



# SEXUAL OFFENCES AND OBSCENE PUBLICATIONS BILL 2019

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# SEXUAL OFFENCES AND OBSCENE PUBLICATIONS BILL 2019

A **BILL** to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts; 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 2019.

### 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.
- (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).

## 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 shall not be taken to be incapable of rape by reason only of being under the age of 14 years.
- (4) 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.
- (5) Sections 91 and 92 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 91 and 92 apply to an offence under this section.  
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 91 and 92 apply to an offence under this section.  
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 91 and 92 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) 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) — 14 years' custody.

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.

### 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) 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) — 14 years' custody.

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.

### 14 **Engaging in sexual activity in the presence of a child**

P2003/42/11

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.

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

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.

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) 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) 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) — 2 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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 evolution of the relationship; and
  - (e) the degree of control or influence by A over B.

## 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.

## DIVISION 7 - FAMILIAL CHILD SEX OFFENCES

## 27 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 29;
  - (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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 the other person was of a description falling within section 29, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant's relation to the other person 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.

**28 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 29;
  - (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 the other person was under 18, the defendant is to be taken not to have reasonably believed that that person 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 the other person was of a description falling within section 29, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant's relation to the other person 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.

## 29 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.

**30 Sections 27 and 28: exception for spouses and civil partners**

P2003/42/28

- (1) Conduct by a person (A) which would otherwise be an offence under section 27 or 28 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.

**31 Sections 27 and 28: sexual relationships which pre-date family relationships**

P2003/42/29

- (1) Conduct by a person (A) which would otherwise be an offence under section 27 or 28 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 29;
  - (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 29, 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 27 or 28 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

**32 Sections 27 and 28: 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 27 or 28 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 27 and 28 come into operation, living as partners in an enduring family relationship.
- (2) 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

### 33 **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.

**34 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.

**35 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.

**36 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

### 37 **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.

**38 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.

**39 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.

**40 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**

**41 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 45.
- (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.

## 42 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 45.
- (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.

#### 43 **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 45.
- (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.

#### 44 **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 45.
- (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.

#### 45 **Care workers: interpretation**

P2003/42/42 and drafting

- (1) For the purposes of sections 41 to 44, 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 in 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*.

**46 Sections 41 to 44: 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 41 to 44 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.

**47 Sections 41 to 44: 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 41 to 44 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 45, 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 41 to 44 it is for the defendant to prove that such a relationship existed at that time.

## DIVISION 11 - SEXUAL EXPLOITATION OF CHILDREN

**48 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) 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.
- (3) This subsection applies to an offence under this section against a person under 13, where subsection (6) applies.
- (4) Unless subsection (3) applies, this subsection applies to an offence under this section against a person under 16.
- (5) This subsection applies unless subsection (3) or (4) applies.
- (6) 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 (3) applies — (on information) — custody for life.

Maximum penalty for an offence to which subsection (4) does not apply —

- (a) where subsection (6) applies — (on information) — 14 years' custody;
- (b) unless subsection (6) 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 (5) applies —

- (a) where subsection (6) applies — (on information) — 14 years' custody;
- (b) unless subsection (6) applies) —
  - (i) (on information) — 7 years' custody;
  - (ii) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

#### 49 **Causing or inciting sexual exploitation of a child**

P2003/42/48 and drafting

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.

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.

#### 50 **Controlling a child in relation to sexual exploitation**

P2003/42/49 and drafting

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.

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 **Arranging or facilitating sexual exploitation of a child**

P2003/42/50 and drafting

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.

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 Sections 49 to 51: interpretation

P2003/42/51

- (1) For the purposes of sections 49 to 51, 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;
 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

## 53 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.

#### 54 **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.

#### 55 **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.

## 56 **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.

## 57 **Sections 53 to 56 : interpretation**

P2003/42/54 and drafting

- (1) In sections 54, 55 and 56, “**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 53, 54, 55 and 56, “**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 56, “**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

#### 58 **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 “prostitute” has the meaning given in section 57.  
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.

#### 59 **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 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.

#### 60 **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 63 (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) of this subsection 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 63.

- (4) A conviction of an offence punishable under section 59 or 61, or under section 27, 28 or 29 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 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 59 or 60, or under section 27, 28 or 29 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 Sections 58 to 61: 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 a premises is used by a person for purposes of prostitution; and
  - (b) that another person residing in or frequenting the premises is living wholly or in part on his or her earnings,the justice may issue a warrant authorising a constable to enter and search the house and to arrest that other person.
- (2) Where it is made to appear by complaint on oath before a justice by a parent, relative or guardian of any person (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*.

**63 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”), 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.

**64 Allowing persons under 16 to be in brothels**

IOM1966/5/3 and drafting

A person commits an offence if the person has responsibility for a child or young person of between 4 and 16 years and allows that child or young person to reside in or to frequent a brothel.

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

**DIVISION 14 - PREPARATORY OFFENCES****65 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.

**66 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.

**67 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 66;

“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

68 **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 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) —
- (a) “parent” includes an adoptive parent;
  - (b) “child” includes an adopted person within the meaning of Part 3 of the *Adoption Act 1984*;
  - (c) “uncle” means the brother of a person's parent, and “aunt” has a corresponding meaning;
  - (d) “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)(b), 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 the other person 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 subsection (3)(a) and (b) above.

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.

## 69 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 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) —
  - (a) “parent” includes an adoptive parent;
  - (b) “child” includes an adopted person within the meaning of Part 3 of the *Adoption Act 1984*;
  - (c) “uncle” means the brother of a person's parent, and “aunt” has a corresponding meaning;
  - (d) “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)(b), 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 the other person 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 subsection (3)(a) and (b) above.

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

### 70 **Indecent photographs of children**

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

- (1) Subject to sections 73 and 74, 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) For purposes of this section, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he or she parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (3) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Attorney General.
- (4) 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.
- (5) 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 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.

## 71 Possession of prohibited images of children

P2009/25/62&66 and drafting

- (1) Subject to sections 73 and 74, 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.
- (8) For the purposes of subsection (7), penetration is a continuing act from entry to withdrawal.
- (9) Proceedings for an offence under subsection (1) may not be instituted except by or with the consent of the Attorney General.

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.

## **72 Exclusion of classified film**

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

- (1) Section 71 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 71(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 71 (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*<sup>1</sup> (of Parliament) ;

“extract” includes an extract consisting of a single image;

“pornographic” has the same meaning as in section 71;

“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.

## 73 **Marriage and other relationships**

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

- (1) This section applies where, in proceedings for an offence under section 70(1)(a) to (e) or section 71(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.
- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 70(1)(c) or (d) or section 71(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.

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<sup>1</sup> 1984 c.39

- (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 70(1)(a) and (b) or section 71(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 70(1)(c) or section 71(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 70(1)(d) or section 71(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.

## 74 **Exception for criminal proceedings, investigations etc**

P1978/37/1B and drafting

In proceedings for an offence under section 70(1)(b) or section 71(1)(b) of making an indecent photograph, pseudo-photograph or prohibited image of a child, the defendant is not guilty of 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 or pseudo-photograph for the exercise of any of the functions of the Constabulary.

**75 Defences**

P2009/25/64 & drafting

- (1) Where a person is charged with an offence under section 70(1) or 71(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 image concerned;
  - (b) that the person had not seen the photograph, pseudo-photograph or 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 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 71.

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

P1978/37/2 and drafting

In proceedings under section 70 and 71 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.

**77 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*.

**78 Special rules relating to providers of information society services**

P2009/25/68

Schedule 1 makes special provision in connection with the operation of section 70 and 71 in relation to persons providing information society services within the meaning of that Schedule.

**79 Forfeiture**

P1978/37/5 and drafting

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

**80 Sections 70 to 79: Interpretation**

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

- (1) The following subsections apply for the interpretation of sections 70 to 79.
- (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.
- “Prohibited image” has the meaning given in section 71.
- (11) “Image” includes —
- (a) a moving or still image (produced by any means); or
  - (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).
- (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.

## 81 **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 prepared by the Sentencing Council under section 120 of the Coroners and Justice Act



2009<sup>2</sup> (of Parliament) in so far as they relate to indecent photographs, pseudo-photographs or prohibited images of children.

- (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.

