

## FEEDBACK ON CONSULTATION ON THE SEXUAL OFFENCES AND OBSCENE PUBLICATIONS BILL

In total 204 responses were received via the Consultation Hub and a further 7 responses were received by letter/email of which the vast majority were from private individuals. We received some responses from academic experts off-Island and are grateful for their insight and positive contributions.

The Department is grateful for the responses received and has carefully reviewed and considered them. All the views expressed have helped the Department to determine the way to take the Bill forward set out below.

### Consent

#### We Asked

**Question 1:** At what age do you feel a person can consent to sex?

#### You Said

For the ages specified these returned the following:

16 years of age:	72%
17 years of age:	3%
18 years of age:	16%
Other:	9%

Where respondents specified a different age the ages of 14, 15 and 21 were put forward.

#### We Did

In considering the responses, and reaching its decision, the Department noted the majority of respondents considered the current age of consent to sexual activity to be correct. The Department also took the view that the internationally recognized age of a child is a person under the age of 18 but that marriage and civil partnerships may be entered into upon attaining the age of 16. Accordingly, the Department decided to retain 16 as the age at which a person may be deemed to be able to consent to sexual activity.

#### We Asked

**Question 2:** Do you agree that consent should be shown to be sought and explicit rather than implied?

#### You Said

Yes:	82%
No:	16%
Not answered:	2%

## **We Did**

The Department has retained within the Bill the existing detailed provisions concerning the definition of consent so the law is obvious that consent must be freely given and clear rather than simply taken as implied.

## Abuse of positions of trust

### We Asked

**Question 3:** Are there other persons, bodies or jobs you wish to see included in the list of those in positions of trust?

### You Said

Yes:	45%
No:	53%
Not answered:	2%

Respondents were asked to specify which persons, bodies or jobs they would like to see included in the list of those in positions of trust.

Whilst most of the responses included those already covered under the Rehabilitation of Offenders (Exceptions) Order 2018, one respondent suggested:

*Private professional tutoring carried out by self-employed persons who are in positions of trust – e.g. car driving lessons and home tutors, etc.*

### We Did

The Department is grateful for the suggestion in relation to private professional tutoring. The Department has inserted into the Bill provision to enable it to issue guidance in relation to position of trust.

## Powers of the Police

### We Asked

**Question 4:** Do you believe the powers given to the police to enable them to search property and seize images and other evidence are proportionate?

### You Said

Yes:	86%
No:	12%
Not answered:	2%

### We Did

The Department has retained the existing provisions that are designed to enable the police to search premises and seize such items as are necessary to enable them to gather evidence sufficient to protect members of the public and prosecute offenders.

## Access to password protected or encrypted electronic devices

### We Asked

Question 5: Do you feel that future legislation might be needed to enable the police to gain access to computer files which may be password protected, or encrypted?

### You Said

Yes:	84%
No:	15%
Not answered:	1%

### We Did

The Department is considering a specific Bill that aims to empower the police to gain access to computer files and other electronic devices that are password protected or encrypted. An initial draft has been prepared and the Department will consult on this important matter, subject to the consent of the Council of Ministers, as soon as may be.

## Notification Orders and Sexual Offence Orders

### We Asked

**Question 6:** Do you agree that the notification requirements should remain in the Bill and continue to be imposed on convicted sex offenders?

### You Said

Yes:	93%
No:	5%
Not answered:	2%

### We Did

The Department has retained within the Bill notification requirements for persons convicted of sexual offences.

### We Asked

**Question 7:** Do you agree with the ability of the court to make Sexual Harm Prevention Orders?

### You Said

Yes:	95%
No:	3%
Not answered:	2%

### We Did

The Department has retained within the Bill provision for a court to make a Sexual Harm Prevention Order where it deems it appropriate to do so.

### We Asked

**Question 8:** Do you agree with the ability of the Chief Constable to apply to a court for a Sexual Risk Order where the Chief Constable has reasonable cause to believe it is necessary to protect the public?

### You Said

Yes:	93%
No:	5%
Not answered:	2%

### We Did

The Department has retained provision for the Chief Constable to apply for a Sexual Risk Order within the Bill.

### We Asked

**Question 9:** Do you agree with the powers to restrict travel by sexual offenders?

### You Said

Yes:	87%
No:	12%
Not answered:	1%

**We Did**

The Department has retained existing provision within the Bill relating to travel by sexual offenders.

## Proposed pardon for now repealed historical homosexual offences

### We Asked

**Question 10:** Which of the following are preferred methods for implementing a pardon and a deletion of criminal convictions for historic homosexual offences in the Isle of Man?

### You Said

This question provided a two-part option (Not answered: 2%)

**Option 1:** That each individual or their family would apply and have their case looked at in isolation with a pardon being granted if it met the criteria and the past conviction or caution being disregarded and removed from all records.

Yes: 21%

**Option 2:** That all persons convicted of those offences are pardoned automatically by virtue of the Act. It is then up to the person or the person's relatives to formally apply to have the past conviction or caution disregarded and removed from all records.

Yes: 77%

### We Did

The Department has redrafted provisions along the lines of Option 2.

## Witness and victim anonymity

### We Asked

**Question 11:** Do you agree that the court should be able to keep the name of any victims and witnesses anonymous in cases related to sexual offences and that any admissible evidence should be justified?

### You Said

Yes:	94%
No:	5%
Not answered:	1%

### We Did

The Department has firmed up provision within the Bill so the court is able to keep the name/s of any victim/s and witnesses anonymous in any case related to sexual offences where the court thinks it appropriate, and in the interests of justice to do so.

