 - (b) any outbuildings which are, or are used as, part of the premises.
- (7) “**Specified prostitution offence**” means an offence listed in section 120(2).
- (8) “**Specified pornography offence**” means an offence listed in section 120(3).
- (9) “**Specified child sex offence**” means an offence listed in section 120(4).

PART 8 – ANONYMITY OF VICTIMS AND OTHERS

139 Anonymity of victims of certain offences

P1992/34/1

- (1) Where an allegation has been made that an offence to which this Part applies has been committed against a person, no matter relating to that person shall during that person’s lifetime be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.
- (2) Where a person is accused of an offence to which this Part applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed (“the complainant”) shall during the complainant’s lifetime be included in any publication.
- (3) This section —
 - (a) does not apply in relation to a person by virtue of subsection (1) at any time after a person has been accused of the offence; and

- (b) in its application in relation to a person by virtue of subsection (2), has effect subject to any direction given under section 143.
- (4) The matters relating to a person in relation to which the restrictions imposed by subsection (1) or (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular —
 - (a) the person's name;
 - (b) the person's address;
 - (c) the identity of any school or other educational establishment attended by the person;
 - (d) the identity of any place of work; and
 - (e) any still or moving picture of the person.
- (5) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

140 Anonymity of suspects and defendants alleged to have committed certain offences

- (1) Where a person is suspected of or alleged to have committed an offence to which this Part applies, no matter likely to lead members of the public to identify the person shall during the person's lifetime be included in any publication.
- (2) This section —
 - (a) has effect subject to any direction given under section 144;
 - (b) does not apply in relation to a person who is convicted of the offence to which subsection (1) refers.
- (3) The matters relating to a person in relation to which the restrictions imposed by subsection (1) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular —
 - (a) the person's name;
 - (b) the person's address;
 - (c) the identity of any school or other educational establishment attended by the person;
 - (d) the identity of any place of work; and
 - (e) any still or moving picture of the person.
- (4) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings

at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

141 Anonymity of witnesses to certain offences

NZ2006/69/103(3) & (4) and drafting

- (1) In the case of a trial of an offence to which this Part applies, on application made on behalf of the prosecution or defence, if the court is satisfied that a direction is required on the grounds specified in subsection (2), the court may direct that neither the name nor address, and no still or moving picture, of a witness shall during that witness's lifetime —
 - (a) be published in the Island in a publication available to the public; or
 - (b) be included in a relevant programme for reception in the Island,if it is likely to lead members of the public to identify that person as a witness in the relevant trial.
- (2) The grounds referred to in subsection (1) are —
 - (a) the age or maturity of the witness;
 - (b) the physical, intellectual, psychological, or psychiatric impairment of the witness;
 - (c) the trauma suffered by the witness;
 - (d) the witness's fear of intimidation;
 - (e) the linguistic or cultural background or religious beliefs of the witness;
 - (f) the nature of the proceeding;
 - (g) the nature of the evidence that the witness is expected to give;
 - (h) the relationship of the witness to any party to the proceeding;
 - (i) the absence or likely absence of the witness from the Island;
 - (j) any other ground likely to promote the purpose of this Part.
- (3) In giving directions under subsection (1), the court must have regard to
 - (a) the need to ensure the fairness of the trial; and
 - (b) the views of the witness and —
 - (i) the need to minimise the stress on the witness; and
 - (ii) the need to promote the recovery of a complainant from the alleged offence; and
 - (c) any other factor that is relevant to the just determination of the proceeding.

142 Offences to which Part 8 applies

P1992/34/2 and drafting

- (1) This Part applies to the following offences —
- (a) any offence under any of the provisions of the *Sexual Offences Act 1992* mentioned in subsection (2);
 - (b) an offence corresponding to any offence referred to in paragraph (a) under an enactment repealed by that Act or any earlier Act dealing with sexual misconduct;
 - (c) burglary to commit rape under section 9(2) of the *Theft Act 1981*;
 - (d) any offence to which Part 2 of this Act applies except section 69, 70, 83, 85 and 87;
 - (e) any offence to which Part 6 of this Act applies;
 - (f) any offence under section 4 of the *Organised and International Crime Act 2010*;
 - (g) any attempt to commit any of those offences.
 - (h) any conspiracy to commit any of those offences;
 - (i) any incitement of another to commit any of those offences.
- (2) The provisions referred to in subsection (1)(a) are —
- (a) section 1 (rape);
 - (b) section 2 (procurement by threats or lies);
 - (c) section 3 (administering drugs to obtain or facilitate sexual act);
 - (d) section 4 (intercourse with a young person);
 - (e) section 5 (sexual act with a subnormal person);
 - (f) section 7 (incest);
 - (g) section 8 (incitement to commit incest);
 - (h) section 9 (unnatural offences);
 - (i) section 11 (assault with intent to commit buggery);
 - (j) section 13 (indecent assault);
 - (k) section 14 (indecency with children).
- (3) This Part applies to an offence under section 42 of the *Armed Forces Act 2006*⁴ (of Parliament) as extended to the Island, if the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence within a paragraph of subsection (1).

⁴ 2006 c.52 (as extended under section 384)

143 Power to displace section 139

P1992/34/3 and drafting

- (1) If, before the commencement of a trial at which a person is charged with an offence to which this Part applies, he, she or another person against whom the complainant may be expected to give evidence at the trial, applies to the court for a direction under this subsection and satisfies the judge —
 - (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and
 - (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,the judge shall direct that section 139, as the case may be, shall not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.
- (2) If at a trial the judge is satisfied —
 - (a) that the effect of section 139 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and
 - (b) that it is in the public interest to remove or relax the restriction,the judge shall direct that that section shall not apply to such matter as is specified in the direction.
- (3) A direction shall not be given under subsection (2) by reason only of the outcome of the trial.
- (4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this subsection and satisfies the court —
 - (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
 - (b) that the applicant is likely to suffer substantial injustice if the direction is not given,the court shall direct that section 139 shall not, by virtue of an accusation which alleges an offence to which this Part applies and is specified in the direction, apply in relation to a complainant so specified.
- (5) A direction given under any provision of this section does not affect the operation of section 139 at any time before the direction is given.
- (6) In subsections (1) and (4), “**court**” means, —
 - (a) in the case of an offence which is to be tried summarily or for which the mode of trial has not been determined, the High Bailiff, Deputy High Bailiff or any justice of the peace; and

- (b) in any other case, any Deemster.
- (7) If, after the commencement of a trial at which a person is charged with an offence to which this Part applies, a new trial of the person for that offence is ordered, the commencement of any previous trial shall be disregarded for the purposes of subsection (1).

144 Power to displace section 140

P1992/34/3 and drafting

- (1) If, in the case of a person who is suspected of, but not yet charged with, an offence to which this Part applies, an officer of or above the rank of superintendent applies to a judge of the High Court for a direction under this subsection and satisfies the judge that the direction is —
 - (a) necessary for the protection of the victim or any other person; or
 - (b) otherwise necessary in the public interest,the judge shall direct that section 140, shall not by virtue of the suspicion, apply in relation to the suspect.
- (2) If, before the commencement of or during a trial at which a person is charged with an offence to which this Part applies, a constable or the prosecution applies to the court for a direction under this subsection and satisfies the judge —
 - (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and
 - (b) that the conduct of the prosecution at the trial is likely to be substantially prejudiced if the direction is not given,the judge shall direct that section 140, shall not, by virtue of the accusation alleging the offence in question, apply in relation to the defendant.
- (3) If at a trial the judge is satisfied —
 - (a) that the effect of section 140 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and
 - (b) that it is in the public interest to remove or relax the restriction,the judge shall direct that that section shall not apply to such matter as is specified in the direction.
- (4) A direction shall not be given under subsection (3) by reason only of the outcome of the trial.
- (5) If the prosecution has given notice of appeal against an acquittal, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this subsection and satisfies the court —
 - (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

- (b) that the complainant is likely to suffer substantial injustice if the direction is not given,
the court shall direct that section 140 shall not, by virtue of an accusation which alleges an offence to which this Part applies and is specified in the direction, apply in relation to a defendant so specified.
- (6) A direction given under any provision of this section does not affect the operation of section 140 at any time before the direction is given.
- (7) In subsections (3) and (5), “**court**” means, —
 - (a) in the case of an offence which is to be tried summarily or for which the mode of trial has not been determined, the High Bailiff, Deputy High Bailiff or any justice of the peace; and
 - (b) in any other case, any Deemster.
- (8) If, after the commencement of a trial at which a person is charged with an offence to which this Part applies, a new trial of the person for that offence is ordered, the commencement of any previous trial shall be disregarded for the purposes of subsection (1).
- (9) The Department may by regulations specify other persons who may make an application for a direction under subsection (1) or (2).
Tynwald procedure: approval required.
- (10) Regulations under subsection (1) may make such other provision as to the Department considers necessary to ensure that the Chief Constable, the prosecution and the defence have been permitted to make representation to the judge before the judge decides whether to give the direction.

145 Offences

P1992/34/5 and drafting

- (1) If any matter is included in a publication in contravention of section 139, 140 or 141, the following persons commit an offence —
 - (a) where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
 - (b) where the publication is a relevant programme —
 - (i) any body corporate engaged in providing the programme service in which the programme is included; and
 - (ii) any person having functions in relation to the programme corresponding to those of an editor of a newspaper;
 - (c) in the case of any other publication, any person publishing it.
- (2) Where a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it shall be a defence, subject to subsection (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the offence

mentioned in section 139, 140 or 141 is alleged to have been committed had given written consent to the appearance of matter of that description.

- (3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it, or that person was under the age of 16 at the time when it was given.
- (4) Where a person is charged with an offence under this section it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question.
- (5) Where —
 - (a) a person is charged with an offence under this section; and
 - (b) the offence relates to the inclusion of any matter in a publication in contravention of section 139(1) or 140,

it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

Maximum penalty — (summary) — 12 months' custody or a fine of level 5 on the standard scale or both.

146 Interpretation of Part 8

P1992/34/6 and drafting

- (1) In this Part —
 - “**complainant**” has the meaning given in section 139(2);
 - “**picture**” includes a likeness however produced;
 - “**publication**” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an information or other document prepared for use in particular legal proceedings;
 - “**relevant programme**” means a programme included in a programme service, within the meaning of the Part 1 of the *Broadcasting Act 1993*.
- (2) Section 48 of the *Armed Forces Act 2006*⁵ (of Parliament) as extended to the Island (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales), applies for the purposes of this Part as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to any provision of this Part.

⁵ 2006 c.52 (as extended under section 384)

- (3) For the purposes of this Part —
- (a) where it is alleged that an offence to which this Part applies has been committed, the fact that any person has consented to an act which, on any prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person against whom the alleged offence was committed; and
 - (b) where a person is accused of an offence of incest, the other party to the act in question shall be taken to be a person against whom the offence was committed even though that person consented to that act.
- (4) For the purposes of this Part, where it is alleged or there is an accusation —
- (a) that an offence of conspiracy or incitement of another to commit an offence mentioned in section 142(1)(a) or (b) has been committed; or
 - (b) that an offence of aiding, abetting, counselling or procuring the commission of an offence of incitement of another to commit an offence mentioned in section 142(1)(a) or (b) has been committed,
- the person against whom the substantive offence is alleged to have been intended to be committed shall be regarded as the person against whom the conspiracy or incitement is alleged to have been committed.
- In this subsection, “**the substantive offence**” means the offence to which the alleged conspiracy or incitement related.
- (5) For the purposes of this Part, a person is accused of an offence, other than an offence under section 42 of the *Armed Forces Act 2006* (of Parliament) as extended to the Island, if —
- (a) a complaint is made under section 4 of the *Summary Jurisdiction Act 1989* (issue of summons or warrant), alleging that he or she has committed the offence;
 - (b) he or she appears before a court charged with the offence;
 - (c) a court before which he or she is appearing sends the person to a Court of General Gaol Delivery for trial on a new charge alleging the offence; or
 - (d) an information preferred by the Attorney General under section 2(3) of the *Criminal Jurisdiction Act 1993* (commencement of proceedings on information),
- and references to an accusation alleging an offence shall be construed accordingly.
- (6) For the purposes of this Part, a person is accused of an offence under section 42 of the *Armed Forces Act 2006* (of Parliament) as extended to the Island, if he or she is charged (under Part 5 of that Act) with the offence,

and references in section 143 to an accusation alleging an offence shall be construed accordingly.

- (7) Nothing in this Part affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a relevant programme.

PART 9 — COMPLAINANT'S HISTORY

147 Restriction on evidence or questions about complainant's sexual history

P1999/23/41, S1995/46/275(1)(c), HC Bill 137 and drafting

- (1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court, on a written application made by the defence or the prosecution, —
- (a) no evidence may be adduced; and
 - (b) no question may be asked in cross-examination, about any sexual behaviour of the complainant.
- (2) A court in making a determination in respect of subsection (1) may direct that —
- (a) the cross examination of a complainant must not involve any matter appertaining to the complainant's —
 - (i) appearance;
 - (ii) sexual behaviour or sexual history with any third party not related to the current proceedings, regardless of the nature of the complainant's alleged behaviour either before or subsequent to the current proceedings; and
 - (b) such matters are not admissible as evidence if the purpose (or main purpose) is to undermine the credibility of the complainant, unless it would be manifestly unjust to treat those matters as inadmissible.
- (3) The court may give leave in relation to any evidence or question only on a written application made by the defence or the prosecution, and may not give such leave unless it is satisfied —
- (a) that subsection (4) or (6) applies;
 - (b) that the probative value of the evidence sought to be admitted or elicited is significant and is likely to outweigh any risk of prejudice to the proper administration of justice arising from its being admitted or elicited; and
 - (c) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

- (4) This subsection applies if the evidence or question relates to a relevant issue in the case and that issue is not an issue of consent.
- (5) For the purposes of subsection (4) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.
- (6) This subsection applies if the evidence or question —
 - (a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and
 - (b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.
- (7) For the purposes of subsections (4) and (6) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).
- (8) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence —
 - (a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
 - (b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.
- (9) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

148 Interpretation and application of section 147

P1999/23/42 and drafting

- (1) In section 147 —
 - (a) “**relevant issue in the case**” means any issue falling to be proved by the prosecution or defence in the trial of the accused;
 - (b) “**issue of consent**” means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);
 - (c) “**sexual behaviour**” means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding (except in subsection (6)(a)) anything alleged to have

taken place as part of the event which is the subject matter of the charge against the accused; and

- (d) subject to any order made under subsection (2), “**sexual offence**” shall be construed in accordance with section 149.
- (2) The Department may by order make such provision as it considers appropriate for adding or removing, for the purposes of section 147, any offence to or from the offences which are sexual offences for the purposes of this Part by virtue of section 149.
- (3) Section 147 applies in relation to the following proceedings as it applies to a trial, namely —
 - (a) any hearing held, between conviction and sentencing, for the purpose of determining matters relevant to the court’s decision as to how the accused is to be dealt with; and
 - (b) the hearing of an appeal,
 and references (in section 147 or this section) to a person charged with an offence accordingly include a person convicted of an offence.

149 Meaning of “**sexual offence**” and other references to offences

P1999/23/62 and drafting

- (1) In this Part “**sexual offence**” means any offence under —
 - (a) Part 2 of this Act, except sections 69, 70, 83, 84, 85 and 87;
 - (b) Part 6 of this Act or any relevant superseded offence; or
 - (c) section 4 of the *Organised and International Crime Act 2010* (trafficking in persons) committed with a view to exploitation that consists of or includes behaviour within section 4(6)(a) of that Act (sexual exploitation).
- (2) In subsection (1) “**relevant superseded offence**” means —
 - (a) an offence under any of sections 1 to 9, 11, 13, 14 and 15 of the *Sexual Offences Act 1992* (unlawful intercourse, indecent assault, forcible abduction etc);
 - (b) an offence of burglary with intent to rape under section 9(2) of the *Theft Act 1981*; and
 - (c) an offence corresponding to any offence referred to in paragraph (a) under an enactment repealed by that Act or any earlier Act dealing with sexual misconduct.
- (3) In this Part any reference (including a reference having effect by virtue of this subsection) to an offence of any description (“the substantive offence”) is to be taken to include a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, the substantive offence.

150 Procedure on applications under section 147

P1999/23/43 and drafting

- (1) An application for leave shall be heard in private and in the absence of the complainant.

In this section “**leave**” means leave under section 147.

- (2) Where such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one) —

- (a) its reasons for giving, or refusing, leave; and
- (b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is a court of summary jurisdiction, must cause those matters to be entered in the register of its proceedings.

- (3) Rules of court may make provision —

- (a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (4) or (6) of section 147;
- (b) enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;
- (c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

PART 10 — NOTIFICATION AND ORDERS**DIVISION 1 - NOTIFICATION REQUIREMENTS****151 Persons becoming subject to notification requirements**

P2003/42/80

- (1) A person is subject to the notification requirements of this Part for the period set out in section 153 (“**the notification period**”) if —

- (a) he or she is convicted of an offence listed in Schedule 3;
- (b) he or she is found not guilty of such an offence by reason of insanity;
- (c) he or she is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
- (d) in the Island, he or she is cautioned in respect of such an offence.

- (2) A person for the time being subject to the notification requirements of this Part is referred to in this Part as a “**relevant offender**”.