## 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 a living 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 a living animal; and

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<sup>2</sup> 2009 c.25

- (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 lavatory causing harassment, alarm or distress**

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

- (1) A person (A) is guilty of an offence if A engages in a sexual activity in a lavatory 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 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.
- (3) 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) — 12 months' custody, or a fine of level 5 on the standard scale or both.

**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&amp;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, they discover 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) any other prescribed position;
  - (b) a "regulated activity" means any prescribed activity; and
  - (c) "prescribed" means prescribed in regulations made 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 the Chief 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 —
  - (a) if the person making the notification has reason to believe that another person in a regulated profession has previously made a child sexual abuse notification in connection with the same act of sexual abuse; or
  - (b) 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 this section to add, remove, or otherwise alter the descriptions of persons regarded as working in a “regulated profession” or working with children in a “regulated activity”, and for the purposes of making 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 appointed by the Department of Education, Sport and Culture in accordance with section 6 of the *Education Act 2001* or a person performing an equivalent function or role.
- (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.

## DIVISION 18 - OFFENCES OUTSIDE THE ISLAND

**88 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, 27 and 28, 33 to 44, 48 to 51, 65 to 67, 70 and 71.
- (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;
  - (b) a resident of the Island means an individual who is ordinarily resident in the Island.

## DIVISION 19 - SUPPLEMENTARY AND GENERAL

**89 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 which would be an offence under section 12 if the offender were aged 18 or over;
  - (d) an offence under any of sections 20, 27, 33, 37 and 41 (sexual activity) against a person under 16.
- (3) 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.

## 90 **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.

## 91 **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.

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.

## 92 **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.

### 93 Sections 91 and 92: relevant acts

P2003/42/77

In relation to an offence to which sections 91 and 92 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.

### 94 “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.

### 95 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**” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.
- (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

#### 96 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 shall be guilty of 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) above, “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) above 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 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 section 8 and 14 of that Act is not required to be so licensed; or
  - (ii) which is an exhibition to which section 9 of that Act applies given by an exempted exhibitions as defined in that section.
- (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.

## 97 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.

## 98 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 96, 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 issued under subsection (1).
- (4) The Department must arrange for any code of conduct issued or revised under this section to be published in such manner as the Department considers appropriate.

# PART 4 — EXTREME PORNOGRAPHIC IMAGES

## 99 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 103);
  - (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) In this section, an “image” is —
- (a) a moving or still image (made by any means), or
  - (b) data (stored by any means) which is capable of conversion into such an image.
- (9) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney General.
- (10) This subsection applies if the offence relates to an image that portrays any relevant act (with or without other acts).
- (11) This subsection applies if the offence relates to an image that does not portray any relevant act.
- (12) In this section “relevant act” means an act within subsection (6)(a) to (c).
- Maximum penalty where subsection (10) 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 (11) 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.

## 100 **Extreme pornography: excluded images**

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

- (1) An offence is not committed under section 99 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*<sup>3</sup> ( of Parliament);
  - “extract” includes an extract of a single image;
  - “image” is to be construed in accordance with section 99;
  - “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.

## 101 Defences: general

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

- (1) Where a person (A) is charged with an offence under section 99, it is a defence for A to prove —
  - (a) that —
    - (i) A directly participated in the act depicted; and
    - (ii) subsection (2) applies; and
  - (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

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<sup>3</sup> 1984 c.39

- 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 99.

## 102 **Special rules relating to providers of information society services**

P2008/4/68

Schedule 1 makes special provision in connection with the operation of section 99 in relation to persons providing information society services within the meaning of that Schedule.

## **PART 5 – OBSCENE PUBLICATIONS AND INDECENT ADVERTISEMENTS**

### 103 **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.

- (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*.

## 104 **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 105 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 109 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.



**105 Prohibition of publication of obscene matter**

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 (7).
- (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) Proceedings for an offence under this section must not be instituted except by or with the consent of the Attorney General in any case where the article in question is a moving picture film of a width of not less than 16 millimetres and the relevant publication or the only other publication which followed or could reasonably have been expected to follow from the relevant publication took place or (as the case may be) was to take place in the course of an exhibition of a film; and in this subsection “the relevant publication” means —
  - (a) in the case of any proceedings under subsection (1)(a), the publication in respect of which the defendant would be charged if the proceedings were brought; and
  - (b) in the case of any proceedings under subsection (1)(b) for having an obscene article for publication for gain, the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.
- (5) 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 against 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.
- (6) 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..
- (7) In this section, “exhibition of a film” has the meaning given in section 96.  
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.

## 106 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 against section 105, and an order for forfeiture shall not be made under section 109, 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 against section 105 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 109,  
  
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.

**107 Penalty for printing, selling etc indecent or obscene publications**

IOM/1907/2/2 and drafting

A person who —

- (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, is guilty of an offence.

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.

**108 Classified video recordings**

IOM1907/2/2A

- (1) A person shall not be guilty of an offence under section 107 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.

**109 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) In a case where by virtue of section 105(4) proceedings under that section for having an article for publication, sale, distribution or exhibition for gain could not be instituted except by or with the consent of the Attorney General, no order for the forfeiture of the article shall be made under this section unless the warrant under which the article was seized was issued on a complaint laid by or on behalf of the Attorney General.

This subsection is subject to subsection (7).

- (7) Where articles are seized under this section and a person is convicted under section 105(1)(b), the court on the person's conviction shall order the forfeiture of those articles.
- (8) An order under subsection (7) 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 instituted or, where such an appeal is duly instituted, 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 institution 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 instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.
- (9) 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.

- (10) Subject to subsections (7) and (8) 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 Court of General Gaol Delivery, and no such order shall take effect until the expiration of the period within which notice of appeal to the Court of General Gaol Delivery 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.
- (11) 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.
- (12) 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.
- (13) In this section —
  - (a) “premises” includes a vehicle or stall; and
  - (b) 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

### 110 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 doing a private act; and
  - (b) A knows that the other person 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 another person to observe, for the purpose of obtaining sexual gratification, a third person (B) doing a private act; and
  - (b) A knows that B does not consent to his or her operating equipment with that intention.
- (3) A person (A) commits an offence if —
  - (a) A records another person (B) doing a private act;
  - (b) A does so with the intention that A or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and
  - (c) A knows that B does not consent to his or her recording the act with that intention.
- (4) 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) — 2 years' custody;
  - (b) (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.

## 111 **Voyeurism: interpretation**

P2003/42/68

- (1) For the purposes of section 110, a person is doing 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 doing a sexual act that is not of a kind ordinarily done in public.
- (2) In section 110, “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

## 112 **Record intimate image without consent**

NSW2017/29/91P and drafting

- (1) A person who intentionally records an intimate image of another person —
  - (a) without the consent of the person; and
  - (b) knowing the person did not consent to the recording or being reckless as to whether the person consented to the recording,

is guilty of 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.

- (2) A prosecution of a person under 16 for an offence against this section is not to be commenced without the approval of the Attorney General.

### 113 **Distribute intimate image without consent**

NSW2017/29/91Q and drafting

- (1) A person who intentionally distributes an intimate image of another person —

- (a) without the consent of the person; and
- (b) knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution,

is guilty of 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.

- (2) A prosecution of a person under 16 for an offence against this section is not to be commenced without the approval of the Attorney General.

### 114 **Threaten to record or distribute intimate image**

NSW2017/29/91R and drafting

- (1) A person who threatens to record an intimate image of another person —

- (a) without the consent of the other person; and
- (b) intending to cause that other person to fear that the threat will be carried out,

is guilty of an offence.

- (2) A person who threatens to distribute an intimate image of another person —

- (a) without the consent of the other person; and
- (b) intending to cause that other person to fear that the threat will be carried out,

is guilty of an offence.

- (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 against 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.
- (6) A prosecution of a person under 16 for an offence against this section is not to be commenced without the approval of the Attorney General.

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 Court may order rectification

NSW2017/29/91S

- (1) A court that finds a person guilty of an offence against section 112 or 113 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 person who, without reasonable excuse, contravenes an order made under this section is guilty of an offence.

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

## 116 Exceptions

NSW2017/29/91S and drafting

- (1) A person does not commit an offence against section 112 or 113 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 or the United Kingdom.