### We Asked

**Question 12:** Currently the penalty for disclosing details of a witness or victim without the permission of the court is by fine only. Do you agree the court should have the power to impose a custodial sentence?

### You Said

Yes:	85%
No:	14%
Not answered:	1%

### We Did

Noting the positive response to this question, the Department has retained the provision within the Bill providing for an additional penalty of a custodial sentence not exceeding 12 months to be available to a court. This means a court may impose a custodial sentence or a fine, or indeed both a fine and a custodial sentence.

### We Asked

**Question 13:** Do you think the identity of the defendant could, in certain circumstances, be anonymised and protected from publication?

### You Said

Yes:	81%
No:	17%
Not answered:	2%

### We Did

In asking the question the Department recognised that it is important, wherever possible, to have justice that is open to all and conducted in public. The Bill nevertheless provides for the identity of the participants to be protected (or in the case of witnesses, the evidence given with the identity of the witness protected) in the case of sexual offences. The Bill empowers anonymity to be lifted if it is in the interests of justice and within the grounds



specified within the Bill. The main concern is to protect the victim and any witnesses so they are willing and feel able to come forward and give their evidence. If it is in the interests of justice for the identity of a person under investigation or the defendant (as the case may be) to be disclosed, the police or the prosecution (as the case may be) are able to apply to the justice/court to have the restrictions on the disclosure of that person's identity lifted.

## Obscene images and publications

### We Asked

**Question 14:** Do you agree that there should be specific provision to cover extreme pornography and that this should be treated differently in terms of sentencing?

### You Said

Yes:	74%
No:	25%
Not answered:	1%

### We Did

The Department has retained the provisions in the Bill which make specific provision to cover extreme pornography and provide for appropriate sentencing.

### We Asked

**Question 15:** Do you agree with the definition of pornography and extreme pornography used in the Bill?

### You Said

Yes:	63%
No:	33%
Not answered:	4%

### We Did

The Department noted 63% of respondents supported the definitions of pornography and extreme pornography and has retained them in the Bill subject to some relatively minor refinements. In observing that 33% of respondents did not agree with the definitions the Department acknowledges that views may differ as to what constitutes pornography or extreme pornography. The definitions within the Bill allow for some interpretation so the context of the alleged offence can be taken into account.

### We Asked

**Question 16:** Do you think there are enough protections to allow for art and free expression which may involve nudity or images seen by some to be sexual in nature?

### You Said

Yes:	61%
No:	35%
Not Answered:	4%

### We Did

In view of the fact just under two thirds of respondents responded positively to this question the provisions remain in the Bill with appropriate drafting refinements.

## Image based sexual abuse

### We Asked

**Question 17:** Would you agree that upskirting is a form of image-based sexual abuse?

### You Said

Yes:	91%
No:	7%
Not answered:	2%

### We Did

The proposed provisions within the Bill relating to image based abuse include upskirting as such an action will have been taken without the person's consent.

### We Asked

**Question 18:** Should up-skirting be punishable under sentencing for 'Recording an intimate image without consent' (and therefore be subject to the same penalties) or should it be treated as a separate and specific offence?

This question provided a two-part option (Not answered: 2%)

**Option 1:** Should be treated as an offence punishable under provisions for "intimate image recorded without consent".

Yes:	74%
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**Option 2:** Should be treated as a separate offence?

Yes:	24%
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### We Did

A significant majority of respondents supported Option 1. Accordingly, up-skirting will be punishable as an offence of recording an intimate image without consent.

### We Asked

**Question 19:** Do you agree that image-based sexual abuse should be made a criminal offence?

### You Said

Yes:	91%
No:	8%
Not answered:	1%

### We Did

The Department noted the significant majority in favour of the provisions within the Bill that have the effect of making image-based sexual abuse a criminal offence and has retained those provisions in the final version of the Bill.

## Sentencing

### We Asked

**Question 20:** Do you consider the levels of the maximum sentences a court may impose, as set out within the Bill, to be reasonable in all the circumstances?

### You Said

Yes:	57%
No:	37%
Not answered	6%

### We Did

The Department, having further reviewed the issue of sentences, considered the proposed maximum sentences that may be imposed to be proportionate and justifiable on human rights grounds. It is accepted that most offenders are likely to receive sentences below the maximum sentence provided for by law as this will properly depend on the facts of each case, any mitigation, and other matters placed before the sentencing court.

### We Asked

**Question 21:** The Bill currently empowers the sentencing in child image cases to be assisted by UK sentencing guidelines. Do you think provision for sentencing guidelines should be extended to all the offences within this Bill?

### You Said

Yes:	81%
No:	13%
Not answered:	6%

### We Did

The Department noted there was significant support for the extension of the ability to provide for sentencing guidelines to all offences within the Bill, and received comments from respondents concerning the severity or leniency of current sentences. The Bill has been amended to empower the Department to apply sentencing guidelines to any or all offences set out within the Bill.

## Additional question regarding Female Genital Mutliation

### We Asked

**Question 22:** Do you feel that updating the current law regarding FGM along the lines suggested in the bullet points above should be included in the Sexual Offences and Obscene Publications Bill?

### You Said

Yes:	86%
No:	12%
Not answered:	2%

### We Did

The Department noted the positive response to this question and has therefore included provisions within the Bill to amend the Prohibition of Female Genital Mutilation Act 2010.

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