152 Persons formerly subject to Part 1 of the Criminal Justice Act 2001

P2003/42/81 and drafting

- (1) A person is, from the commencement of this Part until the end of the notification period, subject to the notification requirements of this Part if, before the commencement of this Part —
- (a) he or she was convicted of an offence listed in Schedule 3;
 - (b) he or she was found not guilty of such an offence by reason of insanity;
 - (c) he or she was found to be under a disability and to have done the act charged against him in respect of such an offence; or
 - (d) in the Island, he or she was cautioned in respect of such an offence.
- (2) Subsection (1) does not apply if the notification period ended before the commencement of this Part.
- (3) Subsection (1)(a) does not apply to a conviction before 4 March 2002 unless, at the beginning of that day, the person —
- (a) had not been dealt with in respect of the offence;
 - (b) was serving a term of custody or was subject to a community order, in respect of the offence; or
 - (c) was detained in a hospital or was subject to a guardianship order, following the conviction.
- (4) Paragraphs (b) and (c) of subsection (1) do not apply to a finding made before 4 March 2002 unless, at the beginning of that day, the person —
- (a) had not been dealt with in respect of the finding; or
 - (b) was detained in a hospital, following the finding.
- (5) Subsection (1)(d) does not apply to a caution given before 4 March 2002.
- (6) A person who would have been within subsection (3)(b) or (c) or (4)(b) but for the fact that at the beginning of 4 March 2002 he or she was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is to be treated as being within that provision.
- (7) Where, immediately before the commencement of this Part, an order under a provision within subsection (8) was in force in respect of a person, the person is subject to the notification requirements of this Part from that commencement until the order is discharged or otherwise ceases to have effect.
- (8) The provisions are —

- (a) Parts 1 and 2 of the *Sex Offenders Act 2006* (sexual offences prevention orders and risk of sexual harm orders);
- (b) Section 8 of the *Sex Offenders Act 2006* (interim orders).

153 The notification period

P2003/42/82 and drafting

- (1) The notification period for a person within section 151(1) or 152(1) is the period in the second column of the following Table opposite the description that applies to the person.

TABLE	
Description of relevant offender	Notification period
A person who, in respect of the offence, is or has been sentenced to custody for life or to custody for a term of 30 months or more	An indefinite period beginning with the relevant date
A person who, in respect of the offence or finding, is or has been admitted to a hospital subject to a restriction order	An indefinite period beginning with that date
A person who, in respect of the offence, is or has been sentenced to custody for a term of more than 6 months but less than 30 months	10 years beginning with that date
A person who, in respect of the offence, is or has been sentenced to custody for a term of 6 months or less	7 years beginning with that date
A person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order	7 years beginning with that date
A person within section 151(1)(d)	2 years beginning with that date
A person in whose case an order for conditional discharge is made in respect of the offence	The period of conditional discharge
A person of any other description	5 years beginning with the relevant date

- (2) Where a person is under 18 on the relevant date, subsection (1) has effect as if for any reference to a period of 10 years, 7 years, 5 years or 2 years there were substituted a reference to one-half of that period.
- (3) Subsection (4) applies where a relevant offender within section 151(1)(a) or 152(1)(a) is or has been sentenced, in respect of 2 or more offences listed in Schedule 3 —
- (a) to consecutive terms of custody; or
 - (b) to terms of custody which are partly concurrent.
- (4) Where this subsection applies, subsection (1) has effect as if the relevant offender were or had been sentenced, in respect of each of the offences, to a term of custody which —

- (a) in the case of consecutive terms, is equal to the aggregate of those terms;
 - (b) in the case of partly concurrent terms (X and Y, which overlap for a period Z), is equal to X plus Y minus Z.
- (5) Where a relevant offender the subject of a finding within section 151(1)(c) or 152(1)(c) is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial.
- (6) In this Part, “**relevant date**” means —
 - (a) in the case of a person within section 151(1)(a) or 152(1)(a), the date of the conviction;
 - (b) in the case of a person within section 151(1)(b) or (c) or 152(1)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 151(1)(d) or 152(1)(d), the date of the caution.

154 Notification requirements: initial notification

P2003/42/83, 2003/6/Sch4A/4(5) and drafting

- (1) A relevant offender must, within the period of 3 days beginning with the relevant date (or, if later, the commencement of this Part), notify to the Constabulary the information set out in subsection (5).
- (2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 151(1) if —
 - (a) immediately before the conviction, finding or caution, he or she was subject to the notification requirements of this Part as a result of another conviction, finding or caution or an order of a court (“the earlier event”);
 - (b) at that time, he or she had made a notification under subsection (1) in respect of the earlier event; and
 - (c) throughout the period referred to in subsection (1), he or she remains subject to the notification requirements as a result of the earlier event.
- (3) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 152(1) or an order within section 152(7) if the offender complied with paragraph 3 of Schedule 1 to the *Criminal Justice Act 2001* in respect of the conviction, finding, caution or order.
- (4) Where a notification order is made in respect of a conviction, finding or caution, subsection (1) does not apply to the relevant offender in respect of the conviction, finding or caution if —
 - (a) immediately before the order was made, he or she was subject to the notification requirements of this Part as a result of another

- conviction, finding or caution or an order of a court (“the earlier event”);
- (b) at that time, he or she had made a notification under subsection (1) in respect of the earlier event; and
 - (c) throughout the period referred to in subsection (1), he or she remains subject to the notification requirements as a result of the earlier event.
- (5) The information is —
- (a) the relevant offender’s date of birth;
 - (b) his or her national insurance number;
 - (c) his or her name on the relevant date and, where the relevant offender used one or more other names on that date, each of those names;
 - (d) his or her home address on the relevant date;
 - (e) his or her name on the date on which notification is given and, where the relevant offender uses one or more other names on that date, each of those names;
 - (f) his or her home address on the date on which notification is given;
 - (g) the address of any other premises in the Island at which, at the time the notification is given, he or she regularly resides or stays;
 - (h) whether he or she has any passports and, in relation to each passport the relevant offender has, the details set out in subsection (6);
 - (i) such other information, about the relevant offender or his or her personal affairs, as the Department may prescribe in regulations.
- (6) The details referred to in subsection (5)(h) are —
- (a) the issuing authority;
 - (b) the number;
 - (c) the dates of issue and expiry;
 - (d) the name and date of birth given as being those of the passport holder.
- (7) When determining the period for the purpose of subsection (1), there is to be disregarded any time when the relevant offender is —
- (a) remanded in or committed to custody by an order of a court;
 - (b) serving a sentence of custody;
 - (c) detained in a hospital; or
 - (d) outside the Island.
- (8) In this Part, “**home address**” means, in relation to any person —
- (a) the address of his or her sole or main residence in the Island; or

- (b) where he or she has no such residence, the address or location of a place in the Island where he or she can regularly be found and, if there is more than one such place, such one of those places as the person may select.
- (9) In this section, “**passport**” means —
 - (a) a United Kingdom passport within the meaning of the *Immigration Act 1971*⁶ (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008⁷;
 - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

155 Notification requirements: changes

P2003/42/84

- (1) A relevant offender must, within the period of 3 days beginning with —
 - (a) his or her using a name which has not been notified to the Constabulary under section 154(1), this subsection, or paragraph 3 of Schedule 1 to the *Criminal Justice Act 2001*;
 - (b) any change of his or her home address;
 - (c) his or her having resided or stayed, for a qualifying period, at any premises in the Island the address of which has not been notified to the Constabulary under section 154(1), this subsection, or paragraph 3 of Schedule 1 to the *Criminal Justice Act 2001*;
 - (d) any prescribed change of circumstances; or
 - (e) his or her release from custody pursuant to an order of a court or from custody or detention in a hospital,notify to the Constabulary that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact that he or she has been released, and (in addition) the information set out in section 154(5).
- (2) A notification under subsection (1) may be given before the name is used, the change of home address or the prescribed change of circumstances occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur.
- (3) If a notification is given in accordance with subsection (2) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

⁶ 1971 c.77

⁷ SI 680/2008 (as amended)

- (4) If a notification is given in accordance with subsection (2) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified —
- (a) the notification does not affect the duty imposed by subsection (1); and
 - (b) the relevant offender must, within the period of 6 days beginning with the date specified,
- notify to the Constabulary the fact that the event did not occur within the period of 3 days beginning with the date specified.
- (5) Section 154(7) applies to the determination of the period of 3 days mentioned in subsection (1) and the period of 6 days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 154(1).
- (6) In this section —
- (a) **“prescribed change of circumstances”** means any change —
 - (i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 154(5)(i);
 - (ii) of a description prescribed by regulations made by the Department;
 - (b) **“the prescribed details”**, in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed; and
 - (c) **“qualifying period”** means —
 - (i) a period of 7 days; or
 - (ii) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.

156 Notification requirements: periodic notification

P2003/42/85

- (1) A relevant offender must, within the applicable period after each event within subsection (2), notify to the Constabulary the information set out in section 154(5), unless within that period he or she has given a notification under section 155(1).
- (2) The events are —
- (a) the commencement of this Part (but only in the case of a person who is a relevant offender from that commencement);
 - (b) any notification given by the relevant offender under section 154(1) or 155(1); and
 - (c) any notification given by the relevant offender under subsection (1).

- (3) Where the applicable period would (apart from this subsection) end whilst subsection (4) applies to the relevant offender, that period is to be treated as continuing until the end of the period of 3 days beginning when subsection (4) first ceases to apply to him or her.
- (4) This subsection applies to the relevant offender if he or she is —
 - (a) remanded in or committed to custody by an order of a court;
 - (b) serving a sentence of custody;
 - (c) detained in a hospital; or
 - (d) outside the Island.
- (5) In this section, “**the applicable period**” means —
 - (a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Department; and
 - (b) in any other case, the period of one year.
- (6) This subsection applies to the relevant offender if the last home address notified by him or her under section 154(1) or 155(1) or subsection (1) was the address or location of such a place as is mentioned in section 154(8)(b).

157 Notification requirements: absence from notified residence

P2003/42/85A and drafting

- (1) This section applies to a relevant offender at any time if the last home address notified by him or her under section 154(1), 155(1) or 156(1) was an address in the Island such as is mentioned in section 154(8)(a) (sole or main residence).
- (2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (“**the relevant period**”), the relevant offender must, not less than 12 hours before leaving that home address, notify to the Constabulary the information set out in subsection (3).
- (3) The information is —
 - (a) the date on which the relevant offender will leave that home address;
 - (b) such details as the relevant offender holds about —
 - (i) his or her accommodation arrangements during the relevant period;
 - (ii) his or her date of return to that home address.
- (4) In this section “**accommodation arrangements**” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.
- (5) Where —

- (a) a relevant offender has given a notification under subsection (2); and
 - (b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the relevant offender must give a further notification under subsection (2).
- (6) Where a relevant offender —
 - (a) has notified a date of return to his or her home address; but
 - (b) returns to his or her home address on a date other than that notified,

the relevant offender must notify the date of his or her actual return to the Constabulary within 3 days of his or her actual return.
- (7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 158.
- (8) In calculating the relevant period for the purposes of this section there is to be disregarded —
 - (a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 154(5)(g) notified to the Constabulary under section 154 or 156;
 - (b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his or her stay at those premises would give rise to a requirement to notify the address of those premises under section 155(1)(c).
- (9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of this section.

158 Notification requirements: travel outside the Island

P2003/42/86

- (1) The Department may by regulations make provision requiring relevant offenders who leave the Island, or any description of such offenders —
 - (a) to give in accordance with the regulations, before they leave, a notification under subsection (2);
 - (b) if they subsequently return to the Island, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose —
 - (a) the date on which the offender will leave the Island;
 - (b) the country (or, if there is more than one, the first country) to which he or she will travel and his or her point of arrival (determined in accordance with the regulations) in that country;

- (c) any other information prescribed by the regulations which the offender holds about his or her departure from or return to the Island or his or her movements while outside the Island.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the Island.

159 Method of notification and related matters

P2003/42/87 and drafting

- (1) A person gives a notification under section 154(1), 155(1), 156(1) or 157(2) to (6) by giving a notification to such person and in such manner as the Department may prescribe by regulations.

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

Tynwald procedure — approval required.

- (2) A notification given in accordance with this section must be acknowledged, —
 - (a) in writing, and
 - (b) in such form as the Department may direct.
- (3) When a person (“P”) gives a notification under section 154(1), 155(1), 156(1) or 157(2) to (6), P must, if requested to do so by the person to whom notification is given, attend at a police station specified by that person and allow that person to do any of the following things —
 - (a) take P's fingerprints;
 - (b) photograph, or otherwise produce an image of, P or any part of P.
- (4) The power in subsection (3) is exercisable for the purpose of verifying P's identity.
- (5) In this section “**photograph**” includes any process by means of which an image may be produced.

160 Young offenders: parental directions

P2003/42/89 and drafting

- (1) Where a person within the first column of the following Table (“the young offender”) is under 18 when he or she is before the court referred to in the second column of the Table opposite the description that applies to him or her, that court may direct that subsection (2) applies in respect of an individual (“the parent”) having parental responsibility for the young offender.

TABLE	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 151(1)(a) to (c) or 152(1)(a) to (c)	The court which deals with the offender in respect of the offence or finding
A person who is the subject of a notification order, interim notification order, sexual harm prevention order, interim sexual harm prevention order, sexual offences prevention order or interim sexual offences prevention order	The court which makes the order
A relevant offender who is the defendant to an application under subsection (4)	The court which hears the application

- (2) Where this subsection applies —
- (a) the obligations that would (apart from this subsection) be imposed by or under sections 154 to 158 on the young offender are to be treated instead as obligations on the parent; and
 - (b) if a young offender is required to attend at a police station under section 159(3), the parent must ensure that the young offender attends at the police station and the parent must attend at the police station with the young offender.
- (3) A direction under subsection (1) takes immediate effect and applies —
- (a) until the young offender attains the age of 18; or
 - (b) for such shorter period as the court may, at the time the direction is given, direct.
- (4) The Chief Constable may, by complaint to a court of summary jurisdiction, apply for a direction under subsection (1) in respect of a relevant offender (“the defendant”) who —
- (a) resides in the Island, or who the Chief Constable believes is in or is intending to come to the Island; and
 - (b) the Chief Constable believes is under 18.

161 Parental directions: variations, renewals and discharges

P2003/42/90 and drafting

- (1) A person within subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a direction under section 160(1).
- (2) The persons are —
- (a) the young offender;
 - (b) the parent;
 - (c) the Chief Constable.

- (3) An application under subsection (1) may be made —
 - (a) where the appropriate court is a Court of General Gaol Delivery in accordance with rules of court;
 - (b) in any other case, by complaint.
- (4) On the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the direction, that the court considers appropriate.
- (5) In this section, the “**appropriate court**” means —
 - (a) where the Court of Appeal made the order, the Staff of Government Division;
 - (b) in any other case, the court that made the direction under section 160(1).

162 Offences relating to notification

P2003/42/91 and drafting

- (1) A person commits an offence if he or she —
 - (a) fails, without reasonable excuse, to comply with section 154(1), 155(1), 155(4)(b), 156(1), 157(2), (5) or (6), 159(3) or 160(2)(b) or any requirement imposed by regulations made under section 158(1) or 159(1) or (3); or
 - (b) notifies the Constabulary, in purported compliance with section 154(1), 155(1), 156(1) or 157(2), (5) or (6) or a requirement imposed by regulations made under section 158(1) or 159(1) or (3), any information which he or she knows to be false.
- (2) A person commits an offence under paragraph (a) of subsection (1) on the day on which he or she first fails, without reasonable excuse, to comply with section 154(1), 155(1) or 156(1) or a requirement imposed by regulations made under section 158(1), and continues to commit it throughout any period during which the failure continues; but a person must not be prosecuted under subsection (1) more than once in respect of the same failure.

Maximum penalty —

- (a) (on information) — 5 years’ custody;
- (b) (summary) — 12 months’ custody, or a fine of level 5 on the standard scale or both.

163 Review of indefinite notification requirements: qualifying relevant offender

P2003/42/91A and drafting

- (1) A qualifying relevant offender may apply to the Chief Constable for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“**an application for review**”).
- (2) In this section and sections 164 to 167, a qualifying relevant offender means a relevant offender who, on the date on which he or she makes an application for review, is —
 - (a) subject to the indefinite notification requirements; and
 - (b) not subject to a sexual harm prevention order under section 181, or an interim sexual harm prevention order under section 187.
- (3) The “**indefinite notification requirements**” mean the notification requirements of this Part for an indefinite period by virtue of —
 - (a) section 151(1);
 - (b) section 152(1); or
 - (c) a notification order made under section 176(5).

164 Review of indefinite notification requirements: application for review and qualifying dates

P2003/42/91B and drafting

- (1) An application for review must be in writing and may be made on or after the qualifying date or, as the case may be, the further qualifying date.
- (2) The qualifying date is —
 - (a) where the qualifying relevant offender was 18 or over on the relevant date, the day after the end of the 15 year period beginning with the day on which the qualifying relevant offender gives the relevant notification; or
 - (b) where the qualifying relevant offender was under 18 on the relevant date, the day after the end of the 8 year period beginning with the day on which the qualifying relevant offender gives the relevant notification.
- (3) Subject to subsections (4) to (6), in this section and section 166, the further qualifying date is the day after the end of the 8 year period beginning with the day on which the Chief Constable makes a determination under section 165 to require a qualifying relevant offender to remain subject to the indefinite notification requirements.
- (4) Subsection (5) applies if the Chief Constable, when making a determination under section 165 to require a qualifying relevant offender to remain subject to the indefinite notification requirements, considers that the risk of sexual harm posed by a qualifying relevant offender is sufficient

to justify a continuation of those requirements after the end of the 8 year period beginning with the day on which the determination is made.