## 117 Meaning of consent in intimate image offences

NSW2017/29/91O and drafting

- (1) This section applies to all offences under sections 112 to 115.
- (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.

**118 Sections 112 to 117: Interpretation**

NSW2017/29/91N and drafting

(1) In sections 112 to 117 —

**“distribute”** includes —

- (a) send, supply, exhibit, transmit or communicate to another person;  
or
- (b) make available for viewing or access by another person,  
whether in person or by electronic, digital or any other means.

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

(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****119 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 49 of this Act committed by causing or inciting a child to be sexually exploited within the meaning given by section 52(1)(a);

- (b) an offence under section 50 of this Act committed by controlling the activities of a child in relation to sexual exploitation within the meaning given by section 52(1)(a);
  - (c) an offence under section 51 of this Act committed by arranging or facilitating the sexual exploitation, within the meaning given by section 52(1)(a), of a child;
  - (d) an offence under section 54 of this Act;
  - (e) an offence under section 55 of this Act.
- (3) The specified pornography offences are —
  - (a) an offence under section 49 of this Act committed by causing or inciting a child to be sexually exploited within the meaning given by section 52(1)(b);
  - (b) an offence under section 50 of this Act committed by controlling the activities of a child in relation to sexual exploitation within the meaning given by section 52(1)(b);
  - (c) an offence under section 51 of this Act committed by arranging or facilitating the sexual exploitation, within the meaning given by section 52(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 27 and 28;
    - (iv) sections 48 to 51;
    - (v) section 70;
  - (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 33 to 44;
    - (iii) section 65;
    - (iv) sections 82 and 110.
  - (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<sup>4</sup> (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.

## 120 **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 123 is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.
- (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

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<sup>4</sup> 2006 c.52 (as extended under section 384)

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.

## **121 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 123 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.

## 122 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 120 or 121 are met;
  - (d) state that an application will be made under section 123 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 123.
- (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 120(7) or 121(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 123.
- (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 124.

## **123 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 122(3)(a).
- (4) A court of summary jurisdiction magistrates' court 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 120(7) or 121(6); and
  - (b) a constable complied with section 122(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.

## 124 **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.

## 125 **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.

## 126 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 122(3) or (4) or 125(2) or (4) commits an offence.
- (5) In this section “authorised person” has the same meaning as in section 125.

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

## 127 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 123(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 122(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.

## 128 Orders extending closure orders

P2003/42/136I

- (1) This section applies where a complaint is made under section 127.
- (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 123(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.

## 129 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 122(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 123 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).

### 130 Appeals

P2003/42/136K and drafting

- (1) An appeal against an order under section 123 or 128, or an appeal against a decision not to make an order under section 129, may be made to the Court of General Gaol Delivery by —
  - (a) a person on whom the closure notice relating to the closed premises was served under section 122(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 123 or 128, or an appeal against an order under section 129, may be made to the Court of General Gaol Delivery 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 court may make such order as it thinks appropriate.

### 131 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 123 or 128; or
  - (b) the Court of General Gaol Delivery in respect of an order made under section 130.
- (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 122(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 124(3) or 128(5).

### 132 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.

### 133 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 the 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 125;
  - (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.

## 134 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 the Court of General Gaol Delivery, if the closure order was made or extended by an order of that court on an appeal under section 130;
  - (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 Court of General Gaol Delivery 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 120 or 121 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.

### 135 **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 125).
- (2) A person discharging a function to which guidance under this section relates must have regard to the guidance in discharging the function.

### 136 **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.

### 137 **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 120 or 121.
- (3) “**A closure order**” means —
  - (a) an order made under section 123;
  - (b) an order extended under section 128;

- (c) an order made or extended under section 130 which has the like effect as an order made or extended under section 123 or 128 (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 119(2)
- (8) **“Specified pornography offence”** means an offence listed in section 119(3).
- (9) **“Specified child sex offence”** means an offence listed in section 119(4).

### 138 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<sup>5</sup> (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 168 and 180(1), **“court”** includes a service court.

<sup>5</sup> 2006 c.52 (as extended under section 384)

- (3) Where the court making a sexual harm prevention order is a service court —
- (a) sections 180(3) to (7), 186 and 190 do not apply;
  - (b) sections 180(1) and (2), 181 to 185 and 187 to 189 apply subject to paragraphs (c) and (d); and
  - (c) in relation to an application under section 183 or 185 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 183 or 185 must be the consent of the defendant and a Provost Martial;
    - (iii) an appeal against the making of an order under section 183 or 185, 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 183 or 185 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 the Court of General Gaol Delivery in the Island;
    - (ii) an appeal against the making of an order under section 183 or 185, 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.

## 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 142.
- (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 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.

## 141 Offences to which this Part 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) burglary to commit rape under section 9(2) of the *Theft Act 1981*;
  - (c) any offence to which Part 2 of this Act applies except section 68, 69, 83, 85 or 87;
  - (d) any offence to which Part 6 of this Act applies;

- (e) any offence under section 4 of the *Organised and International Crime Act 2010*;
  - (f) any attempt to commit any of those offences.
  - (g) any conspiracy to commit any of those offences;
  - (h) 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<sup>6</sup> (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).

## 142 Power to displace section 139 or 140

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 or 140, 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 —

<sup>6</sup> 2006 c.52 (as extended under section 384)

- (a) that the effect of section 139 or 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.
- (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 or 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 complainant so specified.
- (5) A direction given under any provision of this section does not affect the operation of section 139 or 140 at any time before the direction is given.
- (6) In subsections (1) and (2), “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).

## 143 Offences

P1992/34/5 and drafting

- (1) If any matter is included in a publication in contravention of section 139 or 140, the following persons is guilty of 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 or 140 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) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Attorney General.
- (5) 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.
- (6) 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 was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

This section is in addition to section 145 (victims and witnesses of serious crime: disclosure).

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

## 144 Interpretation of sections 139 to 143

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<sup>7</sup> (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.
- (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 141(1)(a) and (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 141(1)(a) and (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) an information is laid, alleging that he or she has committed the offence;
  - (b) he or she appears before a court charged with the offence;

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<sup>7</sup> 2006 c.52 (as extended under section 384)

- (c) a court before which he or she is appearing sends the person to the Court of General Gaol Delivery for trial on a new charge alleging the offence; or
  - (d) a bill of indictment charging him or her with the offence is preferred before a court in which the person may lawfully be indicted for the offence,
- and references in subsection (4) and in section 142 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 142 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.

#### 145 **Victims and witnesses of serious crime: disclosure**

HC Bill 137 and drafting

- (1) The Constabulary, a police officer or a prosecutor employed in the office of the Attorney General may not without the consent of a Deemster disclose the identity of a victim or witness to a serious sexual assault or violent offence to which section 139 or 140 apply, to the person accused of the offence, if —
  - (a) the parties are strangers to one another;
  - (b) non-disclosure would not impact on the completion of a fair trial; and
  - (c) it is reasonable to assume that such a disclosure would put the victim or witness at risk of harm.
- (2) This section applies —
  - (a) to disclosures made at police premises; and
  - (b) whether or not the person accused of the offence has been charged with the offence.

## PART 9 — COMPLAINANT'S HISTORY

### 146 **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.

## 147 Interpretation and application of section 146

P1999/23/42 and drafting

- (1) In section 146 —
  - (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 148.

- (2) The Department may by order make such provision as it considers appropriate for adding or removing, for the purposes of section 146, any offence to or from the offences which are sexual offences for the purposes of this Part by virtue of section 148.
- (3) Section 146 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 146 or this section) to a person charged with an offence accordingly include a person convicted of an offence.

#### 148 **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 or 6 of this Act or any relevant superseded offence; or
  - (b) 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); and
  - (b) an offence of burglary with intent to rape under section 9(2) of the *Theft Act 1981*.
- (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.

#### 149 **Procedure on applications under section 146**

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 146.
- (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 146;
    - (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

#### 150 **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 152 (“**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**”.

#### 151 **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 sentence of imprisonment 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 (d) 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).

## 152 The notification period

P2003/42/82 and drafting

- (1) The notification period for a person within section 150(1) or 151(1) is the period in the second column of the following Table opposite the description that applies to the person.

