



The Gazette

TURKS & CAICOS ISLANDS

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G.N. 370**NOTICE OF EXEMPTION FROM CUSTOMS DUTIES***(Section 71(3) of Customs Ordinance)*

In accordance with section 71(3), the public is hereby notified that pursuant to section 71(1) of the Customs Ordinance, the persons specified in the notice, which is published as a supplement to this *Gazette*, have been granted exemption from the payment of Customs duties in relation to the goods imported into the Islands and specified in the notice, from 1st November 2019 to 30th November 2019.

LIST OF APPROVED WAIVERS

	Consignee Name	Description of Goods	No. of Pieces	Date Assessed	Revenue Forgone	Date of Approval
1	Wellington Williams	Home Owner Items	1	28- NOV-2019	1953.29	27 - NOV -2019

DATED this 15th of June 2020

Chawa Williams
Collector of Customs

G.N. 371**NOTICE OF EXEMPTION FROM CUSTOMS DUTIES***(Section 71(3) of Customs Ordinance)*

In accordance with section 71(3), the public is hereby notified that pursuant to section 71(1) of the Customs Ordinance, the persons specified in the notice, which is published as a supplement to this *Gazette*, have been granted exemption from the payment of Customs duties in relation to the goods imported into the Islands and specified in the notice, from 1ST July 2019 to 31st July 2019.

LIST OF APPROVED WAIVERS

	Consignee Name	Description of Goods	No. of Pieces	Date Assessed	Revenue Forgone	Date of Approval
1	SHAWNA LEWIS	Home Owner Items	1	18-JULY-2019	710.33	12 -JULY -2019

DATED this 15th of June 2020

Chawa Williams
Collector of Customs

G.N. 372

**MICRO, SMALL, MEDIUM ENTERPRISES
CONCESSION ORDER**

NOTICE IS HEREBY GIVEN, in accordance with the provisions of Section 4(3) of the Micro, Small, Medium Development Ordinance 2015, that the following small businesses are granted a Concession Order at a value as stated below.

BUSINESS NAME	BENEFITS	VALUE
THE LODGINGS LTD,	CUSTOMS DUTY REDUCTION	up to USD\$100,000
ROBINSON'S RESIDENCE "TOMPA'S COTTAGE"	CASH GRANT	up to USD\$10,000
SKYLAKE BAND	CASH GRANT	up to USD\$10,000
	CUSTOMS DUTY REDUCTION	up to USD\$2,000
SQUARE CART TCI	CASH GRANT	up to USD\$10,000
	TECHNICAL ASSISTANCE	up to USD\$6,000
	CUSTOMS DUTY REDUCTION	up to USD\$6,000

Dated this 19th day of June 2020

INVEST TURKS AND CAICOS ISLANDS

G.N. 373

**Turks and Caicos Islands
Public Order and Criminal Justice Bill 2020**

Notice is given that the Public Order and Criminal Justice Bill 2020 considered by Cabinet and submitted to the House of Assembly where it has been read for a first time pursuant to S.O. 91.4.

The Bill is published as a Supplement to this Gazette.

Tracey I. Parker
Clerk to House of Assembly

G.N. 374**Turks and Caicos Islands
Sexual Offences Bill 2020**

Notice is given that the Sexual Offences Bill 2020 considered by Cabinet and submitted to the House of Assembly where it has been read for a first time pursuant to S.O. 91.4.

The Bill is published as a Supplement to this Gazette.

Tracey I. Parker
Clerk to House of Assembly

G.N. 375**Turks and Caicos Islands
Vulnerable Witnesses Bill 2020**

Notice is given that the Vulnerable Witnesses Bill 2020 considered by Cabinet and submitted to the House of Assembly where it has been read for a first time pursuant to S.O. 91.4.

The Bill is published as a Supplement to this Gazette.

Tracey I. Parker
Clerk to House of Assembly

G.N. 376**REGISTRATION OF TRADE MARKS ORDINANCE 2007
PENDING APPLICATIONS**

Take Notice that any person wishing to oppose the Registration of any trade mark appearing in the list published as a Supplement to this Gazette may within one month from the date of this Gazette lodge with the Registrar of Trade Marks Office, Grand Turk a Notice of Opposition on Form T M 5 as prescribed by the Trade Marks Rules 1982.

Such Notice should comply with Rule 42 of the said Rules and should be accompanied by the prescribed fee of \$150.00.

REGISTRAR OF COMPANIES

G.N. 377

**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS
IN PROBATE AND ADMINISTRATION**

PA/G/5/2020

Whereas **DOMINIC FEDEERICI** deceased, late of Middlesex, Connecticut, United States of America, who died on or about the **22nd July, 2004 without leaving a Will** and **ANTHONY PATRICK FEDERICI** the lawful **nephew** of the deceased who is the Petitioner hath petitioned the said Court for a Grant for Letters of Administration to be issued to him upon the Estate of the said Deceased.

These are therefore to cite and admonish all whom it may concern that they appear before the Registrar of the said Court on or before the **4th day of August, 2020** to show caused why such Letters of Administration should not be granted.

Witness by my hand and sealed in the Supreme Court this **23rd day of June, 2020**.

**CBSKIPPINGS
Deputy Registrar
Supreme Court**

G.N. 378

**TURKS AND CAICOS ISLANDS
TELECOMMUNICATIONS COMMISSION**

PUBLIC NOTICE 2020-9

AFF Installation Ltd. - Application for additional Spectrum

June 19, 2020

AFF Installation Ltd. has applied for additional spectrum to facilitate wireless broadband internet services in the Turks and Caicos Islands using the following frequencies:

FREQUENCY NO. 3550 – 3650 MHz

This notice is published as a Supplement to this Gazette.

G.N. 379

**REGISTRATION OF TRADE MARKS ORDINANCE 1978
NOTICE OF
RENEWAL OF REGISTERED PROPRIETORS**

Notice is given that on the 15th day of May, 2020 the undermentioned Trade mark was renewed in the Trademarks Registry

<u>TRADE MARK NO.</u>	<u>NAME OF TRADE MARK</u>	<u>CLASS</u>
T.M. NO. 16298	ZIG-ZAG DEVICE	34

Name of Proprietor: REPUBLIC TECHNOLOGIES (NA) LLC

For REGISTRAR

G.N. 380

**PRACTICE DIRECTION NO 4 OF 2020
TO PROVIDE FOR TRANSITIONING FROM REMOTE TO IN-PERSON COURT
BUSINESS**

AUTHORITY: This Practice Direction is issued by the Chief Justice acting in conjunction with the Chief Magistrate pursuant to Section 17 of the Supreme Court Ordinance, and section 150 of the Magistrate's Court Ordinance.

This notice is published as a Supplement to this Gazette.

NON - OFFICIAL NOTICES

NOTICE OF APPOINTMENT OF RECEIVER OVER CC HOLDINGS LTD.

**TO: CC HOLDINGS LTD.
P.O. BOX 481, BUILDING A SUITE 201, GRACEWAY HOUSE, LEEWARD
HIGHWAY, PROVIDENCIALES, TURKS AND CAICOS ISLANDS**

AND TO: THE REGISTRAR OF COMPANIES

This notice is published as a Supplement to this Gazette.

NOTICE OF APPOINTMENT OF RECEIVER OVER CC PROPERTIES LTD.

**TO: CC PROPERTIES LTD.
P.O. BOX 481, BUILDING A SUITE 201, GRACEWAY HOUSE, LEEWARD
HIGHWAY, PROVIDENCIALES, TURKS AND CAICOS ISLANDS**

AND TO: THE REGISTRAR OF COMPANIES

This notice is published as a Supplement to this Gazette.