- (5) If this subsection applies, the Chief Constable may make a determination to require a qualifying relevant offender to remain subject to the indefinite notification requirements for a period which may be no longer than the 15 year period beginning with the day on which the determination is made.
- (6) If subsection (5) applies, the further qualifying date is the day after the end of the period determined under that subsection.
- (7) The Chief Constable within 14 days of receipt of an application for review —
 - (a) must give an acknowledgment of receipt of the application to the qualifying relevant offender; and
 - (b) may notify a responsible body that the application has been made.
- (8) Where a responsible body is notified of the application for review under subsection (7)(b) and holds information which it considers to be relevant to the application, the responsible body must give such information to the Chief Constable within 28 days of receipt of the notification.
- (9) In this section “**the relevant notification**” means the first notification which the relevant offender gives under section 154, 155 or 156 when he or she is first released after —
 - (a) being remanded in or committed to custody by an order of a court in relation to the conviction for the offence giving rise to the indefinite notification requirements;
 - (b) serving a term of custody or a term of service detention in relation to that conviction;
 - (c) being detained in hospital in relation to that conviction.
- (10) For the purposes of this Part —
 - (a) “**responsible body**” means the Department and any person providing probation services in the Island for or on behalf of the Department;
 - (b) “**risk of sexual harm**” means a risk of physical or psychological harm to the public in the Island or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Schedule 3.

165 Review of indefinite notification requirements: determination of application for review

P2003/42/91C and drafting

- (1) The Chief Constable must, within 6 weeks of the latest date on which any body to which a notification has been given under section 164(7)(b) may give information under section 164(8) —

- (a) determine the application for review; and
 - (b) give notice of the determination to the qualifying relevant offender.
- (2) For the purposes of the determination of an application for review under this section, a qualifying relevant offender must satisfy the Chief Constable that it is not necessary for the purpose of protecting the public or any particular members of the public from sexual harm for the qualifying relevant offender to remain subject to the indefinite notification requirements.
- (3) If the Chief Constable determines under this section that the qualifying relevant offender should remain subject to the indefinite notification requirements, the notice of the determination must —
 - (a) contain a statement of reasons for the determination; and
 - (b) inform the qualifying relevant offender that he or she may appeal the determination in accordance with section 167.
- (4) If the Chief Constable determines under this section that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of receipt of the notice of determination.
- (5) The Department may by order amend the period in subsection (1).

166 Review of indefinite notification requirements: factors applying to determination under section 165

P2003/42/91D and drafting

- (1) In determining an application for review under section 165, the Chief Constable must —
 - (a) have regard to information (if any) received from a responsible body;
 - (b) consider the risk of sexual harm posed by the qualifying relevant offender and the effect of a continuation of the indefinite notification requirements on the offender; and
 - (c) take into account (amongst other things) the matters listed in subsection (2).
- (2) The matters are —
 - (a) the seriousness of the offence in relation to which the qualifying relevant offender became subject to the indefinite notification requirements;
 - (b) the period of time which has elapsed since the qualifying relevant offender committed the offence (or other offences);

- (c) where the qualifying relevant offender falls within section 152(1), whether the qualifying relevant offender committed any offence under paragraph 4 of Schedule 1 to the *Criminal Justice Act 2001*;
 - (d) whether the qualifying relevant offender has committed any offence under section 162;
 - (e) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
 - (f) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;
 - (g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the qualifying relevant offender at the time the offence was committed;
 - (h) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
 - (i) any convictions or findings made by a court (including by a court outside the Island) in respect of the qualifying relevant offender for any offence listed in Schedule 3 other than the one referred to in paragraph (a);
 - (j) any caution which the qualifying relevant offender has received for an offence (including for an offence outside the Island) which is listed in Schedule 3;
 - (k) any convictions or findings made by a court outside the Island in respect of the qualifying relevant offender for any offence listed in Schedule 4 where the behaviour of the qualifying relevant offender since the date of such conviction or finding indicates a risk of sexual harm;
 - (l) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender; and
 - (m) any evidence presented by or on behalf of the qualifying relevant offender which demonstrates that the qualifying relevant offender does not pose a risk of sexual harm which may include evidence of —
 - (i) positive changes in the qualifying relevant offender's lifestyle; and
 - (ii) any relevant treatment programmes the qualifying relevant offender has undertaken;
- (3) In this section, a reference to a conviction, finding or caution for an offence committed in a country outside the Island means a conviction, finding or caution for an act which —
- (a) constituted an offence under the law in force in the country concerned; and

- (b) would have constituted an offence listed in Schedule 3 or Schedule 4 if it had been done in the Island.

167 Review of indefinite notification requirements: appeals

P2003/42/91E and drafting

- (1) A qualifying relevant offender may appeal against a determination of the Chief Constable under section 165.
- (2) An appeal under this section may be made by complaint to a court of summary jurisdiction within the period of 21 days beginning with the day of receipt of the notice of determination.
- (3) If the court makes an order that a qualifying relevant offender should not remain subject to the indefinite notification requirements, the qualifying relevant offender ceases to be subject to the indefinite notification requirements on the date of the order.

168 Review of indefinite notification requirements: guidance

P2003/42/91F

- (1) The Department must issue guidance to the Chief Constable in relation to the determination of applications made under section 164.
- (2) The Department may, from time to time, revise the guidance issued under subsection (1).
- (3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as the Department considers appropriate.

169 Certificates for purposes of Part 10

P2003/42/92

- (1) Subsection (2) applies where on any date a person is —
 - (a) convicted of an offence listed in Schedule 3;
 - (b) found not guilty of such an offence by reason of insanity; or
 - (c) found to be under a disability and to have done the act charged against him or her in respect of such an offence.
- (2) If the court by or before which the person is so convicted or found —
 - (a) states in open court —
 - (i) that on that date he or she has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him or her; and
 - (ii) that the offence in question is an offence listed in Schedule 3; and
 - (b) certifies those facts, whether at the time or subsequently,

the certificate is, for the purposes of this Part, evidence of those facts.

- (3) Subsection (4) applies where on any date a person is cautioned in the Island in respect of an offence listed in Schedule 3.
- (4) If the constable —
 - (a) informs the person that he or she has been cautioned on that date and that the offence in question is an offence listed in Schedule 3; and
 - (b) certifies those facts, whether at the time or subsequently, in such form as the Department may by order prescribe,

the certificate is, for the purposes of this Part, evidence of those facts.

DIVISION 2 - INFORMATION FOR VERIFICATION

170 Part 10: supply of information by the Chief Constable

P2003/42/94 and drafting

- (1) This section applies to information notified to the Constabulary under —
 - (a) section 154, 155, 156 or 157; or
 - (b) paragraph 3(1) to (3) of Schedule 1 to the *Criminal Justice Act 2001*.
- (2) The Chief Constable may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to —
 - (a) the Governor or a Department in connection with a relevant function; or
 - (b) a person providing services to the Governor or a Department in connection with a relevant function,

for use for the purpose of verifying the information.

- (3) In relation to information supplied under subsection (2) to any person, the reference to verifying the information is a reference to —
 - (a) checking its accuracy by comparing it with information held —
 - (i) where the person is the Governor or a Department, by the Governor or a Department in connection with the exercise of a relevant function; or
 - (ii) where the person is within subsection (2)(b), by that person in connection with the provision of services referred to there; and
 - (b) compiling a report of that comparison.
- (4) Subject to subsection (5), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising or imposed).

- (5) This section does not authorise the doing of anything that contravenes the data protection legislation.
- (6) This section does not affect any power existing apart from this section to supply information.
- (7) In this section and section 172 —
“**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018⁸; and
“**relevant function**” means —
 - (a) a function relating to social security, child support, employment or training;
 - (b) a function relating to passports;
 - (c) a function relating to driving licences or vehicle registration.

171 Part 10: supply of information to the Chief Constable

P2003/42/95 and drafting

- (1) A report compiled under section 170 may be supplied by —
 - (a) the Governor or a Department; or
 - (b) a person within section 170(2)(b),to the Chief Constable.
- (2) Such a report may contain any information held —
 - (a) by the Governor or a Department in connection with the exercise of a relevant function; or
 - (b) by a person within section 170(2)(b) in connection with the provision of services referred to there.
- (3) Where such a report contains information within subsection (2), the Chief Constable —
 - (a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under this Part; and
 - (b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.
- (4) Subsections (4) to (7) of section 170 apply in relation to this section as they apply in relation to section 170.

⁸ SD 2018/0145 (as amended)

DIVISION 3 - INFORMATION ABOUT RELEASE OR TRANSFER

172 Information about release or transfer

P2003/42/96 and drafting

- (1) This section applies to a relevant offender who is serving a term of custody or is detained in a hospital.
- (2) The Department may by regulations make provision requiring notice to be given by the person who is responsible for that offender to persons prescribed by the regulations, of any occasion when the offender is released or a different person becomes responsible for him or her.
- (3) The regulations may make provision for —
 - (a) determining who is to be treated for the purposes of this section as responsible for an offender;
 - (b) requiring the person who is responsible for an offender, in giving notice under the regulations, to provide —
 - (i) any information about the offender; or
 - (ii) a photograph of any part of the offender;
 - (c) the disclosure of information to —
 - (i) the Social Security Division of the Treasury; and
 - (ii) law enforcement agencies of a specified description in a jurisdiction to which an offender may relocate.
- (4) If regulations made under this section make provision for the disclosure of information —
 - (a) no restriction on the disclosure of information imposed by statute (including this Act) or otherwise, prevents the disclosure, if the disclosure is made for the purposes of enabling or assisting the persons referred to in subsection (3)(c) to discharge their functions;
 - (b) there is to be no disclosure unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it;
 - (c) nothing authorises the making of any disclosure which is prohibited by any provision of the data protection legislation; and
 - (d) nothing in the regulations is to be taken to prejudice any power to disclose information which exists apart from under the regulations.
- (5) In subsection (3), “**photograph**” is to be construed in accordance with section 159.

DIVISION 4 - OFFENCES COMMITTED IN A COUNTRY OUTSIDE THE ISLAND

173 Offences committed in a country outside the Island

P2003/42/96A and drafting

- (1) This section applies to a person (P) if the following 3 conditions are met with respect to P.
- (2) The first condition is that under the law in force in a country outside the Island —
 - (a) P has been convicted of a relevant offence (whether or not P has been punished for it);
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that P is not guilty by reason of insanity;
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that P is under a disability and did the act charged against P in respect of the offence; or
 - (d) P has been cautioned in respect of a relevant offence.
- (3) The second condition is that —
 - (a) the first condition is met because of a conviction, finding or caution which occurred on or after 4 March 2002;
 - (b) the first condition is met because of a conviction or finding which occurred before that date, but P was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it; or
 - (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date P was, in respect of the offence or finding, subject under the law in force in the country concerned to detention or any other disposal equivalent to any of those mentioned in section 152(3) (read with sections 152(6) and 205).
- (4) The third condition is that the notification period set out in section 153 (as modified by subsections (6) and (7)) in respect of the relevant offence has not expired.
- (5) Where this section applies to P, P is subject to the notification requirements of this Part for the notification period set out in section 153; but the application of this Part to P in respect of the conviction, finding or caution is subject —
 - (a) in all cases, to the modifications set out below; and
 - (b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 174.

- (6) The “**relevant date**” means —
- (a) in the case where P is within subsection (2)(a), the date of the conviction;
 - (b) in the case where P is within subsection (2)(b) or (c), the date of the finding;
 - (c) in the case where P is within subsection (2)(d), the date of the caution.
- (7) In section 153 —
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 151 are to be read as references to P;
 - (b) the reference in the Table to section 151(1)(d) is to be read as a reference to subsection (2)(d);
 - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to P in respect of an offence or finding by reference to which this section applies to P;
 - (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (8) Section 154(4) has effect as if —
- (a) for the words “Where a notification order is made” there were substituted “Where a relevant offender is subject to the notification requirements of this Part by virtue of section 173”; and
 - (b) in paragraph (a) for the words “the order was made” there were substituted “he or she became a person to whom section 173 applies”.
- (9) In this section “**relevant offence**” means an act which —
- (a) constituted an offence under the law in force in the country concerned; and
 - (b) would have constituted an offence listed in Schedule 3 if it had been done in the Island,
- and for the purposes of this subsection an act punishable under the law in force in a country outside the Island constitutes an offence under that law however it is described in that law.

174 Convictions, etc. in a country which is not a member of the Council of Europe

P2003/42/96AA

- (1) The further provisions referred to in section 173(5)(b) are as follows.

- (2) Where P is charged with an offence under section 162(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).
- (3) P shall cease to be subject to the notification requirements of this Part by virtue of section 173 if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).
- (4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied —
 - (a) that any investigations or proceedings leading to it were conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the Island; and
 - (b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 173(2).
- (5) In this section —

“the relevant conviction, finding or caution” means the conviction, finding or caution by reason of which P is subject, by virtue of section 173, to the notification requirements of this Part;

“the relevant court” means —

- (a) in a case to which subsection (2) applies, the court before which P is charged;
- (b) in a case to which subsection (3) applies, the High Court.

DIVISION 5 - ENTRY AND SEARCH OF HOME ADDRESS

175 Power of entry and search of relevant offender’s home address

P2003/42/96B

- (1) If on an application made by a member of the Constabulary not below the rank of inspector a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, he or she may issue a warrant authorising a constable —
 - (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
 - (b) to search the premises for that purpose.
- (2) The requirements are —
 - (a) that the address of each set of premises specified in the application is an address falling within subsection (3);

- (b) that the relevant offender is not one to whom subsection (4) applies;
 - (c) that it is necessary for a constable to enter and search the premises for the purpose mentioned in subsection (1)(a); and
 - (d) that on at least 2 occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose.
- (3) An address falls within this subsection if —
 - (a) it is the address which was last notified in accordance with this Part by a relevant offender to the Constabulary as his or her home address; or
 - (b) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there.
- (4) This subsection applies to a relevant offender if he or she is —
 - (a) remanded in or committed to custody by order of a court;
 - (b) serving a sentence of custody;
 - (c) detained in a hospital; or
 - (d) outside the Island.
- (5) A warrant issued under this section must specify the one or more sets of premises to which it relates.
- (6) The warrant may authorise the constable executing it to use reasonable force if necessary to enter and search the premises.
- (7) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in subsection (1)(a).
- (8) Where a warrant issued under this section authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum.
- (9) In this section a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender —
 - (a) who has in accordance with this Part notified the Constabulary that the premises specified in the warrant are his or her home address; or
 - (b) in respect of whom there are reasonable grounds to believe that he or she resides there or may regularly be found there.

DIVISION 6 - NOTIFICATION ORDERS

176 Notification orders: applications and grounds

P2003/42/97 and drafting

- (1) The Chief Constable may, by complaint to a court of summary jurisdiction, apply for an order under this section (a “notification order”) in respect of a person (“the defendant”) if —
 - (a) it appears to him or her that the following 3 conditions are met with respect to the defendant; and
 - (b) the defendant resides in the Island or the Chief Constable believes that the defendant is in, or is intending to come to, the Island.
- (2) The first condition is that under the law in force in a country outside the Island —
 - (a) he or she has been convicted of a relevant offence (whether or not he or she has been punished for it);
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he or she is not guilty by reason of insanity;
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that he or she is under a disability and did the act charged against him or her in respect of the offence; or
 - (d) he or she has been cautioned in respect of a relevant offence.
- (3) The second condition is that —
 - (a) the first condition is met because of a conviction, finding or caution which occurred on or after 4 March 2002;
 - (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it; or
 - (c) the first condition is met because of a conviction or finding which occurred before that date, but on that date the person was, in respect of the offence or finding, subject under the law in force in the country concerned to detention or any other disposal equivalent to any of those mentioned in section 152(3) (read with sections 152(6) and 205).
- (4) The third condition is that the period set out in section 153 (as modified by subsections (2) and (3) of section 177) in respect of the relevant offence has not expired.
- (5) If on the application it is proved that the conditions in subsections (2) to (4) are met, the court must make a notification order.

- (6) In this section and section 177, “**relevant offence**” has the meaning given by section 178.

177 Notification orders: effect

P2003/42/98

- (1) Where a notification order is made —
- (a) the application of this Part to the defendant in respect of the conviction, finding or caution to which the order relates is subject to the modifications set out below; and
 - (b) subject to those modifications, the defendant becomes or (as the case may be) remains subject to the notification requirements of this Part for the notification period set out in section 153.
- (2) The “**relevant date**” means —
- (a) in the case of a person within section 176(2)(a), the date of the conviction;
 - (b) in the case of a person within section 176(2)(b) or (c), the date of the finding;
 - (c) in the case of a person within section 176(2)(d), the date of the caution.
- (3) In section 153 —
- (a) references, except in the Table, to a person (or relevant offender) within any provision of section 151 are to be read as references to the defendant;
 - (b) the reference in the Table to section 151(1)(d) is to be read as a reference to section 176(2)(d);
 - (c) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made;
 - (d) the reference to offences listed in Schedule 3 is to be read as a reference to relevant offences.
- (4) In sections 154 and 156, references to the commencement of this Part are to be read as references to the date of service of the notification order.