<b>TABLE</b>	
<b>Description of relevant offender</b>	<b>Notification period</b>
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 150(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 150(1)(a) or 151(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 150(1)(c) or 151(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 150(1)(a) or 151(1)(a), the date of the conviction;
- (b) in the case of a person within section 150(1)(b) or (c) or 151(1)(b) or (c), the date of the finding;
- (c) in the case of a person within section 150(1)(d) or 151(1)(d), the date of the caution..

### 153 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 150(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 151(1) or an order within section 151(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<sup>8</sup> (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008<sup>9</sup>;
- (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.

## 154 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 153(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 153(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 153(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).
- (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

<sup>8</sup> 1971 c.77

<sup>9</sup> SI 680/2008 (as amended)



- (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 153(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 153(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 153(5)(i); and
    - (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.
- (7) In this section, “qualifying period” means —
  - (a) a period of 7 days; or
  - (b) 2 or more periods, in any period of 12 months, which taken together amount to 7 days.

## 155 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 153(5), unless within that period he or she has given a notification under section 153(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 153(1) or 154(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 153(1) or 154(1) or subsection (1) was the address or location of such a place as is mentioned in section 153(8)(b).

#### 156 **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 153(1), 154(1) or 155(1) was an address in the Island such as is mentioned in section 153(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 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 157.
- (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 153(5)(g) notified to the Constabulary under section 153 or 155;
  - (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 153(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.

## 157 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.

## 158 **Method of notification and related matters**

P2003/42/87 and drafting

- (1) A person gives a notification under section 153(1), 154(1) or 155(1) or 156(2) or (6) by —
- (a) attending at the police headquarters; and
  - (b) giving an oral or written notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.
- (2) A person giving a notification under section 154(1) —
- (a) in relation to a prospective change of home address; or
  - (b) in relation to premises referred to in subsection (1)(c) of that section,
- (3) Any notification under this section must be acknowledged; and an acknowledgment under this subsection must be in writing, and in such form as the Department may direct.
- (4) Where a notification is given under section 153(1), 154(1) or 155(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), allow the officer or person to —
- (a) take his or her fingerprints;
  - (b) photograph any part of him or her; or
  - (c) do both these things.
- (5) The power in subsection (4) is exercisable for the purpose of verifying the identity of the relevant offender.
- (6) In this section “photograph” includes any process by means of which an image may be produced.

## 159 **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.

<b>TABLE</b>	
<i>Description of person</i>	<i>Court which may make the direction</i>
A relevant offender within section 150(1)(a) to (c) or 151(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 153 to 157 on the young offender are to be treated instead as obligations on the parent; and
  - (b) the parent must ensure that the young offender attends at the police headquarters with him or her, when a notification is being given.
- (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.

## 160 **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 159(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 the 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 Court of General Gaol Delivery;
  - (b) in any other case, the court that made the direction under section 159(1).

## 161 Offences relating to notification

P2003/42/91

- (1) A person commits an offence if he or she —
  - (a) fails, without reasonable excuse, to comply with section 153(1), 154(1), 153(4)(b), 155(1), 158(4) or 159(2)(b) or any requirement imposed by regulations made under section 157(1); or
  - (b) notifies the Constabulary, in purported compliance with section 153(1), 154(1) or 155(1) or any requirement imposed by regulations made under section 157(1), 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 153(1), 154(1) or 155(1) or a requirement imposed by regulations made under section 157(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.

## 162 Review of indefinite notification requirements: qualifying relevant offender

P2003/42/91A and drafting

- (1) A qualifying relevant offender may apply to the relevant 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 163 to 166, 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 180, or an interim sexual harm prevention order under section 186.
- (3) The “indefinite notification requirements” mean the notification requirements of this Part for an indefinite period by virtue of —
  - (a) section 150(1); or
  - (b) section 151(1); or
  - (c) a notification order made under section 175(5).

### **163 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 165, 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 164 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 164 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 153, 154 or 155 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 custodial sentence of imprisonment 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.

## 164 **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 163(7)(b) may give information under section 163(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 166.
- (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).

**165 Review of indefinite notification requirements: factors applying to determination under section 164**

P2003/42/91D and drafting

- (1) In determining an application for review under section 164, 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 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 151(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 161;
  - (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;
  - (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; and
  - (n) any other matter which the Chief Constable considers to be appropriate.
- (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.

**166 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 164.
- (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.

**167 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 163.
- (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.

**168 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

### 169 **Part 10: supply of information to Department etc for verification**

P2003/42/94 and drafting

- (1) This section applies to information notified to the Constabulary under —
  - (a) section 153, 154 or 155; 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 Department; or
  - (b) a person providing services to the 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 Department, by the 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 “data protection legislation” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>10</sup>;

“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 .

## 170 **Part 10: supply of information by Department etc.**

P2003/42/95 and drafting

- (1) A report compiled under section 169 may be supplied by —
  - (a) the Department; or
  - (b) a person within section 169(2)(b),  
to the Chief Constable.
- (2) Such a report may contain any information held —
  - (a) by the Department in connection with the exercise of a relevant function; or
  - (b) by a person within section 169(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 169 apply in relation to this section as they apply in relation to section 169.

## DIVISION 3 - INFORMATION ABOUT RELEASE OR TRANSFER

## 171 **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

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<sup>10</sup> SD 2018/0145 (as amended)

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.
- (4) In subsection (3), “photograph” is to be construed in accordance with section 158.

#### DIVISION 4 - ENTRY AND EXAMINATION OF HOME ADDRESS: OFFENCES COMMITTED IN A COUNTRY OUTSIDE THE ISLAND

### 172 **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 151(3) (read with sections 151(6) and 204).

- (4) The third condition is that the relevant date set out in section 152 (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 152; 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 173.
- (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 152 —
  - (a) references, except in the Table, to a person (or relevant offender) within any provision of section 150 are to be read as references to P;
  - (b) the reference in the Table to section 150(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 153(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 172”; and
  - (b) in paragraph (a) for the words “the order was made” there were substituted “he or she became a person to whom section 172 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.

**173 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 172(5)(b) are as follows.
- (2) Where P is charged with an offence under section 161(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 172 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 172(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 172, 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

**174 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

### 175 **Notification orders: applications and grounds**

P2003/42/97 and drafting

- (1) The Chief Constable officer of police 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 151(3) (read with sections 151(6) and 204).

- (4) The third condition is that the period set out in section 152 (as modified by subsections (2) and (3) of section 176) 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 176, “**relevant offence**” has the meaning given by section 177.

## 176 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 152.
- (2) The “relevant date” means —
  - (a) in the case of a person within section 175(2)(a), the date of the conviction;
  - (b) in the case of a person within section 175(2)(b) or (c), the date of the finding;
  - (c) in the case of a person within section 175(2)(d), the date of the caution.
- (3) In section 152 —
  - (a) references, except in the Table, to a person (or relevant offender) within any provision of section 150 are to be read as references to the defendant;
  - (b) the reference in the Table to section 150(1)(d) is to be read as a reference to section 175(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 153 and 155, references to the commencement of this Part are to be read as references to the date of service of the notification order.

## 177 Sections 175 and 176: relevant offences

P2003/42/99

- (1) “Relevant offence” in sections 175 and 176 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).

## 178 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.

### 179 **Notification orders and interim notification orders: appeals**

P2003/42/101

A defendant may appeal to the Court of General Gaol Delivery against the making of a notification order or interim notification order.

## DIVISION 7 - SEXUAL HARM PREVENTION ORDERS AND SEXUAL RISK ORDERS

### 180 **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 191(1)).

## 181 Section 180: supplemental

P2003/42/103B

- (1) In section 180 —

“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;

“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;

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

- (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 180, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.
- (6) Subject to subsection (7), on an application under section 180(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 180 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 205(9)); or
  - (b) to the age of any person, is to be disregarded.

## 182 **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 183(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 181(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, that person is to be deemed to have failed to comply with the terms of the licence and the provisions of that Schedule apply.

**183 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 the 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 181.

- (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 182(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 the Court of General Gaol Delivery or the Court of Appeal made the sexual harm prevention order, the 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 185 (SHPOs: variations, renewals and discharges).

## 184 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 183 or 185.
- (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<sup>11</sup> (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008<sup>12</sup>;
  - (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.

## 185 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 the Court of General Gaol Delivery, in accordance with rules of court;
  - (b) in any other case, by complaint.