**RE: STUART ELLIS PHARMACY INC.
REGISTERED NO. TC.049315**

PURSUANT to Section 35 of the Companies Ordinance 2017, **NOTICE** is hereby given that the following Special Resolution was passed by the Shareholders of the above named company on the 25th day of June, 2020:-

That the company do hereby change its name from

STUART ELLIS PHARMACY INC.

To

JDC COLLINGWOOD LTD.

Dated this 25th day of June, 2020

M & S TRUST COMPANY LIMITED

RE: Galion Reinsurance, Ltd.
REGISTERED NO. TC.038945

In accordance with Section 46 of the Companies Ordinance 2017,
Galion Reinsurance, Ltd. Registered No. TC.038945

hereby gives notice to the Registrar of Companies that:-

(1) The Registered Office of the Company is as follows:-

Regent House West
Regent Village
Grace Bay
Providenciales
Turks and Caicos Islands

(2) The Registered Agent of the Company is:
M & S TRUST COMPANY LIMITED

Dated the 25th day of June 2020
M & S TRUST COMPANY LIMITED

RE: JOJ Reinsurance Company, Ltd.
REGISTERED NO. TC.040081

In accordance with Section 46 of the Companies Ordinance 2017,
JOJ Reinsurance Company, Ltd. Registered No. TC.040081

hereby gives notice to the Registrar of Companies that:-

(1) The Registered Office of the Company is as follows:-

Regent House West
Regent Village
Grace Bay
Providenciales
Turks and Caicos Islands

(2) The Registered Agent of the Company is:
M & S TRUST COMPANY LIMITED

Dated the 13th day of May 2020
M & S TRUST COMPANY LIMITED

TURKS AND CAICOS ISLANDS

PUBLIC ORDER AND CRIMINAL JUSTICE BILL 2020

ARRANGEMENT OF CLAUSES

CLAUSE

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INTIMIDATION AND HARM

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12. Harming etc., witnesses, jurors and judicial officers
13. Sections 11 and 12 – supplementary provisions
14. Interpretation for this Part

DRAFT 13 May 2020

PART X

FINAL PROVISIONS

15. Offence repealed

TURKS AND CAICOS ISLANDS

**A
PROPOSAL
FOR
A
BILL
FOR**

AN ORDINANCE TO CREATE NEW OFFENCES RELATING TO PUBLIC ORDER; TO CONTROL OFFENSIVE MESSAGES AND TELEPHONE CALLS; TO PROTECT SPECIFIC PERSONS FROM INTIMIDATION; AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

**PART I
PRELIMINARIES**

Short title and commencement

1. This Ordinance may be cited as the Public Order and Criminal Justice Ordinance 2020 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

**PART II
PUBLIC ORDER**

Affray

2. (1) A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A person guilty of affray is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding three years.

Fear or provocation of violence

3. (1) A person is guilty of an offence if he—

(a) uses towards another person threatening, abusive or insulting words or behaviour, or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both.

Intentional harassment, alarm or distress

4. (1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

thereby causing that or another person harassment, alarm or distress.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

(a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(b) that his conduct was reasonable.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both.

Harassment, alarm or distress

5. (1) A person is guilty of an offence if he—

(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening or abusive,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

- (3) It is a defence for the accused to prove—
- (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
 - (b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
 - (c) that his conduct was reasonable.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$2,500.

Mental element: miscellaneous

6. (1) A person is guilty of affray only if he intends to use or threaten violence or is aware that his conduct may be violent or threaten violence.

(2) A person is guilty of an offence under section 3 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(3) A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive, or is aware that it may be threatening or abusive or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

(4) For the purposes of this section a person whose awareness is impaired by intoxication shall be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(5) In subsection (4) “intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

Procedure: miscellaneous

7. (1) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 2 to 5 creates one offence.

(2) If on the trial on indictment of a person charged with affray the jury find him not guilty of the offence charged, they

may (without prejudice to section 7 of the Criminal Law Ordinance) find him guilty of an offence under section 3.

(3) The Supreme Court has the same powers and duties in relation to a person who is by virtue of subsection (2) convicted before it of an offence under section 3 as a Magistrate's Court would have on convicting him of the offence.

Interpretation for this Part

8. In this Part—

“dwelling” means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“violence” means any violent conduct, so that—

- (a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons, and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

PART III

OFFENSIVE MESSAGES AND TELEPHONE CALLS

Offence of sending letters etc. with intent to cause distress or anxiety

9. (1) Any person who sends to another person—

- (a) a letter, electronic communication or article of any description which conveys—
 - (i) a message which is indecent or grossly offensive;
 - (ii) a threat; or
 - (iii) information which is false and known or believed to be false by the sender; or

(b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,

is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b), cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

(2) A person is not guilty of an offence by virtue of subsection (1)(a)(ii) if he shows—

(a) that the threat was used to reinforce a demand made by him on reasonable grounds; and

(b) that he believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.

(3) In this section “electronic communication” includes—

(a) any oral or other communication by means of an electronic communications network; and

(b) any communication (however sent) that is in electronic form.

(4) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted and “sender” shall be construed accordingly.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Improper use of public telecommunication system

10. (1) A person who—

(a) sends, by means of a public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character or causes any such message or matter to be sent; or

- (b) for the purpose of causing annoyance, inconvenience or needless anxiety to another, he—
 - (i) sends by means of a public telecommunication system, a message that he knows to be false;
 - (ii) causes such a message to be sent; or
 - (iii) persistently makes use of a public telecommunication system,

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both.

(2) Subsection (1) does not apply to anything done in the course of providing a programme service.

(3) For the purposes of subsection (2)—

“programme service” means—

- (a) a television programme service;
- (b) a radio programme service;
- (c) any other service which consists in the sending, by means of an electronic communications network, of sounds or visual images or both either—
 - (i) for reception at two or more places in the Islands (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
 - (ii) for reception at a place in the Islands for the purpose of being presented there to members of the public or to any group of persons,

and includes an advertisement and, in relation to any service, includes any item included in that service.

PART IV

INTIMIDATION AND HARM

Intimidation of witnesses, jurors and judicial officers

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

- (a) he does an act which intimidates, and is intended to intimidate, another person (“the victim”),

- (b) he does the act knowing or believing that the victim is—
 - (i) assisting in the investigation of an offence;
 - (ii) a witness or potential witness in proceedings for an offence;
 - (iii) a juror or potential juror in proceedings for an offence;
 - (iv) a judicial officer connected with proceedings for an offence, and
- (c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Harming etc., witnesses, jurors and judicial officers

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

- (a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person,
- (b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed (“the victim”), or some other person, has—
 - (i) assisted in an investigation into an offence;
 - (ii) given evidence or particular evidence in proceedings for an offence;
 - (iii) acted as a juror or concurred in a particular verdict in proceedings for an offence;
 - (iv) acted as a judicial officer in proceedings for an offence, and
- (c) he does or threatens to do it because of that knowledge or belief.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Sections 11 and 12 – supplementary provisions

13. (1) For the purposes of sections 11 and 12 it is immaterial that the act is or would be done, or that the threat is made—

- (a) otherwise than in the presence of the victim, or
- (b) to a person other than the victim.

(2) For the purposes of section 12, the harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.

(3) The intention required by section 11(1)(c) and the motive required by section 12(1)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of section 12(1), threatened.

(4) If, in proceedings against a person for an offence under section 11(1), it is proved that he did an act falling within paragraph (a) with the knowledge or belief required by paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (c) of that subsection.