178 Sections 176 and 177: relevant offences

P2003/42/99

- (1) “**Relevant offence**” in sections 176 and 177 means an act which —
- (a) constituted an offence under the law in force in the country concerned; and
 - (b) would have constituted an offence listed in Schedule 3 if it had been done in the Island.

- (2) An act punishable under the law in force in a country outside the Island constitutes an offence under that law for the purposes of subsection (1) however it is described in that law.
- (3) Subject to subsection (4), on an application for a notification order the condition in subsection (1)(b) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the Chief Constable a notice —
 - (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in his or her opinion met;
 - (b) showing his or her grounds for that opinion; and
 - (c) requiring the Chief Constable to prove that the condition is met.
- (4) The court, if it thinks fit, may permit the defendant to require the Chief Constable to prove that the condition is met without service of a notice under subsection (3).

179 Interim notification orders

P2003/42/100 and drafting

- (1) This section applies where an application for a notification order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim notification order”) —
 - (a) may be made in the complaint containing the main application; or
 - (b) if the main application has been made, may be made by Chief Constable, by complaint to a court of summary jurisdiction.
- (3) The court may, if it considers it just to do so, make an interim notification order.
- (4) Such an order —
 - (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) While such an order has effect —
 - (a) the defendant is subject to the notification requirements of this Part;
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (6).
- (6) The “**relevant date**” means the date of service of the order.
- (7) The Chief Constable or the defendant may by complaint apply to a court of summary jurisdiction for the order to be varied, renewed or discharged.

180 Notification orders and interim notification orders: appeals

P2003/42/101

A defendant may appeal to the Staff of Government Division against the making of a notification order or interim notification order.

DIVISION 7 - SEXUAL HARM PREVENTION ORDERS AND SEXUAL RISK ORDERS**181 Sexual harm prevention orders: applications and grounds**

P2003/42/103A and drafting

- (1) A court may make an order under this section (a “**sexual harm prevention order**”) in respect of a person (“the defendant”) where subsection (2) or (3) applies to the defendant.
- (2) This subsection applies to the defendant where —
 - (a) the court deals with the defendant in respect of —
 - (i) an offence listed in Schedule 3 or 4; or
 - (ii) a finding that the defendant is not guilty of an offence listed in Schedule 3 or 4 by reason of insanity; or
 - (iii) a finding that the defendant is under a disability and has done the act charged against the defendant in respect of an offence listed in Schedule 3 or 4; and
 - (b) the court is satisfied that it is necessary to make a sexual harm prevention order, for the purpose of —
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Island.
- (3) This subsection applies to the defendant where —
 - (a) an application under subsection (4) has been made in respect of the defendant and it is proved on the application that the defendant is a qualifying offender; and
 - (b) the court is satisfied that the defendant’s behaviour since the appropriate date makes it necessary to make a sexual harm prevention order, for the purpose of —
 - (i) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (ii) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Island.

- (4) The Chief Constable may by complaint to a court of summary jurisdiction apply for a sexual harm prevention order in respect of a person if it appears to the Chief Constable that —
 - (a) the person is a qualifying offender; and
 - (b) the person has since the appropriate date acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made.
- (5) The Chief Constable may make an application under subsection (4) only in respect of a person —
 - (a) who resides in the Island; or
 - (b) who the Chief Constable believes is in or is intending to come to the Island.
- (6) Where the defendant is a child, a reference in this section to a court of summary jurisdiction is to be taken as referring to a court of summary jurisdiction sitting as a juvenile court (subject to any rules of court made under section 192(1)).

182 Section 181: supplementary provision

P2003/42/103B

- (1) In section 181 —

“appropriate date”, in relation to a qualifying offender, means the date or (as the case may be) the first date on which the offender was convicted, found or cautioned as mentioned in subsection (2) or (3);

“child” means a person under 18;

“the public” means the public in the Island;

“qualifying offender” means a person within subsection (2) or (3); and

“sexual harm” from a person means physical or psychological harm caused —

- (a) by the person committing one or more offences listed in Schedule 3; or
 - (b) (in the context of harm outside the Island) by the person doing, outside the Island, anything which would constitute an offence listed in Schedule 3 if done in the Island.
- (2) A person is within this subsection if, whether before or after the commencement of this Part, the person —
 - (a) has been convicted of an offence listed in Schedule 3 or in Schedule 4;
 - (b) has been found not guilty of such an offence by reason of insanity;
 - (c) has been found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
 - (d) has been cautioned in respect of such an offence.

- (3) A person is within this subsection if, under the law in force in a country outside the Island and whether before or after the commencement of this Part —
- (a) the person has been convicted of a relevant offence (whether or not the person has been punished for it);
 - (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person is not guilty by reason of insanity;
 - (c) such a court has made in respect of a relevant offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence; or
 - (d) the person has been cautioned in respect of a relevant offence.
- (4) In subsection (3), “**relevant offence**” means an act which —
- (a) constituted an offence under the law in force in the country concerned; and
 - (b) would have constituted an offence listed in Schedule 3 or in Schedule 4 if it had been done in the Island.
- For this purpose an act punishable under the law in force in a country outside the Island constitutes an offence under that law, however it is described in that law.
- (5) For the purposes of section 181, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (6) Subject to subsection (7), on an application under section 181(4) the condition in subsection (4)(b) (where relevant) is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice —
- (a) stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant’s opinion met;
 - (b) showing the grounds for that opinion; and
 - (c) requiring the Chief Constable to prove that the condition is met.
- (7) The court, if it thinks fit, may permit the defendant to require the Chief Constable to prove that the condition is met without service of a notice under subsection (6).
- (8) Subsection (9) applies for the purposes of section 181 and this section.
- (9) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates —
- (a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 206(9)); or
 - (b) to the age of any person,

is to be disregarded.

183 Sexual harm prevention orders: effect

P2003/42/103C and drafting

- (1) A sexual harm prevention order prohibits the defendant from doing anything described in the order.
- (2) Subject to section 184(1), a prohibition contained in a sexual harm prevention order has effect —
 - (a) for a fixed period, specified in the order, of at least 5 years from —
 - (i) the date of the order; or
 - (ii) in the case of a defendant who is sentenced to a term of custody, the date of the defendant's release from custody; or
 - (b) until further order.
- (3) A sexual harm prevention order —
 - (a) may specify that some of its prohibitions have effect until further order and some for a fixed period;
 - (b) may specify different periods for different prohibitions.
- (4) The only prohibitions that may be included in a sexual harm prevention order are those necessary for the purpose of —
 - (a) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Island.
- (5) In subsection (4) “**the public**”, “**sexual harm**”, and “**child**” each has the meaning given in section 182(1).
- (6) Where a court makes a sexual harm prevention order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (7) A person who —
 - (a) has been released on licence in accordance with Schedule 2 to the *Custody Act 1995*; and
 - (b) is subject to a sexual harm prevention order,fails to comply with the prohibitions specified in the order, is to be deemed to have failed to comply with the terms of the licence and the provisions of that Schedule apply.

184 Sexual harm prevention orders: variations and discharges prior to release from custody

P2003/42/103E and drafting

- (1) Where a court makes a sexual harm prevention order in relation to a person who is sentenced to a term of custody, prior to the date of that person's release from custody, a person referred to in subsection (2) may apply to the appropriate court for an order varying or discharging the sexual harm prevention order.
- (2) The persons referred to in subsection (1) are —
 - (a) the defendant;
 - (b) the Chief Constable;
 - (c) a probation officer.
- (3) An application under subsection (1) may be made —
 - (a) where the appropriate court is a Court of General Gaol Delivery, in accordance with rules of court;
 - (b) in any other case, by complaint.
- (4) Subject to subsections (5) and (7), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying or discharging the sexual harm prevention order, that the court considers appropriate.
- (5) An order may be varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —
 - (a) protecting the public or any particular members of the public from sexual harm from the defendant; or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Island.

Any varied order may contain only such prohibitions as are necessary for this purpose.
- (6) In subsection (5) “**the public**”, “**sexual harm**”, and “**child**” each has the meaning given in section 182.
- (7) The court must not discharge an order before the end of 5 years from the date from which the order has effect as specified in section 183(2)(a)(ii), without the consent of the defendant and the Chief Constable.
- (8) Subsection (7) does not apply to an order containing a prohibition on off-Island travel and no other prohibitions.
- (9) In this section “**the appropriate court**” means —

- (a) where a Court of General Gaol Delivery or the Court of Appeal made the sexual harm prevention order, a Court of General Gaol Delivery;
- (b) where a court of summary jurisdiction made the order, that court or, where the application is made by the Chief Constable, a court of summary jurisdiction;
- (c) where a court of summary jurisdiction sitting as a juvenile court made the order and the defendant is under the age of 18, that court or, where the application is made by the Chief Constable, a court of summary jurisdiction sitting as a juvenile court;
- (d) where a court of summary jurisdiction sitting as a juvenile court made the order and the defendant is aged 18 or over, an adult summary court or, where the application is made by the Chief Constable, the adult summary court.

In this subsection “**adult summary court**” means a court of summary jurisdiction that is not sitting as a juvenile court.

- (10) This section is in addition to and does not affect section 186 (SHPOs: variations, renewals and discharges).

185 Sexual harm prevention orders: prohibitions on off-Island travel

P2003/42/103D and drafting

- (1) A prohibition on off-Island travel contained in a sexual harm prevention order must be for a fixed period of not more than 5 years.
- (2) A “**prohibition on off-Island travel**” means —
 - (a) a prohibition on travelling to any country outside the Island named or described in the order;
 - (b) a prohibition on travelling to any country outside the Island other than a country named or described in the order; or
 - (c) a prohibition on travelling to any country outside the Island.
- (3) Subsection (1) does not prevent a prohibition on off-Island travel from being extended for a further period (of no more than 5 years each time) under section 184 or 186.
- (4) A sexual harm prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of the defendant’s passports at a police station specified in the order —
 - (a) on or before the date when the prohibition takes effect; or
 - (b) within a period specified in the order.
- (5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual harm prevention order containing a prohibition within subsection (2)(c) (unless the person is subject to an equivalent prohibition under another order).

- (6) Subsection (5) does not apply in relation to —
 - (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.
- (7) In this section “**passport**” means —
 - (a) a United Kingdom passport within the meaning of the *Immigration Act 1971*⁹ (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008¹⁰;
 - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

186 Sexual harm prevention orders: variations, renewals and discharges

P2003/42/103E and drafting

- (1) Where a court makes a sexual harm prevention order in relation to a person who is not sentenced to a term of custody, a person referred to in subsection (2) may apply to the appropriate court for an order varying, renewing or discharging a sexual harm prevention order.
- (2) The persons are —
 - (a) the defendant;
 - (b) the Chief Constable;
 - (c) a probation officer.
- (3) An application under subsection (1) may be made —
 - (a) where the appropriate court is a Court of General Gaol Delivery, in accordance with rules of court;
 - (b) in any other case, by complaint.
- (4) Subject to subsections (5) and (7), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual harm prevention order, that the court considers appropriate.
- (5) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —

⁹ 1971 c.77

¹⁰ SI 680/2008 (as amended)

- (a) protecting the public or any particular members of the public from sexual harm from the defendant; or
- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Island.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

- (6) In subsection (5) “**the public**”, “**sexual harm**”, and “**child**” each has the meaning given in section 182(1).
- (7) The court must not discharge an order before the end of 5 years beginning with the day on which the order was made, without the consent of the defendant and the Chief Constable.
- (8) Subsection (7) does not apply to an order containing a prohibition on off-Island travel and no other prohibitions.
- (9) In this section “**the appropriate court**” has the meaning given in section 184.

187 Interim sexual harm prevention orders

P2003/42/103F

- (1) This section applies where an application under section 181(4) (“**the main application**”) has not been determined.
- (2) An application for an order under this section (“**an interim sexual harm prevention order**”) —
 - (a) may be made by the complaint by which the main application is made; or
 - (b) if the main application has been made, may be made by the Chief Constable, by complaint to a court of summary jurisdiction.
- (3) The court may, if it considers it just to do so, make an interim sexual harm prevention order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order —
 - (a) has effect only for a fixed period, specified in the order;
 - (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The Chief Constable or the defendant may by complaint apply to a court of summary jurisdiction for the interim sexual harm prevention order to be varied, renewed or discharged.

188 Sexual harm prevention orders and interim sexual harm prevention orders: notification requirements

P2003/42/103G

- (1) Where —
 - (a) a sexual harm prevention order is made in respect of a defendant who was a relevant offender immediately before the making of the order; and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the order (as renewed from time to time) has effect,
the defendant remains subject to the notification requirements.
- (2) Where a sexual harm prevention order is made in respect of a defendant who was not a relevant offender immediately before the making of the order —
 - (a) the order causes the defendant to become subject to the notification requirements of this Part from —
 - (i) the making of the order; or
 - (ii) in the case of a defendant who is sentenced to a term of custody, the date of their release from custody,
until the order (as renewed from time to time) ceases to have effect; and
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (3).
- (3) The “relevant date” is the date of service of the order.
- (4) Subsections (1) to (3) apply to an interim sexual harm prevention order as if references to a sexual harm prevention order were references to an interim sexual harm prevention order, and with the omission of “(as renewed from time to time)” in both places.
- (5) On an application for a sexual harm prevention order made by the Chief Constable, the court must make a notification order in respect of the defendant (either in addition to or instead of a sexual harm prevention order) if —
 - (a) the Chief Constable invites the court to do so; and
 - (b) it is proved that the conditions in section 176(2) to (4) are met.
- (6) On an application for an interim sexual harm prevention order made by the Chief Constable, the court may, if it considers it just to do so, make an interim notification order (either in addition to or instead of an interim sexual harm prevention order).

189 Sexual harm prevention orders and interim sexual harm prevention orders: appeals

P2003/42/103H and drafting

- (1) A defendant may appeal against the making of a sexual harm prevention order —
 - (a) where the order was made by virtue of section 181(2)(a)(i), as if the order were a sentence passed on the defendant for the offence;
 - (b) where the order was made by virtue of section 181(2)(a)(ii) or (iii), as if the defendant had been convicted of the offence and the order were a sentence passed on the defendant for that offence;
 - (c) where the order was made on an application under section 181(4), to the Staff of Government Division.
- (2) A defendant may appeal to the Staff of Government Division against the making of an interim sexual harm prevention order.
- (3) A defendant may appeal against the making of an order under section 184 or 186, or the refusal to make such an order, to the Staff of Government Division.
- (4) On an appeal under subsection (1)(c), (2) or (3), the Staff of Government Division may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (5) Any order made by the Staff of Government Division on an appeal under subsection (1)(c), or (2) (other than an order directing that an application be re-heard by a court of summary jurisdiction) is for the purposes of section 184(9), 186(9) or 187(5)(respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Staff of Government Division).

190 Offence: breach of sexual harm prevention order or interim sexual harm prevention order etc

P2003/42/103I and drafting

- (1) A person who has been released from custody on licence or subject to conditions and who, without reasonable excuse —
 - (a) does anything that the person is prohibited from doing by an order specified in subsection (3); or
 - (b) fails to comply with a requirement imposed under section 185(4), commits a breach of licence for the purposes of Schedule 2 of the *Custody Act 1995*.
- (2) A person to whom subsection (1) does not apply, commits an offence if the person, without reasonable excuse, —

- (a) does anything that the person is prohibited from doing by an order specified in subsection (3); or
 - (b) fails to comply with a requirement imposed under section 185(4).
 - (3) The orders referred to in subsections (1) and (2) are —
 - (a) a sexual harm prevention order; and
 - (b) an interim sexual harm prevention order.
 - (4) Where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.
- Maximum penalty —
- (a) (on information) — 5 year's custody;
 - (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

191 Sexual harm prevention orders and interim sexual harm prevention orders: guidance

P2003/42/103J

- (1) The Department must issue guidance to the Chief Constable in relation to the exercise of powers with regard to sexual harm prevention orders and interim sexual harm prevention orders.
- (2) The Department may, from time to time, revise the guidance issued under subsection (1).
- (3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as the Department considers appropriate.

192 Sexual harm prevention orders and interim sexual harm prevention orders: supplementary

P2003/42/103K

- (1) Rules of court —
 - (a) may provide for a juvenile court to give permission for an application under section 181(4) against a person aged 18 or over to be made to the juvenile court if —
 - (i) an application to the juvenile court has been made, or is to be made, under that section against a person aged under 18; and
 - (ii) the juvenile court thinks that it would be in the interests of justice for the applications to be heard together;

- (b) may, in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 181, 184, 186, 187 or 188(5) or (6) have begun —
 - (i) prescribe circumstances in which the proceedings may or must remain in the juvenile court;
 - (ii) make provision for the transfer of the proceedings from the juvenile court to a court of summary jurisdiction that is not sitting as a juvenile court (including provision applying section 187 with modifications).
- (2) A person's age is treated for the purposes of sections 181 to 191 and this section as being that which it appears to the court to be after considering any available evidence.