<sup>11</sup> 1971 c.77

<sup>12</sup> SI 680/2008 (as amended)

- (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 —
  - (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 181(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 183.

## 186 **Interim sexual harm prevention orders**

P2003/42/103F

- (1) This section applies where an application under section 180(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 to be varied, renewed or discharged.

**187 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 175(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).

## 188 **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 180(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 180(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 180(4), to the Court of General Gaol Delivery.
- (2) A defendant may appeal to the Court of General Gaol Delivery against the making of an interim sexual harm prevention order.
- (3) A defendant may appeal against the making of an order under section 183 or 185, or the refusal to make such an order —
  - (a) where the application for such an order was made to the Court of General Gaol Delivery or, to the Court of Appeal;
  - (b) in any other case, to the Court of General Gaol Delivery.
- (4) On an appeal under subsection (1)(c), (2) or (3)(b), the Court of General Gaol Delivery 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 Court of General Gaol Delivery 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 183(9), 185(9) or 186(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 Court of General Gaol Delivery).

## 189 **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 184(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 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 184(4), commits an offence.
  - (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.

## 190 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.

## 191 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 180(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 180, 183, 185, 186 or 187(6) or (7) 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 186 with modifications).
- (2) A person's age is treated for the purposes of sections 180 to 190 and this section as being that which it appears to the court to be after considering any available evidence.

## 192 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 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.

### 193 **Section 188: interpretation**

P2003/42/122B and drafting

- (1) In section 192 —
  - “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;
  - “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 202(1)).

### 194 **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 184(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 195.

- (4) A sexual risk order that contains a prohibition within subsection 184(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<sup>13</sup> (of Parliament) as extended to the Island by the Isle of Man (Immigration) Order 2008<sup>14</sup>;
  - (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.

## 195 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.

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<sup>13</sup> 1971 c.77

<sup>14</sup> SI 680/2008 (as amended)

- (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
  - (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 193(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.

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

## 196 **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.
- (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.

## 197 **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 158 (method of notification and related matters) and 161 (offences relating to notification) apply for the purposes of this section —
  - (a) with references to section 153(1) being read as references to subsection (1) above;
  - (b) with references to section 154(1) being read as references to subsection (3); and
  - (c) with the omission of section 158(2)(b).

## 198 **Sexual risk orders and interim sexual risk orders: appeals**

P203/42/122G and drafting

- (1) A defendant may appeal to the Crown of General Gaol Delivery —

- (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 195, or the refusal to make such an order.
- (2) On any such appeal, the Court of General Gaol Delivery 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 Court of General Gaol Delivery 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 195(7) or 196(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 Court of General Gaol Delivery).

## **199 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 194(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.

## **200 Effect of conviction etc of an offence under section 199 etc**

P2003/42/122I and drafting

- (1) This section applies to a person ("the defendant") who —
  - (a) is convicted of an offence under section 199 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.

## 201 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.

## 202 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

192 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 192, 195 or 196 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 196 with modifications).
- (2) A person's age is treated for the purposes of sections 192 to 201 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

### 203 **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

### 204 **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<sup>15</sup> (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 paragraph 10 of Schedule 4A to, the Naval Discipline Act 1957<sup>16</sup> (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 pleasure under section 8 of the of the *Custody Act 1995*.

## 205 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 152(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.

<sup>15</sup> 2006 c.52 (as extended under section 384)

<sup>16</sup> 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 203 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.

## 206 **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.

## 207 **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<sup>17</sup> (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 153(8);

**“interim notification order”** has the meaning given by section 178(3);

**“interim sexual harm prevention order”** has the meaning given by section 186(2);

**“interim sexual risk order”** has the meaning given by section 196(2);

**“notification order”** has the meaning given by section 175(1);

**“notification period”** has the meaning given by section 150(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<sup>18</sup> (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 184(2);

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<sup>17</sup> 1957 c.53 as extended by SI 727/1996

<sup>18</sup> 2006 c.52 (as extended under section 384)

“**relevant date**” has the meaning given by section 152(6) (save in the circumstances mentioned in sections 172(6), 176(2), 178(6), 187(3) and 200(4);

“**relevant offender**” has the meaning given by section 150(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 180(1);

“**sexual risk order**” has the meaning given by section 192(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 176(4)) as a reference to the commencement of that provision.

## 208 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*<sup>19</sup> (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

<sup>19</sup> 2006 c.52 (as extended under section 384)

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

## 209 **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.

## DIVISION 10 – PARDONS AND DISREGARDS

## 210 **Power of Department to pardon and disregard convictions and to disregard cautions**

P2012/9/92&100 and drafting

- (1) A person to whom subsection (2) applies, may apply to the Department —
  - (a) in the case of a conviction —
    - (i) for a pardon; and
    - (ii) for the conviction to become a disregarded conviction; and
  - (b) in the case of a caution, for the caution to become a disregarded caution.
- (2) This subsection applies to —
  - (a) a person who has been convicted of, or cautioned for, an offence specified in subsection (3); or
  - (b) where the person referred to in paragraph (a) is deceased, a relative of that person.
- (3) The offences referred to in subsection (2) are —
  - (a) sections 74 and 75 of the *Criminal Code 1872* (sodomy and bestiality and attempts) insofar as it relates to buggery with another person;

- (b) section 11 of the *Sexual Offences Act 1967* (buggery) insofar as it relates to buggery with another person; and
  - (c) section 12 of that Act (indecentcy between men)
- (4) When conditions A and B are met —
  - (a) a conviction is pardoned and becomes a disregarded conviction; and
  - (b) a caution becomes a disregarded caution.
- (5) Condition A is that the Department decides that it appears that —
  - (a) the other person involved in the conduct constituting the offence consented to it and was aged 16 or over;
  - (b) any such conduct would not be an offence under this Act.
- (6) Condition B is that —
  - (a) the Department has given notice of the decision to the applicant under section 212(4)(b); and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (7) Sections 213 to 216 explain the effect of —
  - (a) a conviction being pardoned and becoming a disregarded conviction; and
  - (b) a caution becoming a disregarded caution.
- (8) The Department may —
  - (a) appoint persons to advise whether, in any case referred to them by the Department, the Department should decide as mentioned in condition A; and
  - (b) pay expenses and allowances to a person appointed under paragraph (a).
- (9) The Department may disclose to a person appointed under subsection (8) such information (including anything within section 212(1)(a) or (b) as the Department considers relevant to the provision of such advice.
- (10) The Department may by order amend so as to add to, remove from or otherwise revise the list of offences specified in subsection (3).

## 211 Applications to the Department

P2012/9/93 and drafting

- (1) An application under section 210 must be in writing.
- (2) It must state —
  - (a) in the case of an application made by the person who was convicted or cautioned of the offence in question —
    - (i) the name, address and date of birth of the applicant;

- (ii) the name and address of the applicant at the time of the conviction or caution;
  - (iii) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number; and
  - (iv) such other information as the Department may require;
- (b) in the case of an application made by a relative of the person who was convicted or cautioned of the offence in question (B) —
  - (i) the name, address and date of birth of the applicant;
  - (ii) the nature of the relationship between the applicant and B;
  - (iii) B's name, last known address and date of birth;
  - (iv) B's name and address at the time of the conviction or caution;
  - (v) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number; and
  - (vi) such other information as the Department may require.
- (3) It may include representations by the applicant or written evidence about the matter mentioned in condition A in section 210.

## 212 Procedure for decisions by the Department

P2012/9/94

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 210, the Department must, in particular, consider —
  - (a) any representations or evidence included in the application; and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Department considers to be relevant.
- (2) The Department may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 210.
- (3) Subsection (4) applies if the Department —
  - (a) decides that it appears as mentioned in condition A in section 210; or
  - (b) makes a different decision in relation to the matter mentioned in that condition.
- (4) The Department must —
  - (a) record the decision in writing; and
  - (b) give notice of it to the applicant.