(5) If, in proceedings against a person for an offence under section 12(1), it is proved that within the relevant period—

- (a) he did an act which harmed, and was intended to harm, another person, or
- (b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person, and that he did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (b),

he shall be presumed, unless the contrary is proved, to have done the act or (as the case may be) threatened to do the act with the motive required by paragraph (c) of that subsection.

Interpretation for this Part

14. (1) In this Part—

“investigation into an offence” means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders;

“judicial officer” includes a Judge of the Court of Appeal or Supreme Court, Coroner, Magistrate, Justice of the Peace, Registrar, Court Clerk, Bailiff or Attorney;

“offence” includes an alleged or suspected offence;

“potential”, in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and

“the relevant period”—

(a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal, of the conclusion of the appeal;

(b) in relation to a person who has, or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation; and

(c) in relation to a person who both has, or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation and ending with the anniversary mentioned in paragraph (a).

(2) For the purposes of the definition of the relevant period in subsection (1)—

(a) proceedings for an offence are instituted at the earliest of the following times—

(i) when a complaint is made, alleging that a person has committed the offence;

(ii) when a police officer or other public officer acting in the course of his duty presents a

formal charge to the Magistrate, alleging that a person has committed the offence;

- (iii) when a person appears before a court charged with the offence.
- (b) proceedings at a trial of an offence are concluded with the occurrence of any of the following, the discontinuance of the prosecution by entry of a *nolle prosequi*, the discharge of the accused following a sufficiency hearing, the discharge of the jury without a finding otherwise than in circumstances where the proceedings are continued without a jury, the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which he was convicted; and
- (c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.

PART V

FINAL PROVISIONS

Offence repealed

15. Section 9(b) of the Summary Offences Ordinance is hereby repealed.

PASSED by the House of Assembly this day of 2020.

.....
Tracey Parker
Clerk of the House of Assembly

.....
Dwayne Taylor
Speaker

EXPLANATORY MEMORANDUM

This Bill seeks to introduce a range of new provisions relating to public order, offensive messages and telephone calls, and measures to protect witnesses, jurors and judicial officers from intimidation and harm. The clauses are drawn from laws that are well-established in England and Wales, modified to meet the circumstances in the Islands. The sources are:

- The Public Order Act 1986 (“the POA”)
- The Malicious Communications Act 1988 (“the MCA”)
- The Telecommunications Act 1984 (“the TCA”)
- The Criminal Justice and Public Order Act 1994 (“the CJPOA”)

Part II contains the public order offences. These largely mirror the provisions contained within sections 1 to 8 of the most up to date version of the POA. Some adjustment in relation to numbering and sentencing was required before incorporating the provisions into the Bill.

Part III contains the basis of section 1 of the MCA (at clause 9) and section 43 of the TCA (at clause 10). As with all other clauses prescribing offences, the sentencing provisions have been adjusted for the Islands and to be in line with other recent legislation. Clause 10(3) includes a definition of “programme service” which reflects the definition provided in the Sexual Offences Bill.

Clauses 11 to 14 are modelled on section 51 of the CJPOA. This lengthy section has been split into separate clauses to make the provisions easier to understand and follow. A significant change from the position in England and Wales has been to include judicial officers with the category of persons who may be considered ‘victims’ of these offences.

Lastly, section 9(b) of the Summary Offences Ordinance is repealed. The wording of this section bears a close similarity with clause 5 of this Bill, but on conviction it has a significantly lower maximum sentence.

TURKS AND CAICOS ISLANDS

SEXUAL OFFENCES BILL 2020

ARRANGEMENT OF CLAUSES

CLAUSE

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TURKS AND CAICOS ISLANDS

**A
PROPOSAL
FOR
A
BILL
FOR**

AN ORDINANCE TO MAKE PROVISION WITH RESPECT TO SEXUAL OFFENCES, THEIR PREVENTION AND THE PROTECTION OF CHILDREN FROM HARM FROM OTHER SEXUAL ACTS, AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

**PART I
PRELIMINARIES**

Short title and commencement

1. (1) This Ordinance may be cited as the Sexual Offences Ordinance 2020 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

(2) The Notice under subsection (1) may—

- (a) make different provision for different purposes;
- (b) include supplementary, incidental, saving or transitional provisions.

Interpretation

2. (1) In this Ordinance—

“court” means a Magistrate’s Court, the Supreme Court or the Court of Appeal;

“mental disorder” has the meaning as assigned under section 2 of the Mental Health Ordinance;

(2) Subject to section 77, in this Ordinance 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.

PART II

OFFENCES

Penetrative and non-penetrative sexual offences

Rape

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

- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis;
- (b) B does not consent to the penetration; and
- (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault by penetration

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

- (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his 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) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault

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

- (a) he 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) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Causing a person to engage in sexual activity without consent

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

- (a) he 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) A person guilty of 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 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,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Rape and other offences against children under thirteen

Rape of a child under thirteen

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

- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis; and
- (b) the other person is under the age of thirteen.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault of a child under thirteen by penetration

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

- (a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else;
- (b) the penetration is sexual; and
- (c) the other person is under the age of thirteen.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault of a child under thirteen

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

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

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing or inciting a child under thirteen to engage in sexual activity

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

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

(2) A person guilty of 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,

is liable, on conviction, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Child sex offences

Sexual activity with a child

11. (1) A person aged eighteen or over (A) commits an offence if—

- (a) he intentionally touches another person (B);
- (b) the touching is sexual; and
- (c) either—
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of 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
- (d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing or inciting a child to engage in sexual activity

12. (1) A person aged eighteen or over (A) commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity;
- (b) the activity is sexual; and
- (c) either—
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of 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,

is liable, on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Engaging in sexual activity in the presence of a child

13. (1) A person aged eighteen or over (A) commits an offence if—

- (a) he intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, he 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 he is engaging in it; and
- (d) either—
 - (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Causing a child to watch a sexual act

14. (1) A person aged eighteen or over (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual; and
- (c) either—

- (i) B is under sixteen and A does not reasonably believe that B is sixteen or over; or
- (ii) B is under thirteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Child sex offences committed by children or young persons

15. (1) A person under eighteen commits an offence if he does anything which would be an offence under any of sections 11 to 14 if he were aged eighteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Arranging or facilitating commission of a child sex offence

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

- (a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do; and
- (b) doing it will involve the commission of an offence under any of sections 11 to 15.

(2) A person does not commit an offence under this section if—

- (a) he arranges or facilitates something that he believes another person will do, but that he 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 he acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if he 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.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Meeting a child following sexual grooming etc.

17. (1) A person aged eighteen 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 sixteen; and
- (d) A does not reasonably believe that B is sixteen 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 Islands which is not an offence within sub-paragraph (i) but would be an offence within sub-paragraph (i) if done in the Islands.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Sexual communication with a child

18. (1) A person aged eighteen 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 sixteen and A does not reasonably believe that B is sixteen 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.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Abuse of position of trust

Abuse of position of trust: sexual activity with a child

19. (1) Subject to section 23, a person aged eighteen or over (A) commits an offence if—

- (a) he intentionally touches another person (B);
- (b) the touching is sexual;
- (c) A is in a position of trust in relation to B;
- (d) where subsection (2) applies, A commits an offence only if A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and
- (e) either—
 - (i) B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(2) This subsection applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within section 24(2), (3), (4) or (5); and
- (b) is not in such a position of trust by virtue of other circumstances.

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

20. (1) Subject to section 23, a person aged eighteen or over (A) commits an offence if—

- (a) he 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;

- (d)* Where subsection (2) applies, A commits an offence only if A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and
 - (e)* either—
 - (i)* B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii)* B is under thirteen.
- (2) This subsection applies where A—
- (a)* is in a position of trust in relation to B by virtue of circumstances within section 24(2), (3), (4) or (5); and
 - (b)* is not in such a position of trust by virtue of other circumstances.