193 Sexual risk orders: applications, grounds and effect

P2003/42/122A and drafting

- (1) The Chief Constable may by complaint to a court of summary jurisdiction (which, for the purposes of this section, must be a court held by a High Bailiff or Deputy High Bailiff) apply for an order under this section (a “**sexual risk order**”) in respect of a person (“the defendant”) if it appears to the Chief Constable that the following condition is met.
- (2) The condition is that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a sexual risk order to be made.
- (3) The Chief Constable may make an application under subsection (1) only in respect of a person —
 - (a) who resides in the Island; or
 - (b) who the Chief Constable believes is in the Island or is intending to come to it.
- (4) On an application under subsection (1), the court may make a sexual risk order if it is satisfied that the defendant has, whether before or after the commencement of this Part, done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of —
 - (a) protecting the public or any particular members of the public from harm from the defendant; or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the Island.
- (5) Such an order —
 - (a) prohibits the defendant from doing anything described in the order;

- (b) has effect for a fixed period (not less than 2 years) specified in the order or until further order.
- (6) A sexual risk order may specify different periods for different prohibitions.
- (7) The only prohibitions that may be imposed are those necessary for the purpose of —
 - (a) protecting the public or any particular members of the public from harm from the defendant; or
 - (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the Island.
- (8) Where a court makes a sexual risk order in relation to a person who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

194 Section 193: interpretation

P2003/42/122B and drafting

- (1) In section 193 —
 - “**child**” means a person under 18;
 - “**harm**” from the defendant means physical or psychological harm caused by the defendant doing an act of a sexual nature; and
 - “**the public**” means the public in the Island.
- (2) Where the defendant is a child, a reference in that section to a court of summary jurisdiction is to be taken as referring to a court of summary jurisdiction sitting as a juvenile court (subject to any rules of court made under section 203(1)).

195 Sexual risk orders: prohibitions on off-Island travel

P2003/42/122C and drafting

- (1) A prohibition on off-Island travel contained in a sexual risk order must not be for a period of more than 5 years.
- (2) A “prohibition on off-Island travel” has the meaning given by section 185(2).
- (3) Subsection (1) does not prevent a prohibition on off-Island travel from being extended for a further period (of no more than 5 years each time) under section 196.
- (4) A sexual risk order that contains a prohibition within subsection 185(2)(c) must require the defendant to surrender all of the defendant’s passports at a police station specified in the order —
 - (a) on or before the date when the prohibition takes effect; or

- (b) within a period specified in the order.
- (5) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a sexual risk order containing such a prohibition (unless the person is subject to an equivalent prohibition under another order).
- (6) Subsection (5) does not apply in relation to —
 - (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.
- (7) In this section “**passport**” means —
 - (a) a United Kingdom passport within the meaning of the *Immigration Act 1971*¹¹ (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008¹²;
 - (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

196 Sexual risk order: variations, renewals and discharges

P2003/42/122D and drafting

- (1) A person within subsection (2) may by complaint to the appropriate court apply for an order varying, renewing or discharging a sexual risk order.
- (2) The persons are —
 - (a) the defendant;
 - (b) the Chief Constable.
- (3) Subject to subsections (4) and (5), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual risk order, that the court considers appropriate.
- (4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of —
 - (a) protecting the public or any particular members of the public from harm from the defendant; or

¹¹ 1971 c.77

¹² SI 680/2008 (as amended)

- (b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the Island.

Any renewed or varied order may contain only such prohibitions as are necessary for this purpose.

- (5) The court must not discharge an order before the end of 2 years beginning with the day on which the order was made, without the consent of the defendant and the Chief Constable.
- (6) Section 194(1) applies for the purposes of this section.
- (7) In this section “**the appropriate court**” means a court of summary jurisdiction —
 - (a) where sitting as an adult summary court when the sexual risk order was made, that court;
 - (b) where a juvenile court made the order and the defendant is under the age of 18, that court;
 - (c) where a juvenile court made the order and the defendant is aged 18 or over, or, where the application is made by the Chief Constable, the adult summary court.
- (8) In this subsection “**adult summary court**” means a court of summary jurisdiction (being a court held by a High Bailiff or Deputy High Bailiff) that is not sitting as a juvenile court and “**juvenile court**” means a court of summary jurisdiction that is sitting as a juvenile court.

197 Interim sexual risk orders

P2003/42/122E and drafting

- (1) This section applies where an application for a sexual risk order (“the main application”) has not been determined.
- (2) An application for an order under this section (“an interim sexual risk order”) —
 - (a) may be made by the complaint by which the main application is made; or
 - (b) if the main application has been made, may be made by the Chief Constable, by complaint to a court of summary jurisdiction (which, for the purposes of this section must be a court held by a High Bailiff or Deputy High Bailiff).
- (3) The court may, if it considers it just to do so, make an interim sexual risk order, prohibiting the defendant from doing anything described in the order.
- (4) Such an order —
 - (a) has effect only for a fixed period, specified in the order;

- (b) ceases to have effect, if it has not already done so, on the determination of the main application.
- (5) The Chief Constable or the defendant may by complaint apply to a court of summary jurisdiction for the order to be varied, renewed or discharged.

198 Sexual risk orders and interim sexual risk orders: notification requirements

P2003/42/122F

- (1) A person in respect of whom a court makes —
 - (a) a sexual risk order (other than one that replaces an interim sexual risk order); or
 - (b) an interim sexual risk order,must, within the period of 3 days beginning with the date of service of the order, notify to the Constabulary the information set out in subsection (2) (unless the person is subject to the notification requirements of this Part on that date).
- (2) The information is —
 - (a) the person's name and, where the person uses one or more other names, each of those names;
 - (b) the person's home address.
- (3) A person who —
 - (a) is subject to a sexual risk order or an interim sexual risk order (but is not subject to the notification requirements of this Part); and
 - (b) uses a name which has not been notified under this section (or under any other provision of this Part), or changes home address,must, within the period of 3 days beginning with the date on which that happens, notify to the Constabulary that name or (as the case may be) the new home address.
- (4) Sections 159 (method of notification and related matters) and 162 (offences relating to notification) apply for the purposes of this section —
 - (a) with references to section 154(1) being read as references to subsection (1);
 - (b) with references to section 155(1) being read as references to subsection (3).

199 Sexual risk orders and interim sexual risk orders: appeals

P203/42/122G and drafting

- (1) A defendant may appeal to the Staff of Government Division —
 - (a) against the making of a sexual risk order;
 - (b) against the making of an interim sexual risk order; or

- (c) against the making of an order under section 196, or the refusal to make such an order.
- (2) On any such appeal, the Staff of Government Division may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order made by the Staff of Government Division on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a court of summary jurisdiction) is for the purposes of section 196(7) or 197(5)(respectively) to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Staff of Government Division).

200 Offence: breach of sexual risk order or interim sexual risk order etc

P2003/42/122H and drafting

- (1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by —
 - (a) a sexual risk order; or
 - (b) an interim sexual risk order,commits an offence.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 195(4).
- (3) Where a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

Maximum penalty —

- (a) (on information) — 5 years' custody;
- (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

201 Effect of conviction etc of an offence under section 200 etc

P2003/42/122I and drafting

- (1) This section applies to a person ("the defendant") who —
 - (a) is convicted of an offence under section 200 of this Act;
 - (b) is found not guilty of such an offence by reason of insanity;
 - (c) is found to be under a disability and to have done the act charged against him or her in respect of such an offence; or
 - (d) is cautioned in respect of such an offence.
- (2) Where —

- (a) a defendant was a relevant offender immediately before this section applied to the defendant; and
 - (b) the defendant would (apart from this subsection) cease to be subject to the notification requirements of this Part while the relevant order (as renewed from time to time) has effect,

the defendant remains subject to the notification requirements.
- (3) Where the defendant was not a relevant offender immediately before this section applied to the defendant —
 - (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect; and
 - (b) this Part applies to the defendant, subject to the modification set out in subsection (4).
- (4) The “**relevant date**” is the date on which this section first applies to the defendant.
- (5) In this section “**relevant order**” means, —
 - (a) where the conviction, finding or caution within subsection (1) is in respect of a breach of a sexual risk order, that order;
 - (b) where the conviction, finding or caution within subsection (1) is in respect of a breach of an interim sexual risk order or a sexual risk order made on the hearing of the application to which the interim order relates or, if no such order is made, the interim order.

202 Sexual risk orders and interim sexual risk orders: guidance

P2003/42/122J and drafting

- (1) The Department must issue guidance to the Chief Constable in relation to the exercise of powers with regard to sexual risk orders and interim sexual risk orders.
- (2) The Department may, from time to time, revise the guidance issued under subsection (1).
- (3) The Department must arrange for any guidance issued or revised under this section to be published in such manner as the Department considers appropriate.

203 Sexual risk orders and interim sexual risk orders: supplementary

P2003/42/122K

- (1) Rules of court —
 - (a) may provide for a court of summary jurisdiction sitting as a juvenile court to give permission for an application under

section 193 against a person aged 18 or over to be made to the juvenile court if —

- (i) an application to the juvenile court has been made, or is to be made, under that section against a person aged under 18; and
 - (ii) the juvenile court thinks that it would be in the interests of justice for the applications to be heard together;
- (b) may, in relation to a person attaining the age of 18 after proceedings against that person by virtue of section 193, 196 or 197 have begun —
- (i) prescribe circumstances in which the proceedings may or must remain in the juvenile court;
 - (ii) make provision for the transfer of the proceedings from the juvenile court to a court of summary jurisdiction that is not sitting as a juvenile court (including provision applying section 197 with modifications).
- (2) A person's age is treated for the purposes of sections 193 to 202 and this section as being that which it appears to the court to be after considering any available evidence.

DIVISION 8 - POWER TO AMEND SCHEDULES 3 AND 4

204 Power to amend Schedules 3 and 4

P2003/42/130 and drafting

- (1) The Department may by order amend Schedule 3 or 4.
- (2) An amendment within subsection (3) does not apply to convictions, findings and cautions before the amendment takes effect.
- (3) An amendment is within this subsection if it —
 - (a) adds an offence;
 - (b) removes a threshold relating to an offence; or
 - (c) changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within a Schedule when it would not otherwise be.

DIVISION 9 - GENERAL

205 Young offenders: application

P2003/42/131 and drafting

This Part applies to —

- (a) a period of detention which a person is liable to serve under a detention and training order made under section 211 of the *Armed Forces Act 2006*¹³ (of Parliament) as extended to the Island;
- (b) a sentence of detention in a young offender institution, a young offenders institution or a young offenders centre;
- (c) a sentence under a custodial order within the meaning of paragraph 10 of Schedule 4A to, the *Naval Discipline Act 1957*¹⁴, as extended to the Island;
- (d) a sentence of detention under section 8 of the *Custody Act 1995* or section 209 or 218 of the *Armed Forces Act 2006*;
- (e) a sentence of custody during ~~Her Majesty's~~ **His Majesty's** pleasure under section 8 of the of the *Custody Act 1995*,

as it applies to an equivalent sentence to a term of custody and references in this Part to prison or custody are to be interpreted accordingly.

206 Offences with thresholds

P2003/42/132

- (1) This section applies to an offence which in Schedule 3 is listed subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of the defendant) in respect of the finding (a “sentencing condition”).
- (2) Where an offence is listed if either a sentencing condition or a condition of another description is met, this section applies only to the offence as listed subject to the sentencing condition.
- (3) For the purposes of this Part (including in particular section 153(6)) —
 - (a) a person is to be regarded as convicted of an offence to which this section applies; or
 - (b) (as the case may be) a relevant finding in relation to such an offence is to be regarded as made,
 at the time when the sentencing condition is met.
- (4) In the following subsections, references to a foreign offence are references to an act which —
 - (a) constituted an offence under the law in force in a country outside the Island (“the relevant foreign law”), and
 - (b) would have constituted an offence to which this section applies (but not an offence, listed in Schedule 3, to which this section does not apply) if it had been done in the Island.

¹³ 2006 c.52 (as extended under section 384)

¹⁴ 1957 c.53

- (5) In relation to a foreign offence, references to the corresponding offence in the Island are references to the offence (or any offence) to which subsection (4)(b) applies in the case of that foreign offence.
- (6) For the purposes of this Part, a person is to be regarded as convicted under the relevant foreign law of a foreign offence at the time when that person is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding offence in the Island.
- (7) Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is, for the purposes of this Part, to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Schedule 3 as it applies to the corresponding offence in the Island.
- (8) Where (by virtue of an order under section 204 or otherwise) an offence is listed in Schedule 4 subject to a sentencing condition, this section applies to that offence as if references to Schedule 3 were references to Schedule 4.
- (9) In this section, “**relevant finding**”, in relation to an offence, means —
 - (a) a finding that a person is not guilty of the offence by reason of insanity; or
 - (b) a finding that a person is under a disability and did the act charged against him or her in respect of the offence.

207 Disapplication of time limit for complaints

P2003/42/132A

Section 75 of the *Summary Jurisdiction Act 1989* (time limits) does not apply to a complaint under any provision of this Part.

208 Part 10: general interpretation

P2003/42/133 and drafting

- (1) In this Part —

“**admitted to a hospital**” means admitted to a hospital under —

- (a) a hospital order within the meaning of section 138 of the *Mental Health Act 1998*;
- (b) paragraphs 2 to 5 of Schedule 2A to the *Summary Jurisdiction Act 1989*; or
- (c) section 47 of the *Mental Health Act 1998*;

“**cautioned**” means cautioned after the person concerned has admitted the offence and “caution” is to be interpreted accordingly;

“**community order**” means —

- (a) a community order within the meaning of section 47(4) of the *Criminal Justice, Police and Courts Act 2007*; or
- (b) a community supervision order;

“community supervision order” means an order under Schedule 4A to the *Naval Discipline Act 1957*¹⁵ (of Parliament) as extended to the Island;

“country” includes territory;

“detained in a hospital” means detained in a hospital under —

- (a) Part 3 of the *Mental Health Act 1998*;
- (b) section 54 of the *Criminal Jurisdiction Act 1993*; or
- (c) Schedule 2A to the *Summary Jurisdiction Act 1989*;

“guardianship order” means a guardianship order under Schedule 2A to the *Summary Jurisdiction Act 1989* or section 54 of the *Criminal Jurisdiction Act 1993*;

“home address” has the meaning given by section 154(8);

“interim notification order” has the meaning given by section 179(2);

“interim sexual harm prevention order” has the meaning given by section 187(2);

“interim sexual risk order” has the meaning given by section 197(2);

“notification order” has the meaning given by section 176(1);

“notification period” has the meaning given by section 151(1);

“order for conditional discharge” means an order under any of the following provisions discharging the offender conditionally —

- (a) section 6 of the *Criminal Justice Act 1963*;
- (b) section 185 of the *Armed Forces Act 2006*¹⁶ (of Parliament) as extended to the Island;
- (c) Schedule 4A to the *Naval Discipline Act 1957* (of Parliament) as extended to the Island;

“parental responsibility” has the same meaning as in section 2 of the *Children and Young Persons Act 2001*;

“the period of conditional discharge” has the meaning given by each of the following —

- (a) section 6 of the *Criminal Justice Act 1963*;
- (b) section 185(2) of the *Armed Forces Act 2006* (of Parliament) as extended to the Island;

“prohibition on off-Island travel” has the meaning given by section 185(2);

¹⁵ 1957 c.53 as extended by SI 727/1996

¹⁶ 2006 c.52 (as extended under section 384)

“**relevant date**” has the meaning given by section 153(6) (save in the circumstances mentioned in sections 173(6), 177(2), 179(6), 188(3) and 201(4);

“**relevant offender**” has the meaning given by section 151(2);

“**restriction order**” means —

- (a) an order within the meaning of section 48(1) of the *Mental Health Act 1998*; or
- (b) a determination under section 9 of the *Criminal Jurisdiction Act 1993*;

“**sexual harm prevention order**” has the meaning given by section 181(1);

“**sexual risk order**” has the meaning given by section 193(1).

- (2) A reference to a provision specified in paragraph (a) of the definition of “admitted to a hospital”, “detained in a hospital” or “restriction order” includes a reference to the provision as it applies by virtue of —
 - (a) section 35 of the *Criminal Jurisdiction Act 1993*; or
 - (b) Schedule 4 to the *Armed Forces Act 2006* (of Parliament) as extended to the Island.
- (3) Where under section 2 different days are appointed for the commencement of different provisions of this Part, a reference in any such provision to the commencement of this Part is to be read (subject to section 177(4)) as a reference to the commencement of that provision.

209 Conditional discharges and probation orders

P2003/42/134 and drafting

- (1) The following provisions do not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge is made —
 - (a) section 9(1) of the *Criminal Justice Act 1963* (effects of probation and discharge);
 - (b) section 187(1) of the *Armed Forces Act 2006*¹⁷ (of Parliament) as extended to the Island (conviction with absolute or conditional discharge deemed not to be a conviction);
 - (c) Schedule 4A to the *Naval Discipline Act 1957*, as extended to the Island.
- (2) Subsection (1) applies only to convictions after the commencement of this Part.
- (3) The provisions listed in subsection (1)(c) do not apply for the purposes of this Part to a conviction for an offence in respect of which a community

¹⁷2006 c.52 (as extended under section 384)

supervision order is or has (before or after the commencement of this Part) been made.