**213 Effect of pardon and disregard on police and other records**

P2012/9/95

- (1) The Department must by notice direct the relevant data controller to delete details, contained in relevant official records, of —
  - (a) a pardoned and disregarded conviction; or
  - (b) a disregarded caution.
- (2) A notice under subsection (1) may be given at any time after condition A in section 210 is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the pardoned and disregarded conviction or disregarded caution that the details of it have been deleted.
- (5) In this section —

“delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned —

  - (a) the fact that it is a —
    - (i) pardoned and disregarded conviction; or
    - (ii) disregarded caution; and
  - (b) the effect of it being such a conviction or caution;

“official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in the Island for the purposes of its functions;

“prescribed” means prescribed by order of the Department;

“relevant data controller” means in relation to relevant official records, such person as may be prescribed;

“relevant official records” means such official records as may be prescribed.
- (6) An order under this section may make different provision for different purposes.

**214 Effect of pardon and disregard for disclosure and other purposes**

P2012/9/96, P2003/42/Sch4 and drafting

- (1) A person who has a pardoned and disregarded conviction or a disregarded caution is to be treated for all purposes in law as if the person has not —
  - (a) committed the offence;
  - (b) been charged with, or prosecuted for, the offence;

- (c) been convicted of the offence;
  - (d) been sentenced for the offence; or
  - (e) been cautioned for the offence.
- (2) In particular —
  - (a) no evidence is to be 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 (1)(a) to (e);
  - (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 caution or any circumstances ancillary to it; and
  - (c) from the end of the period of 14 days beginning with the day on which the decision was made under section 210 to pardon and disregard a conviction or to disregard a caution, the person ceases to be subject to any notification requirements which apply as a result of —
    - (i) the conviction which is pardoned and disregarded; and
    - (ii) the caution which is disregarded.
- (3) Subsection (2)(c) does not affect any notification requirement which applies as a result of any other conviction, finding or caution or any court order.
- (4) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person —
  - (a) the question is to be treated as not relating to any —
    - (i) pardoned and disregarded conviction; or
    - (ii) disregarded caution,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 caution or any circumstances 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) a pardoned and disregarded conviction; or
  - (b) a disregarded caution,



or any circumstances ancillary to it.

- (6) A pardoned and disregarded conviction or a disregarded caution, or any circumstances ancillary to it, is not a proper ground for —
  - (a) dismissing or excluding a person from any office, profession, occupation or employment; or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (7) This section is subject to section 215 but otherwise applies despite any enactment or rule of law to the contrary.
- (8) See also section 216 (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

## 215 Saving

P2012/9/97 and drafting

- (1) Nothing in section 210 affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.
- (2) Nothing in section 214 gives rise to any right, entitlement or liability.

## 216 Section 214: supplementary

P2012/9/98

- (1) In section 214, “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power —
  - (a) by virtue of any enactment, law, custom or practice;
  - (b) under the rules governing any association, institution, profession, occupation or employment; or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement, to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 214, “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 any such sentence;

- (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 214, “circumstances ancillary to a caution” are any circumstances of —
  - (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;
  - (e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end;
  - (f) any proceedings for judicial review under a petition of dolence relating to the caution.

## **217 Appeal against refusal to pardon and disregard convictions or to disregard cautions**

P2012/9/99 and drafting

- (1) The applicant may appeal to the High Court if —
  - (a) the Department makes a decision of the kind mentioned in section 212(3)(b); and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Department.
- (3) If the High Court decides that it appears as mentioned in condition A in section 210, it must make an order to that effect.
- (4) Otherwise it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a —
  - (a) pardoned and disregarded conviction; or
  - (b) disregarded caution,when the period of 14 days beginning with the day on which the order was made has ended.
- (6) Any notification requirements which apply to a person under Schedule 1 to the *Criminal Justice Act 2001* and this Part in relation to a conviction for which an order is made under subsection (3) end when the period of 14 days beginning with the day on which the order was made has ended.
- (7) There is no appeal from a decision of the High Court under this section.

## PART 11 — AMENDMENT OF ORGANISED AND INTERNATIONAL CRIME ACT 2010

### 218 Organised and International Crime Act 2010 amended

- (1) The *Organised and International Crime Act 2010* is amended in accordance with subsection (2).
- (2) After section 4 of that Act (trafficking in persons), insert —

#### **4A Forfeiture of land vehicle, ship or aircraft**

P2015/30/11

- (1) This section applies if a person is convicted on information of an offence under section 4.
- (2) The court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person —
  - (a) owned the vehicle at the time the offence was committed;
  - (b) was at that time a director, secretary or manager of a company which owned the vehicle;
  - (c) was at that time in possession of the vehicle under a hire-purchase agreement;
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
  - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person —
  - (a) owned the ship or aircraft at the time the offence was committed;
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
  - (e) was at that time a charterer of the ship or aircraft; or
  - (f) committed the offence while acting as captain of the ship or aircraft.

- (4) But where subsection (3)(a) or (b) does not apply to the convicted person, forfeiture of a ship or aircraft may be ordered only if subsection (5) applies or —
  - (a) in the case of a ship other than a hovercraft, its gross tonnage is less than 500 tons;
  - (b) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (5) This subsection applies where a person who, at the time the offence was committed —
  - (a) owned the ship or aircraft; or
  - (b) was a director, secretary or manager of a company which owned it,
 knew or ought to have known of the intention to use it in the course of the commission of an offence under section 4.
- (6) Where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations about its forfeiture, the court may not order its forfeiture without giving the person an opportunity to make representations.

#### **4B Detention of land vehicle, ship or aircraft**

P2015/30/12

- (1) If a person (“P”) has been arrested for an offence under section 4, a constable or senior immigration officer may detain a relevant land vehicle, ship or aircraft.
- (2) A land vehicle, ship or aircraft is relevant if the constable or officer has reasonable grounds to believe that an order for its forfeiture could be made under section 4A if P were convicted of the offence.
- (3) The land vehicle, ship or aircraft may be detained —
  - (a) until a decision is taken as to whether or not to charge P with the offence;
  - (b) if P has been charged, until P is acquitted, the charge against P is dismissed or the proceedings are discontinued; or
  - (c) if P has been charged and convicted, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.
- (4) A person (other than P) may apply to the court for the release of the land vehicle, ship or aircraft on the grounds that the person —
  - (a) owns the vehicle, ship or aircraft;

- (b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement; or
  - (c) is a charterer of the ship or aircraft.
- (5) The court to which an application is made under subsection (4) may, if satisfactory security or surety is tendered, release the land vehicle, ship or aircraft on condition that it is made available to the court if —
  - (a) P is convicted; and
  - (b) an order for its forfeiture is made under section 4A.
- (6) In this section, “the court” means —
  - (a) if P has not been charged, or P has been charged but proceedings for the offence have not begun to be heard, a magistrates' court;
  - (b) if P has been charged and proceedings for the offence have begun to be heard, the court hearing the proceedings.
- (7) In this section, “senior immigration officer” means an immigration officer not below the rank of chief immigration officer.

#### 4C Interpretation of sections 4A and 4B

P2015/30/13

- (1) In sections 4A and 4B —
  - “**captain**” means master (of a ship) or commander (of an aircraft);
  - “**land vehicle**” means any vehicle other than a ship or aircraft;
  - “**ship**” includes every description of vessel (including a hovercraft) used in navigation.
- (2) In sections 4a and 4b, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it. **22**.

## PART 12 — GENERAL

### 219 Orders and regulations

P2003/42/138 and drafting

- (1) An order or regulations under section 87, 136, 153, 154, 155, 157 or section 203 must not come into operation unless they are approved by Tynwald.
- (2) Unless otherwise provided, any other order or regulations, except one containing an order under section 2(1) (commencement), must be laid before Tynwald as soon as practicable after they are made and if Tynwald

at the sitting at which they are laid or the next subsequent sitting resolves that the order is or regulations are to be annulled they shall cease to have effect.

- (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
  - (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.

## 220 **Minor and consequential amendments**

Schedule 5 contains minor and consequential amendments.

## 221 **Repeals and revocations**

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

## 222 **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 180 of this Act; and
  - (b) a risk of sexual harm order of made under that Act remains in operation until it expires or is replaced by a sexual risk order made under section 192 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 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 149 (procedure on applications under section 146).
  - (b) section 160 (parental directions: variations, renewals and discharges);

- (c) section 177 (sections 175 and 176: relevant offences);
  - (d) section 180 (sexual harm prevention orders: applications and grounds);
  - (e) section 181 (section 180: supplemental);
  - (f) section 183 (sexual harm prevention orders: variations and discharges prior to release from custody);
  - (g) section 185 (sexual harm prevention orders: variations, renewals and discharges);
  - (h) section 191 (sexual harm prevention orders and interim sexual harm prevention orders: supplementary);
  - (i) section 193 (section 188: interpretation); and
  - (j) section 202 (sexual risk orders and interim sexual risk orders: supplementary).
- (4) To avoid doubt, section 57(2) of the *Legislation Act 2015* applies to the 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.