Abuse of position of trust: sexual activity in the presence of a child

21. (1) Subject to section 23, a person aged eighteen or over (A) commits an offence if—

- (a)* he intentionally engages in an activity;
 - (b)* the activity is sexual;
 - (c)* for the purpose of obtaining sexual gratification, he 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 he is engaging in it;
 - (d)* A is in a position of trust in relation to B;
 - (e)* where subsection (2) applies, A commits an offence only if A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and
 - (f)* either—
 - (i)* B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii)* B is under thirteen.
- (2) This subsection applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within section 24(2), (3), (4) or (5); and
- (b) is not in such a position of trust by virtue of other circumstances.

Abuse of position of trust: causing a child to watch a sexual act

22. (1) Subject to section 23, a person aged eighteen or over (A) commits an offence if—

- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual;
- (c) A is in a position of trust in relation to B;
- (d) where subsection (2) applies, A commits an offence only if A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B; and
- (e) either—
 - (i) B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(2) This subsection applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within section 24(2), (3), (4) or (5); and
- (b) is not in such a position of trust by virtue of other circumstances.

Provisions applicable to sections 19 to 22

23. (1) Where in proceedings for an offence under section 19, 20, 21, or 22 it is proved that the other person was under eighteen, the defendant is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) Where in proceedings for an offence under section 19, 20, 21, or 22—

- (a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of

circumstances within section 24(2), (3), (4) or (5);
and

(b) it is not proved that he was in such a position of trust
by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have
been expected to know of the circumstances by virtue of which he
was in such a position of trust unless sufficient evidence is adduced
to raise an issue as to whether he knew or could reasonably have
been expected to know of those circumstances.

(3) A person guilty of an offence under section 19, 20, 21,
or 22 is liable—

(a) on summary conviction, to imprisonment for a term
not exceeding six months, or to a fine of \$10,000,
or to both;

(b) on conviction on indictment, to imprisonment for a
term not exceeding five years.

Positions of trust

24. (1) For the purposes of sections 19 to 23, a person (A) is in
a position of trust in relation to another person (B) if—

(a) any of the following subsections applies; or

(b) any condition specified in an order made by the
Governor is met.

(2) This subsection applies if A looks after persons under
eighteen who are detained in an institution by virtue of a court
order or under an enactment, and B is so detained in that institution.

(3) This subsection applies if—

(a) a Juvenile Court has made an order committing a
person under eighteen to the care of A, pursuant to
section 9(1)(a) or 12(1)(c) of the Juveniles
Ordinance;

(b) A is a Supervisor exercising supervision of a person
under eighteen, further to an order made pursuant
to section 9(1)(c) of the Juveniles Ordinance; or

(c) A is a supervisor exercising supervision of a person
under eighteen, further to an order made pursuant
to section 3(1) of the Probation of Offenders
Ordinance.

(4) This subsection applies if A looks after persons under
eighteen who are accommodated and cared for in a hospital, and B
is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under eighteen who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means) whilst B has been committed to a place of safety pursuant to section 16(2) or 17(1) of the Juveniles Ordinance.

(7) This subsection applies if A has been appointed to be the guardian of B pursuant to section 10, 11 or 12 of the Family Law (Guardian, Custody and Access to Children) Ordinance and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means).

(8) This subsection applies if—

- (a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings; and
- (b) A looks after B on an individual basis in pursuance of the requirements.

Positions of trust: interpretation

25. (1) The following provisions apply for the purposes of section 24.

(2) Subject to subsection (3), a person looks after persons under eighteen if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

- (a) A is regularly involved in caring for, training or supervising B; and
- (b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

(4) A person receives education at an educational institution if—

- (a) he is registered or otherwise enrolled as a pupil or student at the institution; or
- (b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In section 24—

“guardian” has the same meaning as assigned under section 2 of the Family Law (Guardianship, Custody and Access to Children) Ordinance;

“hospital” means any establishment in which any of the services listed in subsection (6) are provided;

“place of safety” has the same meaning as assigned under section 2 of the Juveniles Ordinance;

“supervisor” has the same meaning as assigned under section 3(1) of the Probation of Offenders Ordinance; and

“Supervisor” has the same meaning as assigned under section 2 of the Juveniles Ordinance.

(6) The services referred to in the definition of “hospital” are as follows—

- (a) medical treatment under anaesthesia or intravenously administered sedation;
- (b) dental treatment under general anaesthesia;
- (c) obstetric services and, in connection with childbirth, medical services;
- (d) termination of pregnancies;
- (e) cosmetic surgery, other than—
 - (i) ear and body piercing;
 - (ii) tattooing;
 - (iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes; or
 - (iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.

Sections 19 to 22: exception for spouses

26. (1) Conduct by a person (A) which would otherwise be an offence under any of sections 19 to 22 against another person (B) is not an offence under that section if at the time—

- (a) B is sixteen or over; and
- (b) A and B are lawfully married.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married.

Sections 19 to 22: sexual relationships which pre-date position of trust

27. (1) Conduct by a person (A) which would otherwise be an offence under any of sections 19 to 22 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 intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 19 to 22 it is for the defendant to prove that such a relationship existed at that time.

Familial child sex offences

Sexual activity with a child family member

28. (1) Subject to section 30, a person (A) commits an offence if—

- (a) he intentionally touches another person (B), or he intentionally incites another person (B) to touch, or allow himself to be touched by A;
- (b) the touching is sexual;
- (c) the relation of A to B is within section 31;
- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section; and
- (e) either—
 - (i) B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

Inciting a child family member to engage in sexual activity

29. (1) Subject to section 30, a person (A) commits an offence if—

- (a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A;
- (b) the touching is sexual;
- (c) the relation of A to B is within section 31;

- (d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section; and
- (e) either—
 - (i) B is under eighteen and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

Provisions applicable to sections 28 and 29

30. (1) Where in proceedings for an offence under section 28 or 29 it is proved that the other person was under eighteen, the defendant is to be taken not to have reasonably believed that that person was eighteen or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) Where in proceedings for an offence under section 28 or 29 it is proved that the relation of the defendant to the other person was of a description falling within section 31, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(3) A person guilty of an offence under section 28 or 29, if aged eighteen or over at the time of the offence, is liable—

- (a) where subsection (5) applies, on conviction on indictment to imprisonment for a term not exceeding fourteen years;
- (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(4) Unless subsection (3) applies, a person guilty of an offence under section 28 or 29 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(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
- (d) penetration of A's mouth with B's penis.

Family relationships

31. (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 41 of the Adoption Ordinance (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 prospective adoptive 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) A and B are cousins;
- (c) one of them is or has been the other's stepbrother or stepsister; or
- (d) the parent or present or former prospective adoptive parent of one of them is or has been the other's prospective adoptive 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 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.

(6) In this section—

“aunt” means the sister or half-sister of a person’s parent, and “uncle” has a corresponding meaning;

“cousin” means the child of an aunt or uncle;

“prospective adoptive parent” means a person who has received custody of a child further to an interim order made pursuant to section 39(1) of the Adoption Ordinance;

“step-parent” includes a parent’s partner and “stepbrother” and “stepsister” include the child of a parent’s partner.

Sections 28 and 29: exception for spouses

32. (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if at the time—

(a) B is sixteen or over; and

(b) A and B are lawfully married.

(2) In proceedings for such an offence it is for the defendant to prove that A and B were at the time lawfully married.