210 Interpretation: mentally disordered offenders

P2003/42/135 and drafting

- (1) In this Part, a reference to a conviction includes a reference to a finding of a court in summary proceedings, where the court makes an order under paragraph 2(3) of Schedule 2A of the *Summary Jurisdiction Act 1989* that the accused did the act charged and similar references are to be interpreted accordingly.
- (2) In this Part, a reference to a person being or having been found to be under a disability and to have done the act charged against the person in respect of an offence includes a reference to his or her being or having been found —
 - (a) unfit to be tried for the offence;
 - (b) to be insane so that his or her trial for the offence cannot or could not proceed; or
 - (c) unfit to be tried and to have done the act charged against him or her in respect of the offence.

PART 11 – PARDONS AND DISREGARDS

DIVISION 1 – INTRODUCTORY

211 Part 11: interpretation

S2018/14/16

In this Part —

"alternative to prosecution" is to be construed in accordance with section 224(3);

"conviction", in addition to being construed in accordance with section 224(2) and (3), includes any finding in criminal proceedings that a person has committed an offence or done the act or made the omission charged (including a finding linked with mental disorder or in respect of which an admonition or absolute discharge is made);

"disregarded conviction" is a conviction for a historical sexual offence in respect of which a disregard has taken effect by virtue of sections 216 to 221;

"historical sexual offence" has the meaning given by section 213;

"official records" means records containing information about persons convicted of offences kept by any relevant record keeper for the purposes of its functions;

"person", for the purposes of section 214 only, includes a deceased person;

"proceedings before a judicial authority" has the meaning given by section 220(6); and

"relevant record keeper" means a person prescribed in regulations made under section 221(5).

212 Purpose of Part 11

S2018/14/1

The purpose of this Part is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences by —

- (a) pardoning persons who have been convicted of those offences; and
- (b) providing for a process for convictions for those offences to be disregarded.

213 Historical sexual offence: definition

S2018/14/2 and drafting

- (1) In this Part, "**historical sexual offence**" means —
 - (a) an offence under section 74 or 75 of the *Criminal Code 1872* (sodomy and bestiality and attempts) insofar as it relates to buggery with another person;
 - (b) an offence under section 11 of the *Sexual Offences Act 1967* (buggery) insofar as it relates to buggery with another person;
 - (c) an offence under section 12 of that Act (indecency between men);
 - (d) any other offence which falls within subsection (2);
 - (e) an offence of attempting, inciting or conspiring to commit any of the offences mentioned in paragraphs (a) to (d).
- (2) An offence falls within this subsection if the offence —
 - (a) regulated, or was used in practice to regulate, sexual activity between men; and
 - (b) either, —
 - (i) has been repealed; or
 - (ii) has not been repealed but once covered sexual activity between men of a type which, or in circumstances which, would not amount to the offence on the day on which section 214 comes into force.
- (3) Where an offence of the type described in subsection (2)(b)(ii) covers or once covered activity other than sexual activity between men, the offence falls with subsection (2) only to the extent that it once covered sexual activity between men.
- (4) In this section, "**sexual activity between men**" includes —

- (a) any physical or affectionate activity between males of any age which is of a type which is characteristic of persons involved in an intimate personal relationship;
- (b) conduct intended to introduce or procure such activity.

DIVISION 2 — PARDONS FOR CERTAIN HISTORICAL SEXUAL OFFENCES

214 Pardons for certain historical sexual offences

S2018/14/3

A person who has been convicted of a historical sexual offence is pardoned for the offence if the conduct constituting the offence, if occurring in the same circumstances, would not be an offence on the day on which this section comes into operation.

215 Pardons: supplementary

S2018/14/4

A pardon under section 214 does not —

- (a) affect any conviction or sentence; or
- (b) give rise to any right, entitlement or liability.

DIVISION 3 — DISREGARDING CERTAIN CONVICTIONS FOR HISTORICAL SEXUAL OFFENCES

216 Application to have conviction for historical sexual offence disregarded

S2018/14/5

- (1) A person who has been convicted of a historical sexual offence may apply to the Department for the conviction to be disregarded.
- (2) An application made under subsection (1) must be in writing and must include —
 - (a) the applicant's name, address and date of birth;
 - (b) in so far as known to the applicant, the applicant's name and address at the time of the conviction;
 - (c) in so far as known to the applicant, the time when and place where the conviction took place and the relevant case number;
 - (d) in so far as known to the applicant, the nature and circumstances of the offence and the sentence imposed;
 - (e) any other information which the Department may require.
- (3) An application made under subsection (1) may also include any other information which the applicant wishes the Department to consider when determining the application.

217 Application for disregard: further information

S2018/14/6

- (1) The Department may request any person to make representations, or to provide further information, in relation to an application made under section 216(1).
- (2) A person so requested is authorised to make such representations or, as the case may be, to provide such information for the purposes of assisting the Department to determine the application.

218 Determination of application for disregard

S2018/14/7

- (1) When determining an application made under section 216(1), the Department must in particular —
 - (a) consider all representations and other information included in the application;
 - (b) consider all representations made or other information provided in pursuance of section 217 in relation to the application; and
 - (c) except where it appears to it that the offence to which the application relates is not a historical sexual offence, take reasonable steps to obtain (and, where available, consider) any record of —
 - (i) the investigation of the conduct which led to the conviction; and
 - (ii) any subsequent proceedings relating to the conduct.
- (2) Having done so, the Department must —
 - (a) unless subsection (3) applies, determine that the conviction in respect of which the application is made is to be disregarded; or
 - (b) where subsection (3) applies, determine that the conviction is not to be disregarded.
- (3) This subsection applies if it appears to the Department —
 - (a) that the offence for which the applicant was convicted is not a historical sexual offence; or
 - (b) that the conduct constituting the historical sexual offence, if occurring in the same circumstances, would have been an offence on the day on which section 214 came into operation.
- (4) The Department must —
 - (a) record its determination, and the reasons for it, in writing;
 - (b) provide notice of its determination, and the reasons for it, to the applicant; and

- (c) where it has determined that a conviction for a historical sexual offence is to be disregarded, inform the applicant that references to the conviction will be removed in pursuance of section 221.
- (5) Where the Department determines that a conviction for a historical sexual offence is to be disregarded, the disregard takes effect from the day falling 14 days after notice of its determination is given.

219 Appeals

S2018/14/8 and drafting

- (1) This section applies where the Department has determined that a conviction in respect of which an application is made under section 216(1) is not to be disregarded.
- (2) The applicant may, with the permission of the Department, appeal against the determination to the High Bailiff.
- (3) When deciding an appeal, the High Bailiff may not take account of any representations which were, or other information which was, not available to the Department when determining the application.
- (4) On an appeal, the High Bailiff must —
 - (a) unless subsection (5) applies, order that the conviction in respect of which the appeal is made is to be disregarded; or
 - (b) where subsection (5) applies, dismiss the appeal.
- (5) This subsection applies if it appears to the High Bailiff —
 - (a) that the offence for which the appellant was convicted is not a historical sexual offence; or
 - (b) that the conduct constituting the historical sexual offence, if occurring in the same circumstances, would have been an offence on the day on which section 214 came into operation.
- (6) The High Bailiff's decision on an appeal is final.
- (7) Where the High Bailiff orders that a conviction for a historical sexual offence is to be disregarded, the disregard takes effect from the day falling 14 days after the High Bailiff's order is made.

220 Effect of disregard

S2018/14/9

- (1) This section applies where a disregard for a conviction for a historical sexual offence has taken effect (see sections 218(5) and 219(7)).
- (2) The person who was convicted of the offence is to be treated for all purposes as not having —
 - (a) committed the offence;
 - (b) been charged with, or prosecuted for, the offence;

- (c) been convicted of the offence; or
 - (d) been sentenced for the offence.
- (3) In particular —
- (a) no evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in the Island to prove that the person has done, or undergone, anything within subsection (2); and
 - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or any circumstances ancillary to it.
- (4) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, offences, conduct or circumstances of any person —
- (a) the question is to be treated as not relating to any disregarded conviction, or any circumstances ancillary to it (and the answer to the question may be framed accordingly); and
 - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or any circumstance ancillary to it in answering the question.
- (5) Any obligation imposed on any person by any enactment or rule of law, or by the provisions of any agreement or arrangement, to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or any circumstances ancillary to it.
- (6) In this section, "**proceedings before a judicial authority**" includes, in addition to any court proceedings, proceedings before any tribunal, body or person having power by virtue of any enactment, rule of law, arbitration agreement, rules, custom or practice —
- (a) to determine any question affecting the rights, privileges, obligations or liabilities of any person; or
 - (b) to receive evidence affecting the determination of any such question.
- (7) For the purposes of this section, circumstances ancillary to a conviction are any circumstances of —
- (a) the offence which was the subject of the conviction;
 - (b) the conduct constituting the offence;
 - (c) any process or proceedings preliminary to the conviction;
 - (d) any sentence imposed in respect of the conviction;
 - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or sentence;

- (f) anything done in pursuance of, or undergone in compliance with, any such sentence.

221 Removal of disregarded convictions from official records

S2018/14/10

- (1) Where a disregard for a conviction for a historical sexual offence has taken effect (see sections 218(5) and 219(7), the Department must —
 - (a) where it is the relevant record keeper in relation to any official records held by it, remove all references to the disregarded conviction contained in those official records (and, where the disregard has effect by virtue of section 219(7), give notice of the removal to the person who has the disregarded conviction); and
 - (b) require every other relevant record keeper to remove all references to the disregarded conviction contained in official records held by the keeper.
- (2) A relevant record keeper issued with a requirement under subsection (1)(b) must —
 - (a) comply with the requirement as soon as reasonably practicable (but no earlier than the day on which the disregard takes effect); and
 - (b) give notice of the removal to the person who has the disregarded conviction.
- (3) The Department may, by regulations, prescribe the manner in which references to disregarded convictions are to be removed from official records in pursuance of this section.
- (4) Regulations may, in particular, provide that removal from records means recording with the details of the conviction —
 - (a) the fact that it is a disregarded conviction; and
 - (b) the effect of it being a disregarded conviction.
- (5) A "**relevant record keeper**" means such person as may be prescribed in regulations made by the Department (and may, in particular, include the Department acting in its capacity as the holder of official records of a type so prescribed).

222 Advisers

S2018/14/11

- (1) The Department may appoint persons to advise or assist it on the determination of applications made under section 216(1).
- (2) The Department may provide to an appointed person, or authorise that person to access, such information contained in or relating to such applications as it considers relevant.

- (3) The Department may pay an appointed person such allowances and expenses as it considers appropriate.

DIVISION 4 — GENERAL

223 Saving for Pardons

S2018/14/12 and drafting

Nothing in this Part affects the prerogative of mercy.

224 Application of Part to conduct dealt with otherwise than by prosecution

S2018/14/13

- (1) This Part applies in relation to any conduct constituting a historical sexual offence in respect of which an alternative to prosecution has been given as it applies to conduct in respect of which a person is convicted.
- (2) Accordingly —
 - (a) references in this Part to "**conviction**" and "**convicted**" are to be read as including references to, or to being given, an alternative to prosecution;
 - (b) references to a sentence imposed include a reference to the giving of an alternative to prosecution.
- (3) For the purposes of this Part, an alternative to prosecution has been given in respect of conduct constituting an offence if a person has been given a caution by a constable or a prosecutor.

225 Ancillary provision

S2018/14/15 and drafting

- (1) Department may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that it considers appropriate for the purposes of, in connection with or for giving full effect to this Part.
- (2) Regulations under subsection (1) may —
 - (a) modify any enactment (including this Act);
 - (b) make different provision for different purposes.

PART 12 — AMENDMENT OF ORGANISED AND INTERNATIONAL CRIME ACT 2010

226 Organised and International Crime Act 2010 amended

- (1) The *Organised and International Crime Act 2010* is amended in accordance with subsection (2).

- (2) [Inserted section 4A to 4C]

PART 13 — PROHIBITION OF FEMALE GENITAL MUTILATION

227 Prohibition of Female Genital Mutilation Act 2010 amended

- (1) The Prohibition of *Female Genital Mutilation Act 2010* is amended as follows.
- (2) [Amended section 3]
- (3) [Amended section 6(1)(c)]
- (4) [Inserted section 6A to 6C]
- (5) [Substituted section 7]
- (6) [Inserted Schedule]

PART 14 — GENERAL

228 Service courts

P2003/42/137 and drafting

- (1) In this Act —
- (a) a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court;
- (b) a reference to an offence includes a reference to an offence triable by a service court;
- (c) “**proceedings**” includes proceedings before a service court; and
- (d) a reference to proceedings for an offence under this Act includes a reference to proceedings for an offence under section 42 of the *Armed Forces Act 2006*¹⁸ (of Parliament) as extended to the Island, as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is that offence.
- (2) In sections 169 and 181(1), “**court**” includes a service court.
- (3) Where the court making a sexual harm prevention order is a service court —
- (a) sections 181(3) to (6), 187 and 191 do not apply;
- (b) sections 181(1) and (2), 182 to 186 and 188 to 190 apply subject to paragraphs (c) and (d); and

¹⁸ 2006 c.52 (as extended under section 384)

- (c) in relation to an application under section 184 or 186 in respect of a defendant who at the time of the application is a person subject to service law or a civilian subject to service discipline —
 - (i) the application may be made only by the defendant or a Provost Martial, and must be made to the Court Martial;
 - (ii) consent under section 184 or 186 must be the consent of the defendant and a Provost Martial;
 - (iii) an appeal against the making of an order under section 184 or 186, or the refusal to make such an order, must be made to the Court Martial Appeal Court;
 - (d) in relation to an application under section 184 or 186 in respect of a defendant who at the time of the application is neither a person subject to service law nor a civilian subject to service discipline —
 - (i) the application must be made to a Court of General Gaol Delivery in the Island;
 - (ii) an appeal against the making of an order under section 184 or 186, or the refusal to make such an order, must be made to the Court of Appeal in the Island.
- (4) In this section —
- “**civilian subject to service discipline**” has the same meaning as in the *Armed Forces Act 2006* (of Parliament) as extended to the Island (see section 370 of that Act);
- “**service court**” means the Court Martial or the Service Civilian Court;
- “**subject to service law**” has the same meaning as in the *Armed Forces Act 2006* (of Parliament) as extended to the Island (see section 374 of that Act).
- (5) In subsection (1)(a) the reference to a service court includes a reference to the following —
- (a) the Court Martial Appeal Court ;
 - (b) the Supreme Court on an appeal brought from the Court Martial Appeal Court;
 - (c) a court-martial;
 - (d) a Standing Civilian Court.
- (6) Paragraphs (c)(i) and (d)(i) of subsection (3) have effect, in relation to a sexual harm prevention order made by the Court Martial Appeal Court, as if the reference to a service court in that subsection included a reference to that court.

229 Application to the Island of sentencing guidelines

P2009/25/125 and drafting

- (1) The Department may, after consulting the Deemsters and such other persons as the Department may consider appropriate, by order apply to

the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the order, any provision to which this subsection applies.

- (2) Subsection (1) applies to any sentencing guidelines issued under section 120 of the Coroners and Justice Act 2009¹⁹ (of Parliament) from time to time or a re-enactment of that provision in so far as they relate to an offence under this Act.
- (3) An order made under subsection (1) may provide that a court, in sentencing an offender, must have regard to any sentencing guidelines applied by the order which are relevant to the offender's case, unless the court is satisfied that it would be contrary to the interests of justice to do so.
- (4) An order made under subsection (1) must have annexed to it a text of the sentencing guidelines applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.
- (5) An order made under subsection (1) may provide that a reference in it to sentencing guidelines or a provision of sentencing guidelines is to be construed as a reference to the guidelines or provision as amended from time to time.
- (6) An order made under subsection (1) which applies any sentencing guidelines which relate to indecent images of children to the Island must state that the decision in *R v Oliver, Hartrey and Baldwin* [2003] 1 Criminal Appeal Reports 28 is to be disregarded.

230 Orders and regulations

P2003/42/138 and drafting

- (1) Tynwald procedure for an order or regulations under section 87, 90, 137, 148, 154, 155, 156, 158, 165, 169, 204 or 221 — approval required.
- (2) Tynwald procedure, unless otherwise provided, for any other order or regulations, except one containing an order under section 2(1) (commencement) — negative.
- (3) Orders or regulations made by the Department under this Act may —
 - (a) make different provision for different purposes;
 - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.
- (4) Regulations made by the Department under this Act may —
 - (a) permit a person to exercise a discretion in respect of any matters specified in the regulations; and

¹⁹ 2009 c.25

- (b) provide for their contravention to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding level 5 on the standard scale on summary conviction.

231 Minor and consequential amendments

Schedule 5 contains minor and consequential amendments.

232 Repeals

The provisions listed in Schedule 6 are repealed to the extent specified.