## 223 Extent and saving

- (1) Subject to section 138 (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 78 and 102]

**SPECIAL RULES RELATING TO PROVIDERS OF INFORMATION SOCIETY SERVICES****1 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 70(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 71(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 99(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 70(1), 71(1) or 99(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 80 and “prohibited image of a child” has the meaning given by section 71(2).

- (7) For the purposes of sub-paragraph (4), “extreme pornographic image” has the meaning given by section 99(2) and in determining whether a domestic service provider is in possession of such an image “extreme image” has the meaning given by section 99(6).
- (8) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 3 to 5.

## **2 Non-Island service providers: restriction on institution 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 70, 71 or 99 may not be instituted 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 institution 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.

## **3 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 70, 71 or 99 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.

#### **4 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 70, 71 or 99 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.

#### **5 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 70, 71 or 99 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 70, 71 or 99, 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.

## 6 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/EC<sup>20</sup> 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

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<sup>20</sup> 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.

**SCHEDULE 2**

[Section 79]

**FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN AND  
PROHIBITED IMAGES OF CHILDREN**

P1978/37/Sch and drafting

**1 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.

**2 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.

### 3 Relevant officer

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

### 4 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).

## 5 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 2).
- (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.

## **6 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 5 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 1.

## **7 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 5, 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.

## **8 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.

## 9 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).

## **10 Supplementary orders**

- (1) Where the court condemns property under paragraph 9(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 9(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 9(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.

## **11 Supplementary provision about forfeiture proceedings**

- (1) Proceedings by virtue of this Schedule are civil proceedings and may be instituted in a court of summary jurisdiction.
- (2) Either party may appeal against the decision of a court of summary jurisdiction to the Court of General Gaol Delivery.
- (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.

## 16 Interpretation

- (1) In this Schedule —

“**the court**” is to be construed in accordance with paragraph 11(1);

“**forfeitable property**” is to be construed in accordance with paragraph 1(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 3.

- (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.

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

[Sections 150, 151, 152, 163, 165, 168, 172, 176, 177, 180, 181, 203 and 205]

- 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).
- 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.

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 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 27 or 28 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 33 to 40 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 41 to 44 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 48 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 49 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 50 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 51 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 65 of this Act (administering a substance with intent).

32 An offence under section 66 or 67 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 68 or 69 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 70 or 71 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 99 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 110 of this Act (voyeurism) if —
- (a) where the offender was under 18, he 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 207.

**SCHEDULE 4**

[Sections 165, 180 and 203]

**OTHER OFFENCES FOR PURPOSES OF PART 10**

- 1 Murder under section 18 of the *Criminal Code 1872* (murder).
- 2 Manslaughter under section 20 of that Act (manslaughter).
- 3 Unlawful detention under section 60B of that Act (unlawful detention).
- 4 Kidnapping under section 60C of that Act (kidnapping).
- 5 An offence under section 19 of that Act (conspiring or soliciting to commit murder).
- 6 An offence under section 31 of that Act (threats to kill or cause serious injury).
- 7 An offence under section 33 of that Act (shooting or wounding with intent to do grievous bodily harm).
- 8 An offence under section 35 of that Act (inflicting bodily injury, with or without weapon).
- 9 An offence under section 36 of that Act (attempting to choke, etc, in order to commit any indictable offence).
- 10 An offence under section 37 of that Act (using chloroform, etc to commit any indictable offence).
- 11 An offence under section 38 of that Act (maliciously administering poison, etc, so as to endanger life, or inflict grievous bodily harm).
- 12 An offence under section 42 of that Act (exposing children whereby life is endangered).
- 13 An offence under section 43 of that Act (causing bodily injury by explosive).
- 14 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).
- 15 An offence under section 45 of that Act (placing explosive near a building with intent to do bodily injury).
- 16 An offence under section 46 of that Act (setting spring guns, etc, with intent to inflict grievous bodily harm).

- 17 An offence under section 47 of that Act (doing or omitting anything to endanger passengers by railway).
- 18 An offence under section 50 of that Act (assaulting a magistrate, etc, on account of his preserving wreck).
- 19 An offence under section 51 of that Act (assault with intent to commit felony, or on peace officers, etc).
- 20 An offence under section 60 of that Act (assault occasioning bodily harm).
- 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 or 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<sup>21</sup> (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<sup>22</sup> (of Parliament, as extended to the Island) (torture).

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<sup>21</sup> 1982 c.36

- 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*<sup>23</sup> (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 48 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 53 to 55 of this Act.
- 68 An offence under section 4 of the *Organised and International Crime Act 2010* (trafficking in persons).

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<sup>22</sup> 1988 c.33

<sup>23</sup> 1990 c.31

69 An offence under section 42 of the Armed Forces Act 2006<sup>24</sup> (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.

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<sup>24</sup> 2006 c.52 (as extended under section 384)



## SCHEDULE 5

[Section 220]

## MINOR AND CONSEQUENTIAL AMENDMENTS

**1 Vagrancy Act 1896 amended**

Omit subsections (2) and (4) of section 2 of the *Vagrancy Act 1896* (acts of vagrancy - prostitution and riotous and indecent behaviour and indecent exhibitions).

**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) for head (v), substitute —

ⓐ(v) under the Sexual Offences Act 1956 or the Sexual Offences Act 2003 (Acts of Parliament); ⓑ; and

(b) for head (vi), substitute —

ⓐ(vi) under the *Sexual Offences Act 1992* or the *Sexual Offences and Obscene Publications Act 2019*; ⓑ.

**3 Firearms Act 1947 amended**

(1) The *Firearms Act 1947* is amended as follows.

(2) For paragraph 7 of the Third Schedule and the cross heading immediately preceding it, substitute —

ⓐ *Sexual Offences and Obscene Publications Act 2019*

7. Offences under sections 4 (rape) and 86 (abduction by force). ⓑ.

**4 Children and Young Persons Act 1966 amended**

(1) The *Children and Young Persons Act 1966* is amended as follows.

(2) In the First Schedule, for the words from “For all purposes” to the end of the Schedule, substitute —

ⓐ For all purposes except those of section 107(2) of this Act, an offence against a child or young person under any of the following provisions —

(a) sections 2 to 5, 7, 9, 11, 13, 15, 17, 18, 20, 21 and 23 of the *Sexual Offences Act 1992* or an attempt to commit an offence under section 2(a), 4, 5, 7, 9(1), 17 or 18 of that Act; or

- (b) Divisions 2 to 7, 11 and 12 of Part 2 of the *Sexual Offences and Obscene Publications Act 2019* or an attempt to commit an offence under those Divisions.

For the purposes of section 107(2) of this Act —

- (a) an offence under section 7, 9(1), 11, 13, 15 or 23 of the *Sexual Offences Act 1992* or an attempt to commit an offence under section 7 or 9(1) of that Act; or
- (b) an offence under section 5, 6, 27, 28, 49, 50, 51 or 88 of the *Sexual Offences and Obscene Publications Act 2019* or an attempt to commit an offence under section 27 or 28 of that Act. **22**.

## 5 Theft Act 1981 amended

- (1) The *Theft Act 1981* is amended as follows.
- (2) In section 9(2) (burglary), omit “or raping any woman”.

## 6 Adoption Act 1984 amended

- (1) The *Adoption Act 1984* is amended as follows.
- (2) In section 35(1) omit the words “or affect section 7(2)(d) of the *Sexual Offences Act 1992*”.

## 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) For paragraphs 14 and 15 of the table in Schedule 3 substitute —

14. Proceedings before a court of summary jurisdiction in respect of sexual harm prevention orders or sexual risk orders under the <i>Sexual Offences and Obscene Publications Act 2019</i> .	A court of summary jurisdiction.	The person in respect of whom the order may be made.
15. Appeal to the Court of General Gaol under section 188 or 198 of the <i>Sexual Offences and Obscene Publications Act 2019</i> .	The Court of General Gaol.	The appellant. 22.