Sections 28 and 29: Sexual relationships which pre-date family relationships

33. (1) Conduct by a person (A) which would otherwise be an offence under section 28 or 29 against another person (B) is not an offence under that section if—

(a) the relation of A to B is not within subsection (2) of section 31;

(b) it would not be within that subsection if section 41 of the Adoption Ordinance did not apply; and

(c) immediately before the relation of A to B first became such as to fall within section 31, 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 intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under section 28 or 29 it is for the defendant to prove the matters mentioned in subsection (1)(a) to (c).

Sexual exploitation of children

Paying for sexual services of a child

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

- (a) he intentionally obtains for himself the sexual services of another person (B);
- (b) before obtaining those services, he 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 eighteen, and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(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) A person guilty of an offence under this section against a person under thirteen, where subsection (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under sixteen is liable—

- (a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding fourteen years;
- (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(5) Unless subsection (3) or (4) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

(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.

Causing or inciting sexual exploitation of a child

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

- (a) he intentionally causes or incites another person (B) to be sexually exploited in any part of the world; and
- (b) either—
 - (i) B is under eighteen, and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Controlling a child in relation to sexual exploitation

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

- (a) he 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 eighteen, and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Arranging or facilitating sexual exploitation of a child

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

- (a) he intentionally arranges or facilitates the sexual exploitation in any part of the world of another person (B); and
- (b) either—
 - (i) B is under eighteen, and A does not reasonably believe that B is eighteen or over; or
 - (ii) B is under thirteen.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Sections 35 to 37: interpretation

38. (1) For the purposes of sections 35 to 37, a person (B) is sexually exploited if—

- (a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for payment or a promise of payment to B or a third person; or
- (b) an indecent image of B is recorded or streamed or otherwise transmitted,

and “sexual exploitation” is to be interpreted accordingly.

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

Indecent photographs of children

Indecent photographs of children

39. (1) Subject to section 40, any person who—

- (a) possesses, takes, or permits to be taken or makes, any indecent photograph or pseudo-photograph of a child; or
- (b) distributes or shows such indecent photographs or pseudo-photographs; or
- (c) has in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others; or
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so; or
- (e) knowingly accesses such indecent photographs or pseudo-photographs,

is guilty of an offence.

(2) For the purposes of this section, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) For the purposes of subsection (1)(e), a person accesses indecent photographs or pseudo-photographs of a child if he knowingly causes such indecent photographs or pseudo-photographs to be viewed by, or transmitted to, himself.

(4) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(5) Where a person is charged with an offence under subsection (1)(a) it shall be a defence for him to prove that it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world.

(6) Where a person is charged with an offence under subsection (1)(b), (c), (d) or (e), it shall be a defence for him to prove—

- (a) that he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) accessing or having them in his possession; or
- (b) that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

(7) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment for an offence under subsection (1)(a), (b), (c) or (d), to imprisonment for a term not exceeding ten years, or to a fine or both;
- (c) on conviction on indictment for an offence under subsection (1)(e), to imprisonment for a term not exceeding five years, or to a fine or both.

Marriage and other relationships

40. (1) This section applies where, in proceedings for an offence under section 39, the defendant proves that the photograph or pseudo-photograph was of a child aged sixteen or over, and that at the time of the offence charged the child and he—

- (a) were married; or
- (b) lived together as partners in an enduring family relationship.

(2) This section applies whether the photograph or pseudo-photograph showed the child alone or with the defendant, but not if it showed any other person.

(3) In the case of an offence under section 39(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph or pseudo-photograph 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.

(4) In the case of an offence under section 39(1)(b), 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.

(5) In the case of an offence under section 39(1)(c), if sufficient evidence is adduced to raise an issue both—

- (a) as to whether the child consented to the photograph or pseudo-photograph 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 or pseudo-photograph in his 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 or pseudo-photograph in his possession with a view to its being distributed or shown to a person other than the child.

(6) In the case of an offence under section 39(1)(e), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph or pseudo-photograph being accessed by the defendant, 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.

Section 39: Supplementary provisions

41. (1) In proceedings under section 39 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 was then under the age of eighteen.

(2) Where a justice of the peace is satisfied by information on oath, laid on behalf of the Director of Public Prosecutions or by a police officer, that there is reasonable ground for suspecting that in any premises there is an indecent photograph or pseudo-photograph of a child, the justice may issue a warrant authorising any police officer—

- (a) to enter (if need be by force); and
- (b) to search the premises; and
- (c) to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs or pseudo-photographs of children.

Sections 39 to 41: Interpretation

42. (1) The following subsections apply for the interpretation of sections 39 to 41.

(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

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;
 - (c) 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
 - (d) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (c),

and subsection (8) applies in relation to such an image as it applies in relation to a pseudo-photograph.

(5) “Film” includes any form of video-recording.

(6) “Child”, subject to subsection (8), means a person under the age of eighteen.

(7) “Pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Ordinance as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(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.

Possession of prohibited images of children

Possession of prohibited images of children

43. (1) It is an offence for a person to be in possession of a prohibited image of a child.

(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 Director of Public Prosecutions.

(10) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding three years, or to a fine or both.

Defences to a charge under section 43(1)

44. (1) Where a person is charged with an offence under section 43(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 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 a prohibited image of a child;
- (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.

(2) In this section “prohibited image” has the same meaning as in section 43.

Meaning of “image” and “child” in sections 43 and 44

45. (1) The following apply for the purposes of sections 43 and 44.

(2) “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).

(3) “Image” does not include an indecent photograph, or indecent pseudo-photograph, of a child.

(4) In subsection (3) “indecent photograph” and “indecent pseudo-photograph” are to be construed in accordance with section 42.

(5) “Child”, subject to subsection (6), means a person under the age of eighteen.

(6) Where an image shows a person, the image is to be treated as an image of a child if—

(a) the impression conveyed by the 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.

(7) References to an image of a person include references to an image of an imaginary person.

(8) References to an image of a child include references to an image of an imaginary child.

Entry, search and seizure

46. Section 41(2) applies in relation to prohibited images of children as that subsection applies in relation to indecent photographs or pseudo-photographs of children.

Unlawfully disclosing private sexual photographs and films

Disclosing private sexual photographs and films with intent to cause distress

47. (1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

- (a) without the consent of an individual who appears in the photograph or film; and
- (b) with the intention of causing that individual distress.

(2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

(3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(4) It is a defence for a person charged with an offence under this section to show that—

- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material; and
- (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

(5) It is a defence for a person charged with an offence under this section to show that—

- (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person; and
- (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).

(6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—

- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond reasonable doubt.

(7) For the purposes of subsections (1) to (5)—

- (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure; and
- (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.

(8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.

(9) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine or both, and

Meaning of “disclose” and “photograph or film”

48. (1) The following apply for the purposes of section 47, this section and section 49.

(2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.

(3) Something that is given, shown or made available to a person is disclosed—

(a) whether or not it is given, shown or made available for reward; and

(b) whether or not it has previously been given, shown or made available to the person.

(4) “Photograph or film” means a still or moving image in any form that—

(a) appears to consist of or include one or more photographed or filmed images; and

(b) in fact consists of or includes one or more photographed or filmed images.

(5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(6) “Photographed or filmed image” means a still or moving image that—

(a) was originally captured by photography or filming; or

(b) is part of an image originally captured by photography or filming.

(7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(8) References to a photograph or film include—

- (a) a negative version of an image described in subsection (4); and
- (b) data stored by any means which is capable of conversion into an image described in subsection (4).

Meaning of “private” and “sexual”

49. (1) The following apply for the purposes of section 47.

(2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.