233 Transitional and savings provisions

- (1) Despite the repeal of the *Sex Offenders Act 2006* —
 - (a) a sexual offences prevention order made under that Act remains in operation until it expires or is replaced by a sexual harm prevention order made under section 181 of this Act; and
 - (b) a risk of sexual harm order made under that Act remains in operation until it expires or is replaced by a sexual risk order made under section 193 of this Act.
- (1A) For the avoidance of doubt —
 - (a) for the purposes of section 190, a sexual offences prevention order that remains in operation under subsection (1) shall be treated as if it were a sexual harm prevention order made under section 181 of this Act; and
 - (b) for the purposes of section 200, a risk of sexual harm order that remains in operation under subsection (1) shall be treated as if it were a sexual risk order made under section 193 of this Act.
- (2) Until the first rules of court are made in relation to Courts of General Gaol Delivery or the courts of summary jurisdiction, under section 91 of the *Summary Jurisdiction Act 1989*, section 25 of the *High Court Act 1991* (by virtue of section 57 of the *Criminal Jurisdiction Act 1993*) or this Act, for the purposes of the sections of this Act specified in subsection (3), the procedure shall be such as the presiding Deemster or court, as the case may be, shall determine.
- (3) The sections referred to in subsection (2) are —
 - (a) section 150 (procedure on applications under section 147).
 - (b) section 161 (parental directions: variations, renewals and discharges);
 - (c) section 178 (sections 176 and 177: relevant offences);
 - (d) section 181 (sexual harm prevention orders: applications and grounds);
 - (e) section 182 (section 181: supplemental);

- (f) section 184 (sexual harm prevention orders: variations and discharges prior to release from custody);
 - (g) section 186 (sexual harm prevention orders: variations, renewals and discharges);
 - (h) section 192 (sexual harm prevention orders and interim sexual harm prevention orders: supplementary);
 - (i) section 194 (section 193: interpretation); and
 - (j) section 203 (sexual risk orders and interim sexual risk orders: supplementary).
- (4) To avoid doubt, section 57(2) of the *Legislation Act 2015* applies to the repeal of section 39A of the *Sexual Offences Act 1992* which abolished any presumption of criminal law that a boy under the age of 14 years is incapable of sexual intercourse.

234 Extent and saving

- (1) Subject to section 228 (service courts), this Act extends to the Island only.
- (2) Unless otherwise provided, any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

SCHEDULE 1

[Sections 79 and 103]

SPECIAL RULES RELATING TO PROVIDERS OF INFORMATION SOCIETY SERVICES

1 Interpretation

P2008/4/Sch14/6, P2009/25/Sch13/6 and drafting

(1) In this Schedule —

“Information society services” —

- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations); and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”,

and **“the E-Commerce Directive”** means Directive 2000/31/EC²⁰ of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“recipient”, in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

“service provider” means a person providing an information society service.

(2) For the purpose of construing references in this Schedule to a service provider who is established in the Island, a part of the United Kingdom or in some other EEA state, —

- (a) a service provider is established in the Island, a particular part of the United Kingdom, or in a particular EEA state, if the service provider —
 - (i) effectively pursues an economic activity using a fixed establishment in the Island, that part of the United Kingdom or that EEA state, for an indefinite period; and

²⁰ OJ L178, 17/07/2000, p.1

- (ii) is a resident of the Island or a national of an EEA state or a company or firm mentioned in Article 54 of the treaty on the Functioning of the European Union;
 - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;
 - (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.
- (3) If at any time the United Kingdom is not an EEA state —
- (a) in paragraph (2), “some other EEA state” means an EEA state;
 - (b) in paragraph (2)(a)(ii), “a national of an EEA state” means a national of the United Kingdom or an EEA state; and
 - (c) in paragraphs 2(2)(a), 2(3)(a), 2(4)(a) and 3(1), “an EEA state”, wherever occurring, means the United Kingdom or an EEA state.

2 Domestic service providers: extension of liability

P2008/4/Sch14/1 P2009/25/Sch13/1 and drafting

- (1) This paragraph applies where a service provider is established in the Island (a “domestic service provider”).
- (2) Section 71(1) applies to a domestic service provider who —
- (a) is in possession of an indecent photograph or pseudo-photograph of a child in an EEA state; and
 - (b) is in possession of it there in the course of providing information society services,
- as well as to persons (of any description) who are in possession of such images in the Island.
- (3) Section 72(1) applies to a domestic service provider who —
- (a) is in possession of a prohibited image of a child in an EEA state; and
 - (b) is in possession of it there in the course of providing information society services,
- as well as to persons (of any description) who are in possession of such images in the Island.
- (4) Section 100(1) applies to a domestic service provider who —
- (a) is in possession of an extreme pornographic image in an EEA state; and
 - (b) is in possession of it there in the course of providing information society services,

as well as to persons (of any description) who are in possession of such images in the Island.

- (5) In the case of an offence under section 71(1), 72(1) or 100(1), as it applies to a domestic service provider by virtue of sub-paragraph (2), (3) or (4) —
 - (a) proceedings for the offence may be taken in the Island; and
 - (b) the offence may for all incidental purposes be treated as having been committed in the Island.
- (6) For the purposes of sub-paragraphs (2) and (3), “indecent photograph or pseudo-photograph” has the meaning given in section 81 and “prohibited image of a child” has the meaning given by section 72(2).
- (7) For the purposes of sub-paragraph (4), “extreme pornographic image” has the meaning given by section 100(2) and in determining whether a domestic service provider is in possession of such an image “extreme image” has the meaning given by section 100(6).
- (8) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 4 to 6.

3 Non-Island service providers: restriction on commencement of proceedings

P2008/4/Sch14/2 P2009/25/Sch13/2 and drafting

- (1) This paragraph applies where a service provider is established outside the Island in an EEA state (a “non-Island service provider”).
- (2) Proceedings for an offence under section 71, 72 or 100 may not be commenced against a non-Island service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.
- (3) The derogation condition is satisfied where the commencement of proceedings —
 - (a) is necessary for the purposes of the public interest objective;
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective; and
 - (c) is proportionate to that objective.
- (4) “**The public interest objective**” means the pursuit of public policy.

4 Exceptions for mere conduits

P2008/4/Sch14/3 and P2009/25/Sch13/3

- (1) A service provider is not capable of being guilty of an offence under section 71, 72 or 100 in respect of anything done in the course of providing so much of an information society service as consists in —

- (a) the provision of access to a communication network; or
 - (b) the transmission in a communication network of information provided by a recipient of the service,if the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the service provider does not —
 - (a) initiate the transmission;
 - (b) select the recipient of the transmission; or
 - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1) —
 - (a) the provision of access to a communication network; and
 - (b) the transmission of information in a communication network,includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

5 Exception for caching

P2008/4/Sch14/4 and P2009/25/Sch13/4

- (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not capable of being guilty of an offence under section 71, 72 or 100 in respect of the automatic, intermediate and temporary storage of information so provided, if —
 - (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request; and
 - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider —
 - (a) does not modify the information;
 - (b) complies with any conditions attached to having access to the information; and
 - (c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that —
 - (a) the information at the initial source of the transmission has been removed from the network;

- (b) access to it has been disabled; or
- (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

6 Exception for hosting

P2008/4/Sch14/5, P2009/25/Sch13/5 and drafting

- (1) A service provider is not capable of being guilty of an offence under section 71, 72 or 100 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if —
 - (a) the service provider had no actual knowledge when the information was provided that it contained offending material; or
 - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.
- (2) “**Offending material**” means material the possession of which constitutes an offence under section 71, 72 or 100, as the case may be.
- (3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

SCHEDULE 2

[Section 80]

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN AND
PROHIBITED IMAGES OF CHILDREN

P1978/37/Sch and drafting

1 Interpretation

(1) In this Schedule —

“**the court**” is to be construed in accordance with paragraph 12(1);“**forfeitable property**” is to be construed in accordance with paragraph 2(2);“**premises**” has the same meaning as in section 81 of the *Police Powers and Procedures Act 1998*; and“**the relevant officer**” is to be construed in accordance with paragraph 4.

(2) For the purposes of this Schedule the circumstances in which a person (“P”) has a legitimate reason for possessing an indecent photograph or pseudo-photograph or a prohibited image of a child (“C”) include where —

- (a) the photograph was of C aged 16 or over;
- (b) one or both of the following sub-paragraphs apply —
 - (i) P and C are married, are civil partners of each other or are living together as partners in an enduring family relationship;
 - (ii) P and C were married, were civil partners of each other or were so living together at the time P obtained the photograph;
- (c) the photograph shows C alone or with P, but does not show any other person;
- (d) C has consented to the photograph being in P’s possession (and that consent has not been withdrawn); and
- (e) P owns, or is authorised (directly or indirectly) by the owner, to possess the photograph.

2 Application of Schedule

(1) This Schedule applies where —

- (a) property which has been lawfully seized in the Island is in the custody of a constable;
- (b) ignoring this Schedule, there is no legitimate reason for the constable to retain custody of the property;

- (c) the constable is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property; and
 - (d) ignoring this Schedule, the constable is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.
- (2) The following property is “**forfeitable property**” —
 - (a) any indecent photograph or pseudo-photograph of a child;
 - (b) any prohibited image of a child;
 - (c) any property which it is not reasonably practicable to separate from any property within paragraph (a) or (b);
 - (d) any electronic device used wholly or in part in connection with the property within paragraph (a) or (b).
- (3) For the purposes of this paragraph —
 - (a) a part of any property is a “**readily separable part**” of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property; and
 - (b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.
- (4) The circumstances mentioned in sub-paragraph (3)(a) include the time and costs involved in separating the property.

3 Possession pending forfeiture

- (1) The property must be retained in the custody of a constable until it is returned or otherwise disposed of in accordance with this Schedule.
- (2) Nothing in the *Police Powers and Procedures Act 1998* applies to property held under this Schedule.

4 Relevant officer

The “relevant officer”, in relation to any property, is the constable who for the time being has custody of the property.

5 Notice of intended forfeiture

- (1) The relevant officer must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to —
 - (a) every person whom he or she believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property;

- (b) where the property was seized from premises, every person whom the relevant officer believes to have been an occupier of the premises at that time; and
 - (c) where the property was seized as a result of a search of any person, that person.
- (2) The notice of intended forfeiture must set out —
 - (a) a description of the property; and
 - (b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.
- (3) The notice of intended forfeiture may be given to a person only by —
 - (a) delivering it to that person personally;
 - (b) addressing it to that person and leaving it for him or her at the appropriate address; or
 - (c) addressing it to that person and sending it to him or her at that address by post.
- (4) But a notice given in accordance with sub-paragraph (1)(b) may, where it is not practicable to give the notice in accordance with sub-paragraph (3), be given by —
 - (a) addressing it to “the occupier” of those premises, without naming him or her; and
 - (b) leaving it for him or her at those premises or sending it to him or her at those premises by post.
- (5) Property may be treated or condemned as forfeited under this Schedule only if —
 - (a) the requirements of this paragraph have been complied with in the case of the property; or
 - (b) it was not reasonably practicable for them to be complied with.
- (6) In this paragraph “**the appropriate address**”, in relation to a person, means —
 - (a) in the case of a body corporate, its registered or principal office in the Island;
 - (b) in the case of a firm, the principal office of the partnership;
 - (c) in the case of an unincorporated body or association, the principal office of the body or association;
 - (d) in any other case, his or her usual or last known place of residence in the Island or his or her last known place of business in the Island.
- (7) In the case of —
 - (a) a company registered outside the Island;
 - (b) a firm carrying on business outside the Island; or

- (c) an unincorporated body or association with offices outside the Island,

the references in this paragraph to its principal office include references to its principal office within the Island (if any).

6 Notice of claim

- (1) A person claiming that he or she has a legitimate reason for possessing the property or a part of it may give notice of his or her claim to a constable at the police headquarters.
- (2) Oral notice is not sufficient for these purposes.
- (3) A notice of claim may not be given more than one month after —
 - (a) the date of the giving of the notice of intended forfeiture; or
 - (b) if no such notice has been given, the date on which the property began to be retained under this Schedule (see paragraph 3).
- (4) A notice of claim must specify —
 - (a) the name and address of the claimant;
 - (b) a description of the property, or part of it, in respect of which the claim is made;
 - (c) in the case of a claimant who is outside the Island, the name and address of an advocate in the Island who is authorised to accept service, and to act, on behalf of the claimant.
- (5) Service upon an advocate so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.
- (6) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference —
 - (a) in relation to a person to whom notice of intended forfeiture was given, to the day on which that notice was given to that person; and
 - (b) in relation to any other person, to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

7 Automatic forfeiture in a case where no claim is made

- (1) If the property is unclaimed it is treated as forfeited.
- (2) The property is “unclaimed” if, by the end of the period for the giving of a notice of claim —
 - (a) no such notice has been given in relation to it or any part of it; or
 - (b) the requirements of paragraph 6 have not been complied with in relation to the only notice or notices of claim that have been given.

- (3) Sub-paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose sub-paragraph (2) applies as if references to the property were to the part.
- (4) In this paragraph “readily separable part” has the meaning given by paragraph 2.

8 Decision whether to take court proceedings to condemn property as forfeited

- (1) Where a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraph 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.
- (2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

9 Return of property if no forfeiture proceedings

- (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides —
 - (a) not to take proceedings for condemnation of the property; or
 - (b) not to take proceedings for condemnation of a part of the property.
- (2) The relevant officer must return the property or part to the person who appears to the officer to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.
- (3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

10 Forfeiture proceedings

- (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it (“the relevant property”).
- (2) The court must condemn the relevant property if it is satisfied —
 - (a) that the relevant property is forfeitable property; and
 - (b) that no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

This is subject to sub-paragraphs (5) and (7).

- (3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

- (4) If the court is satisfied —
- (a) that the relevant property is forfeitable property; and
 - (b) that a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,
- the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.
- (5) Where the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.
- (6) For this purpose a part of any property is a “separable part” of the property if —
- (a) it can be separated from the remainder of that property; and
 - (b) where a person has a legitimate reason for possessing the remainder of that property or any part of it, the separation will not prejudice the remainder or part.
- (7) Where the court is satisfied —
- (a) that a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property; and
 - (b) that, although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property,
- the court may order the return of that part to that person.
- (8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

11 Supplementary orders

- (1) Where the court condemns property under paragraph 10(2) —
- (a) it may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate; and
 - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (2) A court order under paragraph 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.
- (3) Where the court makes an order under paragraph 10(7) for the return of a part of the relevant property —

- (a) it may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part; and
 - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (4) For the purposes of this paragraph, “**specified**” means specified in, or determined in accordance with, the court order.

12 Supplementary provision about forfeiture proceedings

- (1) Proceedings by virtue of this Schedule are civil proceedings and may be commenced in a court of summary jurisdiction.
- (2) Either party may appeal against the decision of a court of summary jurisdiction to the Staff of Government Division.
- (3) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- (4) Where an appeal has been made (whether by case stated or otherwise) against the decision of a court of summary jurisdiction in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a constable pending the final determination of the matter.

12 Effect of forfeiture

Where property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

13 Disposal of property which is not returned

- (1) This paragraph applies where any property is required to be returned to a person under this Schedule.
- (2) If —
 - (a) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose; and
 - (b) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,the relevant officer may dispose of it in any manner the officer thinks fit.
- (3) This paragraph applies where any property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 10(2) (return of property conditional on payment of costs within specified period).

- (4) The relevant officer may dispose of the property in any manner the officer thinks fit.

14 Provisions as to proof

- (1) In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- (2) In proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either —
 - (a) the order of condemnation; or
 - (b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

15 Saving for owner's rights

Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects —

- (a) the rights in relation to that property, or any part of it, of any other person; or
- (b) the right of any other person to enforce his or her rights against the person to whom it is returned.

SCHEDULE 3**SEXUAL OFFENCES FOR THE PURPOSES OF PART 10**

[Sections 151, 152, 153, 164, 166, 169, 173, 177, 178, 181, 182, 204 and 206]

Offences under the Sexual Offences Act 1992

- 1 An offence under section 1 of the *Sexual Offences Act 1992* (rape).
- 2 An offence under section 4(1) of that Act (intercourse with young person - under 13).
- 3 An offence under section 4(2) of that Act (intercourse with young person - under 16), if the offender was 20 or over.
- 4 An offence under section 7 of that Act (incest), if the victim or (as the case may be) other party was under 18.
- 5 An offence under section 8 of that Act (incitement to commit incest).
- 6 An offence under section 9 of that Act (unnatural offences) if —
 - (a) the offender was 20 or over; and
 - (b) the victim or (as the case may be) other party was under 18.
- 7 An offence under section 9A of that Act (abuse of position of trust), if the offender was 20 or over.
- 8 An offence under section 13 of that Act (indecent assault) if —
 - (a) the victim or (as the case may be) other party was under 18; or
 - (b) the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to a term of custody of at least 30 months; or
 - (ii) admitted to a hospital subject to a restriction order.
- 9 An offence under section 11 of that Act (assault with intent to commit buggery), if the victim or (as the case may be) other party was under 18.
- 10 An offence under section 14 of that Act (indecentcy with children).
- 11 An offence under section 17 of that Act (causing prostitution).

Offences under other Acts

- 12 An offence under section 3 of *Criminal Justice Act 2001* (indecent photographs of children), if the indecent photographs or pseudo-photographs showed persons under 16 and —

- (a) the conviction, finding or caution was before the commencement of Part 10 ; or
- (b) the offender —
 - (i) was 18 or over; or
 - (ii) is sentenced in respect of the offence to a term of custody of at least 12 months.

13 An offence under section 178 of the *Customs and Excise Management Act 1986* (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be sent under section 14 of the *Post Office Act 1993* (prohibition on sending certain articles), if the prohibited goods included an indecent photograph, pseudo-photograph or prohibited image of persons under 16 and —

- (a) the conviction, finding or caution was before the commencement of Part 10; or
- (b) the offender —
 - (i) was 18 or over; or
 - (ii) is sentenced in respect of the offence to a term of custody for at least 12 months.