## 9 Summary Jurisdiction Act 1989 amended

- (1) The *Summary Jurisdiction Act 1989* is amended as follows.
- (2) In section 6(5) for “Schedule 2 (anonymity in rape cases) to the *Sexual Offences Act 1992*”, substitute 23 Part 8 of the *Sexual Offences and Obscene Publications Act 2019* 22.
- (3) For section 72(2)(c), substitute —
 

23(c)	an offence under —
(i)	the <i>Sexual Offences Act 1992</i> ;
(ii)	Schedule 2 or 3 to the <i>Criminal Justice Act 2001</i> ; or
(iii)	the <i>Sexual Offences and Obscene Publications Act 2019</i> ; 22.
- (4) In paragraph 4 of Schedule 2 for “An offence under section 4(2) (sexual intercourse with a person over 13 but under 16 years of age), section 9(4) (gross indecency) or section 13 (indecent assault) of the *Sexual Offences Act 1992*.”, substitute 23 An offence under section 5 (assault by penetration) or section 11(2) (sexual activity with a child) of the *Sexual Offences and Obscene Publications Act 2019*. 22.

## 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 23 an offence under the *Sexual Offences and Obscene Publications Act 2019* 22.

## 11 Criminal Jurisdiction Act 1993 amended

- (1) The *Criminal Jurisdiction Act 1993* is amended as follows.
- (2) Omit section 22(3) (alternative verdicts for rape or incest).

- (3) In section 43(1)(b) for “directions under paragraph 4 of Schedule 2 to the *Sexual Offences Act 1992*”, substitute **“**directions under section 142(4) of the *Sexual Offences and Obscene Publications Act 2019* (power to displace section 139 or 140)**”**.

## 12 Custody Act 1995 amended

- (1) The *Custody Act 1995* is amended as follows.
- (2) After paragraph 2A(2)(b) of Schedule 2, insert —
- “**(c) an offence under Part 2 of the *Sexual Offences and Obscene Publications Act 2019*.**”**

## 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 2019* (suppression of brothels)**”**.

## 14 Police Powers and Procedures Act 1998 amended

- (1) The *Police Powers and Procedures Act 1998* is amended as follows.
- (2) In section 55 for “an offence under the *Sexual Offences Act 1992* (except sections 25 to 31), substitute **“**an offence under Part 2 of the *Sexual Offences and Obscene Publications Act 2019* (except for Divisions 12 and 13)**”**.
- (3) In Schedule 1A —
- (a) for paragraph 1 and the heading to that paragraph, substitute —

### **“**1 Sexual Offences and Obscene Publications Act 2019

Each of the powers of seizure conferred by section 109 of the *Sexual Offences and Obscene Publications Act 2019* (powers of search and seizure)**”**;

- (b) omit paragraph 11(2);
- (c) for paragraph 17 and the heading to that paragraph, substitute —

### **“**17 Sexual Offences and Obscene Publications Act 2019

Each of the powers of seizure conferred by section 109 of the *Sexual Offences and Obscene Publications Act 2019* (powers of search and seizure).**”**; and

- (d) for paragraph 23, substitute —

**23 Sexual Offences and Obscene Publications Act 2019**

Each of the powers of seizure conferred by sections 77 to 79 and Schedule 2 to the *Sexual Offences and Obscene Publications Act 2019* (forfeiture of indecent photographs and prohibited images of children).<sup>22</sup>

(4) For paragraph 1(2)(a) of Schedule 1B, substitute —

<sup>22</sup>(a) sections 77 to 79 of, and Schedule 2 to (forfeiture of indecent photographs and prohibited images of children), and section 109 (powers of search and seizure) of the *Sexual Offences and Obscene Publications Act 2019*; and <sup>22</sup>.

(5) In Schedule 3 —

(a) for paragraph 6 and the cross heading immediately preceding it, substitute —

**<sup>22</sup> Sexual Offences and Obscene Publications Act 2019**

6. Part 5, insofar as it relates to obscene matter or items. <sup>22</sup>

(b) for paragraphs 13 to 16 and the cross heading immediately preceding paragraph 13, substitute —

**<sup>22</sup> Sexual Offences and Obscene Publications Act 2019**

13. Section 4 (rape).

14. Section 8 (rape of a child under 13).

15. Section 9 (assault of a child under 13 by penetration).

16. Section 12 where the child is under 13 and subsection (2) of that section applies (sexual activity with a child).

16A. Section 27 where the child is under 13. <sup>22</sup>.

**15 Children and Young Persons Act 2001 amended**

(1) The *Children and Young Persons Act 2001* is amended as follows.

(2) In section 76(14)(b) for “an offence under the *Sexual Offences Act 1992* (except sections 25 to 31)”, substitute <sup>22</sup>an offence under Part 2 of the *Sexual Offences and Obscene Publications Act 2019* (except Divisions 12 and 13) <sup>22</sup>.

(3) After paragraph 8 of Schedule 8, insert —

<sup>22</sup>9. An offence against a child or young person under any of the following provisions of Part 2 of the *Sexual Offences and Obscene Publications Act 2019* —

(a) Divisions 1 to 12;

(b) Divisions 14 and 15.

10. An attempt to commit an offence against a child or young person under any of the following provisions specified in paragraph 9. **22**.

## 16 Criminal Justice Act 2001 amended

(1) The *Criminal Justice Act 2001* is amended as follows.

(2) In section 38(5) for ““sexual offence” means an offence under paragraph 2(1) of Schedule 1;”, substitute —

**22** “sexual offence” means an offence under —

- (a) Parts 2 to 6 of the *Sexual Offences and Obscene Publications Act 2019* (sexual offences);
- (b) an offence equivalent to an offence specified in paragraph (a) if that offence was an offence under an enactment repealed by the *Sexual Offences Act 1992* or the *Sexual Offences and Obscene Publications Act 2019*;
- (c) 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), where the prohibited goods include an indecent photograph, pseudo photograph or prohibited image of a person which give the impression or predominant impression that the person shown is a child;
- (d) an offence of conspiracy to commit any of those offences;
- (e) an offence of attempting to commit any of those offences;
- (f) an offence of inciting another to commit any of those offences; **22**.

(3) In paragraphs 1(1)(e) and 6(3) of Schedule 8 for “by summons issued under section 3 of the *Obscene Publications and Indecent Advertisements Act 1907* (forfeiture of obscene, etc. articles)”, substitute **22** under section 109 of the *Sexual Offences and Obscene Publications Act 2019* (powers of search and seizure) **22**.

## 17 International Criminal Court Act 2003 amended

(1) The *International Criminal Court Act 2003* is amended as follows.

(2) After section 49(1)(a), insert —

**22** (ab) Part 8 of the *Sexual Offences and Obscene Publications Act 2019*; or **22**.

**18 Proceeds of Crime Act 2008 amended**

- (1) The *Proceeds of Crime Act 2008* is amended as follows.
- (2) In paragraph 8 of Schedule 3 after “An offence under section 28 or 29 of the *Sexual Offences Act 1992* (keeping or letting premises for use as a brothel)”, insert “or an offence under Division 12 or 13 of the *Sexual Offences and Obscene Publications Act 2019*”.

**19 Criminal Justice (Witness Anonymity) Act 2011 amended**

In section 3 of the *Criminal Justice (Witness Anonymity) Act 2011* and the heading to that section, for “*Sexual Offences Act 1992*”, substitute “*Sexual Offences and Obscene Publications Act 2019*”.

**20 Regulation of Care Act 2013 amended**

- (1) The *Regulation of Care Act 2013* is amended as follows.
- (2) In section 44(1)(c) after “an order under the *Sex Offenders Act 2006*”, insert “, an order under Part 10 of the *Sexual Offences and Obscene Publications Order 2019*”.
- (3) After section 44(3)(f), insert —
  - (fa) an offence against Part 2 of the *Sexual Offences and Obscene Publications Act 2019*;

**SCHEDULE 6**

[Section 221]

**REPEALS AND REVOCATIONS**

- (1) The following Acts are repealed 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) Sections 1 to 3 of, and Schedules 1 to 3 to, the *Criminal Justice Act 2001* are repealed.