(3) A photograph or film is “sexual” if—

- (a) it shows all or part of an individual’s exposed genitals or pubic area;
- (b) it shows something that a reasonable person would consider to be sexual because of its nature; or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(4) Subsection (5) applies in the case of—

- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way;
- (b) a photograph or film that combines two or more photographed or filmed images; and
- (c) a photograph or film that combines a photographed or filmed image with something else.

(5) The photograph or film is not private and sexual if—

- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual;
- (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4); or
- (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 47(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

Offences against a person with a mental disorder

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

- 50.** (1) A person (A) commits an offence if—
- (a) he 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) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of 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
 - (d) penetration of A's mouth with B's penis,
- is liable, on conviction on indictment, to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

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

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

- (a) he 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) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason); or
- (b) he is unable to communicate such a choice to A.

(3) A person guilty of 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,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

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

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

- (a) he intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, he 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 he 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) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

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

- 53.** (1) A person (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of 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) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or
 - (b) he is unable to communicate such a choice to A.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Inducements etc. to persons with a mental disorder

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

- 54.** (1) A person (A) commits an offence if—
- (a) with the agreement of another person (B) he intentionally touches that person;
 - (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) A person guilty of 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

(d) penetration of A's mouth with B's penis,
is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

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

55. (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 him for this purpose, he 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) A person guilty of 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,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

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

- 56.** (1) A person (A) commits an offence if—
- (a) he intentionally engages in an activity;
 - (b) the activity is sexual;
 - (c) for the purpose of obtaining sexual gratification, he 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 he 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.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

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

- 57.** (1) A person (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) B agrees to watch or look 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.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Sex with an adult relative

Sex with an adult relative: penetration

58. (1) A person aged sixteen or over (A), subject to subsection (3), commits an offence if—

(a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis;

(b) the penetration is sexual;

(c) the other person (B) is aged eighteen or over;

(d) A is related to B as a parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; and

(e) A knows or could reasonably be expected to know that he is related to B in that way.

(2) In subsection (2)—

“parent” includes an adoptive parent;

“child” includes an adopted person within the meaning of the Adoption Ordinance;

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

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

(3) Where subsection (1) applies in a case where A is related to B as B’s child by virtue of subsection (2)(b), A does not commit an offence under this section unless A is eighteen or over.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person as

described in subsection (1)(d), it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Sex with an adult relative: consenting to penetration

59. (1) A person aged sixteen or over (A), subject to subsection (3), 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 eighteen or over;
- (e) A is related to B as a parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; and
- (f) A knows or could reasonably be expected to know that he is related to B in that way.

(2) In subsection (1)—

“parent” includes an adoptive parent;

“child” includes an adopted person within the meaning of the Adoption Ordinance;

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

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

(3) Where subsection (1) applies in a case where A is related to B as B's child by virtue of subsection (2)(b), A does not commit an offence under this section unless A is eighteen or over.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person as

described in subsection (1)(e), it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Prostitution

Soliciting

60. (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.

(2) The reference to a person in a street or public place includes a person in a vehicle in a street or public place.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$2,000.

(4) In this section "street" has the same meaning as assigned under section 2 of the Juveniles Ordinance.

Causing or inciting prostitution for gain

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

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

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Controlling prostitution for gain

- 62.** (1) A person commits an offence if—
- (a) he intentionally controls any of the activities of another person relating to that person’s prostitution in any part of the world; and
 - (b) he does so for or in the expectation of gain for himself or a third person.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

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

- 63.** (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.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$2,000.

Sections 60 to 63: interpretation

64. (1) In sections 61, 62 and 63, “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 60, 61, 62 and 63 “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 64, “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.

Causing or encouraging prostitution of girl under sixteen

65. (1) It is an offence for a person to cause or encourage the prostitution of a girl under the age of sixteen for whom he is responsible.

(2) Where a girl has become a prostitute, a person shall be deemed for the purposes of this section to have caused or encouraged it, if he knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

(3) The persons who are to be treated for the purposes of this section as responsible for a girl are (subject to subsection (4) of this section)—

- (a) her parents;
- (b) any person who is not a parent of hers but who has parental responsibility for her; and
- (c) any person who has care of her.

(4) An individual falling within subsection (3)(a) or (b) of this section is not to be treated as responsible for a girl if a legal custody order under the Family Law (Guardianship, Custody and Access to Children) Ordinance is in force with respect to her and he is not named in the order as the person with whom she is to live.

(5) If, on a charge of an offence against a girl under this section, the girl appears to the court to have been under the age of sixteen at the time of the offence charged, she shall be presumed

for the purposes of this section to have been so, unless the contrary is proved.

(6) In this section, the words “legal custody” shall have the meaning assigned to them by section 2 of the Family Law (Guardianship, Custody and Access to Children) Ordinance.

(7) A person guilty of an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Keeping a brothel used for prostitution

66. (1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

(2) In this section “prostitution” has the meaning given by section 64(2).

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Preparatory offences

Administering a substance with intent

67. (1) A person commits an offence if he 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.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Committing an offence with intent to commit a sexual offence

68. (1) A person commits an offence under this section if he 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 (including an offence of aiding, abetting, counselling or procuring such an offence).

(3) A person guilty of an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Trespass with intent to commit a sexual offence

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

- (a) he is a trespasser on any premises;
- (b) he intends to commit a relevant sexual offence on the premises; and
- (c) he knows that, or is reckless as to whether, he 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 68(2);

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

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Other offences

Exposure

- 70.** (1) A person commits an offence if—
- (a) he intentionally exposes his genitals; and
 - (b) he intends that someone will see them and be caused alarm or distress.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Voyeurism

- 71.** (1) A person commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he observes another person doing a private act; and
 - (b) he knows that the other person does not consent to being observed for his sexual gratification.
- (2) A person commits an offence if—
- (a) he 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) he knows that B does not consent to his operating equipment with that intention.
- (3) A person commits an offence if—
- (a) he records another person (B) doing a private act;
 - (b) he does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at an image of B doing the act; and
 - (c) he knows that B does not consent to his recording the act with that intention.
- (4) A person commits an offence if he installs equipment, or constructs or adapts a structure or part of a structure, with the

intention of enabling himself or another person to commit an offence under subsection (1).

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Voyeurism: additional offences

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

- (a) A operates equipment beneath the clothing of another person (B);
- (b) A does so with the intention of enabling A or another person (C), for a purpose mentioned in subsection (3), to observe—
 - (i) B's genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible; and

- (c) A does so—
 - (i) without B's consent; and
 - (ii) without reasonably believing that B consents.

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

- (a) A records an image beneath the clothing of another person (B);
- (b) the image is of—
 - (i) B's genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible;

- (c) A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in subsection (3); and

- (d) A does so—
 - (i) without B’s consent; and
 - (ii) without reasonably believing that B consents.
- (3) The purposes referred to in subsections (1) and (2) are—
 - (a) obtaining sexual gratification (whether for A or C);
 - (b) humiliating, alarming or distressing B.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Voyeurism: interpretation

73. (1) For the purposes of section 71, 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) For the purposes of sections 71 and 72, operating equipment includes enabling or securing its activation by another person without that person’s knowledge.

(3) In section 71, “structure” includes a tent, vehicle or vessel or other temporary or movable structure.

Intercourse with an animal

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

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

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Sexual penetration of a corpse

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

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

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Supplementary and general

Exceptions to aiding, abetting and counselling

76. (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 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 7 to 9 (offences against children under thirteen);
- (b) an offence under section 11 (sexual activity with a child);
- (c) an offence under section 15 which would be an offence under section 11 if the offender were aged eighteen;
- (d) an offence under any of sections 19, 28, 50 and 54 (sexual activity) against a person under sixteen.