Offences under this Act

14 An offence under section 4 or 5 of this Act (rape, assault by penetration).

15 An offence under section 6 of this Act (sexual assault) if —

- (a) where the offender was under 18, he or she is or has been sentenced, in respect of the offence, to a term of custody of at least 12 months;
- (b) in any other case —
 - (i) the victim was under 18; or
 - (ii) the offender, in respect of the offence or finding, is or has been —
 - (A) sentenced to a term of custody; or
 - (B) detained in a hospital.

16 An offence under any of sections 7 to 9 of this Act (causing sexual activity without consent, rape of a child under 13, assault of a child under 13 by penetration).

17 An offence under section 10 of this Act (sexual assault of a child under 13) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to term of custody of at least 12 months.

18 An offence under any of sections 11 to 15 of this Act (causing or inciting a child under 13 to engage in sexual activity, child sex offences committed by adults).

19 An offence under section 16 of this Act (child sex offences committed by children or young persons), if the offender is or has been sentenced, in respect of the offence, to a term of custody of at least 12 months.

20 An offence under section 17 of this Act (arranging or facilitating the commission of a child sex offence) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced, in respect of the offence, to a term of custody of at least 12 months.

21 An offence under section 18 of this Act (meeting a child following sexual grooming etc).

22 An offence under section 19 of this Act (sexual communication with a child).

23 An offence under any of sections 20 to 23 of this Act (abuse of a position of trust) if the offender, in respect of the offence, is or has been —

- (a) sentenced to a term of custody;
- (b) detained in a hospital; or
- (c) made the subject of a community sentence of at least 12 months.

24 An offence under section 28 or 29 of this Act (familial child sex offences) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to a term of custody of at least 12 months.

25 An offence under any of sections 34 to 41 of this Act (offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).

26 An offence under any of sections 43 to 46 of this Act (care workers for persons with mental disorder) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been —
 - (A) sentenced to a term of custody; or
 - (B) detained in a hospital.

27 An offence under section 49 of this Act (paying for sexual services of a child) if the victim or (as the case may be) other party was under 16, and the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to a term of custody of at least 12 months.

28 An offence under section 50 of this Act (causing or inciting sexual exploitation of a child) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to a term of custody of at least 12 months.

29 An offence under section 51 of this Act (controlling a child in relation to sexual exploitation) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to a term of custody of at least 12 months.

30 An offence under section 52 of this Act (arranging or facilitating sexual exploitation of a child) if the offender —

- (a) was 18 or over; or
- (b) is or has been sentenced in respect of the offence to a term of custody of at least 12 months.

31 An offence under section 66 of this Act (administering a substance with intent).

32 An offence under section 67 or 68 of this Act (committing an offence or trespassing, with intent to commit a sexual offence) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case —
 - (i) the intended offence was an offence against a person under 18; or
 - (ii) the offender, in respect of the offence or finding, is or has been —
 - (A) sentenced to a term of custody; or
 - (B) detained in a hospital.

33 An offence under section 69 or 70 of this Act (sex with an adult relative) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to a term of custody; or

- (ii) detained in a hospital.

34 An offence under section 82 of this Act (exposure) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case —
 - (i) the victim was under 18; or
 - (ii) the offender, in respect of the offence or finding, is or has been —
 - (A) sentenced to a term of custody; or
 - (B) detained in a hospital.

35 An offence under section 83 or 84 of this Act (intercourse with an animal, sexual penetration of a corpse) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to a term of custody; or
 - (ii) detained in a hospital.

36 An offence under section 71 or 72 of this Act (possession of indecent photographs or prohibited images of children) if the offender —

- (a) was 18 or over; and
- (b) is sentenced in respect of the offence to a term of custody of at least 2 years.

37 An offence under section 100 of this Act (possession of extreme pornographic images) if the offender —

- (a) was 18 or over; and
- (b) is sentenced in respect of the offence to a term of custody of at least 2 years.

38 An offence under section 111 of this Act (voyeurism) if —

- (a) where the offender was under 18, he or she is or has been sentenced in respect of the offence to a term of custody of at least 12 months;
- (b) in any other case, the offender, in respect of the offence or finding, is or has been —
 - (i) sentenced to a term of custody; or
 - (ii) detained in a hospital.

39 **Interpretation**

In this Schedule, “**admitted to hospital**” and “**detained in hospital**” have the meanings given in section 208.

Provisional consolidation for reference purpose only

SCHEDULE 4

[Sections 166, 181 and 204]

OTHER OFFENCES FOR PURPOSES OF PART 10

- 1 Murder under section 18 of the *Criminal Code 1872* (murder).
- 2 An offence under section 19 of that Act (conspiring or soliciting to commit murder).
- 3 Manslaughter under section 20 of that Act (manslaughter).
- 4 An offence under section 31 of that Act (threats to kill or cause serious injury).
- 5 An offence under section 33 of that Act (shooting or wounding with intent to do grievous bodily harm).
- 6 An offence under section 35 of that Act (inflicting bodily injury, with or without weapon).
- 7 An offence under section 36 of that Act (attempting to choke, etc, in order to commit any indictable offence).
- 8 An offence under section 37 of that Act (using chloroform, etc to commit any indictable offence).
- 9 An offence under section 38 of that Act (maliciously administering poison, etc, so as to endanger life, or inflict grievous bodily harm).
- 10 An offence under section 42 of that Act (exposing children whereby life is endangered).
- 11 An offence under section 43 of that Act (causing bodily injury by explosive).
- 12 An offence under section 44 of that Act (causing gunpowder to explode, or sending explosive, or throwing corrosive fluid, with intent to do grievous bodily harm).
- 13 An offence under section 45 of that Act (placing explosive near a building with intent to do bodily injury).
- 14 An offence under section 46 of that Act (setting spring guns, etc, with intent to inflict grievous bodily harm).
- 15 An offence under section 47 of that Act (doing or omitting anything to endanger passengers by railway).
- 16 An offence under section 50 of that Act (assaulting a magistrate, etc, on account of his preserving wreck).

- 17 An offence under section 51 of that Act (assault with intent to commit felony, or on peace officers, etc).
- 18 An offence under section 60 of that Act (assault occasioning bodily harm).
- 19 Unlawful detention under section 60B of that Act (unlawful detention).
- 20 Kidnapping under section 60C of that Act (kidnapping).
- 21 An offence under section 60D of that Act (hostage-taking).
- 22 An offence under section 332 of that Act (riot).
- 23 An offence under section 342 of that Act (endangering public personal safety).
- 24 Outraging public decency under section 347 of that Act (other offences not specified).
- 25 An offence under section 63(15) or (15A) of the *Petty Sessions and Summary Jurisdiction Act 1927* (nuisances on public roads - indecent behaviour).
- 26 An offence under section 66(4) of that Act (rules of the road –furious driving).
- 27 An offence under section 2 of the *Explosive Substances Act 1883* (causing explosion likely to endanger life or property).
- 28 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
- 29 An offence under section 2 of the *Infanticide and Infant Life (Preservation) Act 1938* (conviction for infanticide in certain cases).
- 30 An offence under section 3 of that Act (punishment for child destruction).
- 31 An offence under section 1 of the *Children and Young Persons Act 1966* (cruelty to persons under sixteen).
- 32 An offence under section 22 of the *Firearms Act 1947* (penalty for possessing firearms with intent to injure).
- 33 An offence under section 23(1) of that Act (penalty for use and possession of firearms or imitation firearms in certain cases - to resist arrest).
- 34 An offence under section 23(2) of that Act (penalty for use and possession of firearms or imitation firearms in certain cases - possession of firearm at time of committing or being arrested for offence specified in Schedule 3 to that Act).
- 35 An offence under section 23A of that Act (possession of firearm with intent to cause fear of violence).

- 36 An offence under section 1 of the *Firearms Act 1968* (carrying firearms with intent to commit a serious offence or resist or prevent arrest).
- 37 An offence under section 1 of the *Theft Act 1981* (basic definition theft).
- 38 An offence under section 8 of that Act (robbery).
- 39 An offence under section 9(1) of that Act (burglary).
- 40 An offence under section 10 of that Act (aggravated burglary).
- 41 An offence under section 1(1) or (2) of the *Criminal Damage Act 1981* (destroying or damaging property) other than an offence of arson.
- 42 An offence of arson under section 1(3) of that Act (destroying or damaging property).
- 43 An offence under section 1 of the *Aviation Security Act 1982*²¹ (of Parliament, as applied to the Island)(hijacking).
- 44 An offence under section 2 of that Act (as applied to the Island) (destroying, damaging or endangering safety of aircraft).
- 45 An offence under section 3 of that Act (as applied to the Island) (other acts endangering or likely to endanger safety of aircraft).
- 46 An offence under section 4 of that Act (as applied to the Island) (offences in relation to certain dangerous articles).
- 47 An offence under section 123 of the *Mental Health Act 1998* (ill-treatment of patients).
- 48 An offence under section 50 of the *Child Custody Act 1987* (offence of abduction of child by parent etc).
- 49 An offence under section 51 of that Act (abduction of child by other persons).
- 50 An offence under section 4 of the *Prohibition of Female Genital Mutilation Act 2010* (offence of female genital mutilation).
- 51 An offence under section 1 of the *Public Order Act 1998* (affray).
- 52 An offence under section 134 of the *Criminal Justice Act 1988*²² (of Parliament) as extended to the Island (torture).

²¹ 1982 c.36

²² 1988 c.33

- 53 An offence under section 1 of the *Road Traffic Act 1985* (causing death by dangerous driving).
- 54 An offence under section 3A of that Act (causing death by careless driving when under influence of drink or drugs).
- 55 An offence under section 1 of the *Aviation and Maritime Security Act 1990*²³ (of Parliament, as applied to the Island) (endangering safety at aerodromes).
- 56 An offence under section 10 of that Act (as applied to the Island) (seizing or exercising control of fixed platforms).
- 57 An offence under section 11 of that Act (as applied to the Island) (destroying fixed platforms or endangering their safety).
- 58 An offence under section 12 of that Act (as applied to the Island) (other acts endangering or likely to endanger safe navigation).
- 59 An offence under section 13 of that Act (as applied to the Island) (offences involving threats).
- 60 An offence under section 1 of the *Maritime Security Act 1995* (hijacking of ships).
- 61 An offence under section 2 of the *Protection from Harassment Act 2000* (offence of harassment).
- 62 An offence under section 4 of that Act (putting people in fear of violence).
- 63 An offence under section 14 of the *Post Office Act 1993* (prohibition on sending certain articles).
- 64 An offence under section 45 or 46 of the *International Criminal Court Act 2003* (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.
- 65 An offence under section 28 of the *Telecommunications Act 1984* (improper use of public telecommunication system).
- 66 An offence under section 49 of this Act, where the victim or (as the case may be) other party was 16 or over.
- 67 An offence under any of sections 54 to 56 of this Act.
- 68 An offence under section 4 of the *Organised and International Crime Act 2010* (trafficking in persons).

²³ 1990 c.31

69 An offence under section 42 of the *Armed Forces Act 2006*²⁴ (of Parliament) as extended to the Island, as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence listed in any of paragraphs 1 to 68.

70 Section 48 of that Act (attempts, encouragement and assistance and aiding and abetting outside England and Wales) applies for the purposes of this paragraph as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to this paragraph.

General

71 Reference in a preceding paragraph to an offence includes —

- (a) a reference to an attempt, conspiracy or incitement to commit that offence; and
- (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.

72 Reference in a preceding paragraph to a person's age is a reference to his or her age at the time of the offence.

²⁴ 2006 c.52 (as extended under section 384)

SCHEDULE 5

[Section 231]

MINOR AND CONSEQUENTIAL AMENDMENTS

1 Vagrancy Act 1896 amended

- (1) The *Vagrancy Act 1896* is amended as follows.
- (2) [Repealed subsections (2) and (4) of section 2]

2 Charitable Collections (Regulation) Act 1939 amended

- (1) The *Charitable Collections (Regulation) Act 1939* is amended as follows.
- (2) In section 4(3)(d) —
 - (a) [Substituted sub-paragraph (v)]
 - (b) [Substituted sub-paragraph (vi)]

3 Firearms Act 1947 amended

- (1) The *Firearms Act 1947* is amended as follows.
- (2) [Substituted paragraph 7 of the Third Schedule and the cross heading immediately preceding it]

4 Children and Young Persons Act 1966 amended

- (1) The *Children and Young Persons Act 1966* is amended as follows.
- (2) [Amended the First Schedule]

5 Theft Act 1981 amended

- (1) The *Theft Act 1981* is amended as follows.
- (2) [Amended section 9(2)]

6 Adoption Act 1984 amended

- (1) The *Adoption Act 1984* is amended as follows.
- (2) [Amended section 35(1)]

7 Fines Act 1986 amended

- (1) The *Fines Act 1986* is amended as follows.
- (2) Omit the entry in Schedule 1 which relates to section 3 of the *Children and Young Persons Act 1966*.

8 Legal Aid Act 1986 amended

- (1) The *Legal Aid Act 1986* is amended as follows.
- (2) [Substituted paragraphs 14 and 15 of the table in Schedule 3]

9 Summary Jurisdiction Act 1989 amended

- (1) The *Summary Jurisdiction Act 1989* is amended as follows.
- (2) [Amended section 6(5)]
- (3) [Amended section 19(1)]
- (4) [Substituted section 72(2)(c)]
- (5) [Amended paragraph 4 of Schedule 2]

10 Criminal Justice Act 1991 amended

- (1) The *Criminal Justice Act 1991* is amended as follows.
- (2) In section 15(7) for “an offence under the *Sexual Offences Act 1992*”, substitute **an offence under the *Sexual Offences and Obscene Publications Act 2021***.

11 Criminal Jurisdiction Act 1993 amended

- (1) The *Criminal Jurisdiction Act 1993* is amended as follows.
- (2) [Repealed section 22(3)]
- (3) [Amended section 43(1)(b)]

12 Custody Act 1995 amended

- (1) The *Custody Act 1995* is amended as follows.
- (2) [Inserted paragraph 2A(2)(c) of Schedule 2]

13 Licensing Act 1995 amended

- (1) The *Licensing Act 1995* is amended as follows.
- (2) In section 36(3) for “sections 28 to 31 of the *Sexual Offences Act 1992*”, substitute **Division 13 of Part 2 of the *Sexual Offences and Obscene Publications Act 2021* (suppression of brothels)**.

14 Police Powers and Procedures Act 1998 amended

- (1) The *Police Powers and Procedures Act 1998* is amended as follows.
- (2) [Amended section 55]
- (3) In Schedule 1A —

- (a) [Substituted paragraph 1 and the heading to that paragraph]
- (b) [Repealed paragraph 11(2)]
- (c) [Substituted paragraph 17 and the heading to that paragraph]
- (d) [Substituted paragraph 23]
- (4) [Substituted paragraph 1(2)(a) of Schedule 1B]
- (5) In Schedule 3 —
 - (a) [Substituted paragraph 6 and the cross heading immediately preceding it]
 - (b) [Substituted paragraphs 13 to 16 and the cross heading immediately preceding paragraph 13]

15 Children and Young Persons Act 2001 amended

- (1) The *Children and Young Persons Act 2001* is amended as follows.
- (2) [Amended section 76(14)(b)]
- (3) [Inserted paragraph 9 and 10 of Schedule 8]

16 Criminal Justice Act 2001 amended

- (1) The *Criminal Justice Act 2001* is amended as follows.
- (2) [Substituted definition of “sexual offence” in section 38(5)]
- (3) [Amended paragraphs 1(1)(e) and 6(3) of Schedule 8]

17 International Criminal Court Act 2003 amended

- (1) The *International Criminal Court Act 2003* is amended as follows.
- (2) [Inserted section 49(1)(ab)]

18 Proceeds of Crime Act 2008 amended

- (1) The *Proceeds of Crime Act 2008* is amended as follows.
- (2) [Amended paragraph 8 of Schedule 3]

19 Criminal Justice (Witness Anonymity) Act 2011 amended

[Amended section 3 of the *Criminal Justice (Witness Anonymity) Act 2011* and the heading to that section]

20 Regulation of Care Act 2013 amended

- (1) The *Regulation of Care Act 2013* is amended as follows.
- (2) [Amended section 44(1)(c)]

(3) [Inserted section 44(3)(fa)]

Provisional consolidation for reference purpose only

SCHEDULE 6

[Section 232]

REPEALS

- (1) [Repealed the following Acts in whole —
 - (a) the *Obscene Publications and Indecent Advertisements Act 1907*;
 - (b) the *Sexual Offences Act 1992*; and
 - (c) the *Sex Offenders Act 2006*.]
- (2) [Repealed sections 1 to 3 of, and Schedules 1 to 3 to, the *Criminal Justice Act 2001*]
- (3) [Repealed section 298(5) of the *Local Government Consolidation Act 1916*]
- (4) [Repealed section 3 of the *Children and Young Persons Act 1966*]

ENDNOTES

Table of Endnote References

¹ ADO – Part 11 (sections 211 to 225) in operation 29/06/2022 [SD2022/0193].

Remainder of Act, except section 87 and paragraph 13 of Schedule 5, in operation 25/03/2024 [SD 2024/0108], subject to transitional and savings provisions [see section 233 and SD2024/0108].

Provisional consolidation for reference purpose only