(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.

“Consent”

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

Evidential presumptions about consent

78. (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 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 he 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;
- (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.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive presumptions about consent

79. (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.

Sections 78 and 79: relevant acts

80. In relation to an offence to which sections 78 and 79 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 3 (rape).	The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).
An offence under section 4 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under section 5 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 6 (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.

“Sexual”

81. For the purposes of this Part, except section 18, 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.

PART III

NOTIFICATION REQUIREMENTS

Persons becoming subject to notification requirements

82. (1) A person is subject to the notification requirements of this Part for the period set out in section 83 (“the notification period”) if—

- (a) he is convicted of an offence listed in Column A of Schedule 1 and the corresponding criteria (if any) in Column B is met;
- (b) he is found not guilty of such an offence by reason of insanity;
- (c) he is subject to an order under Part IV of this Ordinance.

(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”.

The notification period

83. (1) The notification period for a person within section 82 is the period in the second column of the following Table opposite the description that applies to him.

TABLE

Description of relevant offender	Notification Period
A person who, in respect of the offence, is or has been sentenced to imprisonment for life or to imprisonment for a term of thirty 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 conveyed to a hospital or other	An indefinite period beginning with that date

place appointed to be a mental health facility or for the reception of mentally disordered offenders, pursuant to section 65 of the Criminal Procedure Ordinance.	
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than six months but less than thirty months	Ten years beginning with that date
A person who, in respect of the offence, is or has been sentenced to imprisonment for a term of six months or less	Seven years beginning with that date
A person of any other description	Five years beginning with the relevant date

(2) Where a person is under eighteen on the relevant date, subsection (1) has effect as if for any reference to a period of ten years, seven years, five years or two years there were reference to one-half of that period.

(3) Subsection (4) applies where a relevant offender within section 82(1)(a) is or has been sentenced, in respect of two or more offences listed in Column A of Schedule 1—

- (a) to consecutive terms of imprisonment; or
- (b) to terms of imprisonment that 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 imprisonment 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 with Z), is equal to X plus Y minus Z.

(5) In this Part, “relevant date” means—

- (a) in the case of a person within section 82(1)(a), the date of conviction;
- (b) in the case of a person within section 82(1)(b), the date of the finding;
- (c) in the case of a person within section 82(1)(c), the date of the order.

(6) In this Part, “finding” in relation to an offence means a finding of not guilty of the offence by reason of insanity and that

the person did the act or omission charged against him in respect of the offence.

Notification requirements: initial notification

84. (1) A relevant offender must, within a period of three days beginning with the relevant date, notify to the police the information set out in subsection (3).

(2) Subsection (1) does not apply to a relevant offender in respect of a conviction, finding or caution within section 82(1) if—

- (a) immediately before the conviction or finding he was subject to the notification requirements of this Part as a result of another conviction, finding or an order of the court (“the earlier event”);
- (b) at that time, he had made a notification under subsection (1) in respect of the earlier event; and
- (c) throughout the period referred to in subsection (1), he remains subject to the notification requirements as a result of the earlier event.

(3) The information is—

- (a) the relevant offender’s date of birth;
- (b) his national insurance number, national health insurance number, National Turks and Caicos Islander Status Card number, or National Turks and Caicos Islander Certificate number;
- (c) his name on the relevant date and, where he used one or more other names on that date, each of those names;
- (d) his home address on the relevant date;
- (e) his name on the date on which notification is given and, where he uses one or more other names on that date, each of those names;
- (f) his home address on the date on which notification is given;
- (g) the address of any other premises in the Islands at which, at the time notification is given, he regularly resides or stays;
- (h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (4);

- (i) such other information, about him or his personal affairs, as the Governor may prescribe in regulations.
- (4) The details 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.
- (5) 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 the court;
 - (b) serving a sentence of imprisonment;
 - (c) detained in a hospital or other place appointed to be a mental health facility or for the reception of mentally disordered offenders; or
 - (d) outside the Islands.
- (6) In this part “home address” means, in relation to any person—
 - (a) the address of his sole or main residence in the Islands, or
 - (b) where he has no such residence, the address or location of a place in the Islands where he can regularly be found and, if there is more than one such place, such one of those places as the person may select.

Notification requirements: changes

- 85.** (1) A relevant offender must, within the period of three days beginning with—
- (a) his using a name which has not been notified to the police under section 84(1);
 - (b) any change of his home address;
 - (c) his having resided or stayed, for a qualifying period, at any premises in the Islands the address of which has not been notified to the police under section 84(1) or this subsection;

- (d) any prescribed change of circumstances; or
- (e) his release from custody pursuant to an order of a court or from imprisonment or from detention in a hospital,

notify to the police that name, the new home address, the address of those premises, the prescribed details or (as the case may be) the fact he has been released, and (in addition) the information set out in section 84(3).

(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 two 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 three days beginning with the date specified—

- (a) the notification does not affect the duty imposed by subsection (1); and
- (b) the relevant offender must, within the period of six days beginning with the date specified, notify to the police the fact that the event did not occur within the period of three days beginning with the date specified.

(5) Section 84(5) applies to the determination of the period of three days mentioned in subsection (1) and the period of six days mentioned in subsection (4)(b), as it applies to the determination of the period mentioned in section 84(1).

(6) In this section—

- (a) “prescribed 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 84(3)(h); and
 - (ii) of a description prescribed by regulations made by the Governor;
- (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 seven days; or
- (b) two or more periods, in any period of twelve months, which taken together amount to seven days.

Notification requirements: periodic notification

86. (1) A relevant offender must, within one year after each event within subsection (2), notify to the police the information set out in section 84(3), unless within that period he has given a notification under section 85(1).

(2) The events are—

- (a) the commencement of this Part (only in the case of a relevant offender from that commencement);
- (b) any notification given by the relevant offender under section 84(1) or 85(1); and
- (c) any notification given by him under subsection (1).

(3) Where one year 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 three days beginning when subsection (4) first ceases to apply to him.

(4) This subsection applies to the relevant offender if he is—

- (a) remanded in or committed to custody by an order of the court;
- (b) serving a sentence of imprisonment;
- (c) detained in a hospital; or
- (d) outside the Islands.

(5) This section applies to the relevant offender if the last home address notified by him under subsection 84(1) or 85(1) or subsection (1) was the address or location of such a place as is mentioned in section 84(6)(b).

Notification requirements: absence from notified residence

87. (1) This section applies to a relevant offender at any time if the last home address notified by him under section 84(1), 85(1) or 86(1) was an address such as is mentioned in section 84(6)(a) (sole or main residence).

(2) If the relevant offender intends to be absent from that home address for a period of more than three days (“the relevant period”), the relevant offender must, not less than twelve hours

before leaving that home address, notify to the police 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 hold about—
 - (i) his travel arrangements during the relevant period;
 - (ii) his accommodation arrangements during that period;
 - (iii) his date of return to that home address.

(4) In this section—

“travel arrangements” include, in particular, details of the means of transport to be used and the dates of travel,

“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) the 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 home address, but
- (b) returns to his home address on a date other than that notified,

the relevant offender must notify the date of his actual return to the police within three 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 section 88.

(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 84(3)(g) already notified to the police under sections 84 or 86;

- (b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 85(1)(c).

Notification requirements: travel outside the Islands

88. (1) The Governor may by regulations make provision requiring relevant offenders who leave the Islands, 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 Islands, 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 Islands;
- (b) the country (or, if there is more than one, the first country) to which he will travel and his 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 departure from or return to the Islands or his movements whilst outside the Islands.

(3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the Islands.

Method of notification and related matters

89. (1) A person gives notification under section 84(1), 85(1), 86(1), 87(2) or (6) by—

- (a) attending at a police station; and
- (b) giving an oral notification to any police officer, or to any person authorised for the purpose by the Commissioner of Police.

(2) Any notification under this section must be acknowledged; and an acknowledgement under this subsection

must be in writing and in such form as the Governor may direct.

(3) When the notification is given under section 84(1), 85(1), 86(1), 87(2) or (6), 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 fingerprints;
- (b) photograph any part of him;
- (c) do both these things.

(4) The power in subsection (3) is exercisable for the purpose of verifying the identity of the relevant offender.

Review of indefinite notification requirements

Review of indefinite notification requirements: qualifying relevant offender

90. (1) A qualifying relevant offender may apply to the Commissioner of Police for a determination that the qualifying relevant offender is no longer subject to the indefinite notification requirements (“an application for review”).

(2) A qualifying relevant offender means a relevant offender who, on the date on which he makes an application for review, is—

- (a) subject to the indefinite notification requirements; and
- (b) not subject to a sexual harm prevention order or an interim sexual harm prevention order under Part IV.

(3) The “indefinite notification requirements” mean the notification requirements of this Part for an indefinite period by virtue of section 82(1).

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

91. (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 eighteen or over on the relevant date, the day after the end of the fifteen 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 eighteen on the relevant date, the day after the end of the eight year period beginning with the day on which the qualifying relevant offender gives the relevant notification.

(3) Subject to subsections (4) to (6), the further qualifying date is the day after the end of the eight year period beginning with the day on which the Commissioner of Police makes a determination under section 92 to require a qualifying relevant offender to remain subject to the indefinite notification requirements.

(4) Subsection (5) applies if the Commissioner of Police, when making a determination under section 92 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 eight year period beginning with the day on which the determination is made.

(5) If this subsection applies, the Commissioner of Police 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 fifteen 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 Commissioner of Police within fourteen 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 Commissioner of Police within twenty eight days of receipt of the notification.

(9) In this section “the relevant notification” means the first notification which the relevant offender gives under section 84, 85 or 87 when he 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 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 a body established by the Governor for the purposes of making recommendations to the Commissioner of Police, prior to him exercising his discretion pursuant to section 92;
- (b) “risk of sexual harm” means a risk of physical or psychological harm to the public in the Islands or any particular members of the public caused by the qualifying relevant offender committing one or more of the offences listed in Column A of Schedule 1 and meeting the corresponding criteria (if any) in Column B.

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

92. (1) The Commissioner of police must, within six weeks of the latest date on which any body to which a notification has been given under section 91(7)(b) may give information under section 91(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 Commissioner of Police 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 Commissioner of Police 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 may appeal the determination in accordance with section 94.

(4) If the Commissioner of Police 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 Governor may by order amend the period in subsection (1).

Review of indefinite notification requirements: factors applying to determination under section 92

93. (1) In determining an application for review under section 92, the Commissioner of Police 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) whether the qualifying relevant offender has committed any offence under section 95;
- (d) the age of the qualifying relevant offender at the qualifying date or further qualifying date;
- (e) the age of the qualifying relevant offender at the time the offence referred to in paragraph (a) was committed;

- (f) 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;
- (g) any submission or evidence from a victim of the offence giving rise to the indefinite notification requirements;
- (h) any convictions or findings made by a court (including by a court in countries outside the Islands) in respect of the qualifying relevant offender for any offence listed in Column A of Schedule 1 other than the one referred to in paragraph (a);
- (i) any other submission or evidence of the risk of sexual harm posed by the qualifying relevant offender;
- (j) 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
- (k) any other matter which the Commissioner of Police considers to be appropriate.

(3) In this section, a reference to a conviction or finding for an offence committed in a country outside the Islands means a conviction or finding 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 Column A of Schedule 1 if it had been done in the Islands.

Review of indefinite notification requirements: appeals

94. (1) A qualifying relevant offender may appeal against a determination of the Commissioner of Police under section 93.

(2) An appeal under this section may be made by complaint to a Magistrate's Court within the period of twenty one 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.

Offences relating to notification

95. (1) A person commits an offence if he—

- (a) fails, without reasonable excuse, to comply with section 84(1), 85(1), 85(4)(b), 86(1), 87(2) or (6), or 89(4), or any requirement imposed by regulations made under section 88(1); or
- (b) notifies the police, in purported compliance with section 84(1), 85(1), 86(1), 87(2) or (6), or any requirement imposed by regulations made under section 88(1), any information which he knows to be false.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(3) A person commits an offence under subsection (1)(a) on the day on which he first fails, without reasonable excuse, to comply with section 84(1), 85(1), 85(4)(b), 86(1), 87(2) or (6), or any requirement imposed by regulations made under section 88(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.

Power of entry and search of relevant offender's home address

96. (1) If on an application made by or on behalf of the Commissioner of Police a justice of the peace is satisfied that the requirements in subsection (2) are met in relation to any premises, the Magistrate may issue a warrant authorising a police officer—

- (a) to enter the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates; and
- (b) 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 police officer to enter and search the premises for the purpose mentioned in subsection (1)(a); and
 - (d) that on at least two occasions a police officer 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 police as his 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 is—
 - (a) remanded in or committed to custody by order of a court;
 - (b) serving a sentence of imprisonment;
 - (c) detained in a hospital; or
 - (d) outside the Islands.
- (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 police officer 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 police that the premises specified in the warrant are his home address; or
 - (b) in respect of whom there are reasonable grounds to believe that he resides there or may regularly be found there.

PART IV

SEXUAL HARM PREVENTION ORDERS

Sexual harm prevention orders: applications and grounds

97. (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 Column A of Schedule 1; or
 - (ii) a finding that the defendant is not guilty of an offence listed in Column A of Schedule 1 by reason of insanity; 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 Islands.
- (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 Islands.

(4) The Commissioner of Police may by complaint to a Magistrate's Court apply for a sexual harm prevention order in respect of a person if it appears to the Commissioner of Police 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 Commissioner of Police may make an application under subsection (4) only in respect of a person—

- (a) who resides in the Islands; or
- (b) who the Commissioner of Police believes is in the Islands, or intending to come to them.

(6) Where the defendant is a child, a reference in this section to a court is to include a Juvenile Court.

Section 97: supplemental

98. (1) In section 97—

“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 or found as mentioned in subsections (2) or (3);

“child” means a person under eighteen;

“the public” means the public in the Islands;

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

- (a) by the person committing an offence listed in Column A of Schedule 1, or
- (b) (in the context of harm outside the Islands) by the person doing, outside the Islands, anything which would constitute an offence listed in Column A of Schedule 1 if done in the Islands;

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

“vulnerable adult” means a person aged eighteen 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 old age or otherwise.

(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 Column A of Schedule 1; or
- (b) has been found not guilty of such an offence by reason of insanity.

(3) A person is within this subsection if, under the law in force of a country outside the Islands 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); or
- (b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding that the person is not guilty by reason of insanity.

(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 in Column A of Schedule 1 if it had been done in the Islands.

(5) For the purposes of section 97, acts, behaviour, convictions and findings include those occurring before the commencement of this Part.

(6) Subject to subsection (7), on an application under section 97(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, the condition is not in the defendant’s opinion met;
- (b) showing the grounds for that opinion; and
- (c) requiring the applicant to prove that the condition is met.

(7) The court, if it thinks fit, may permit the defendant to require the applicant to prove that the condition is met without service of a notice under subsection (6).

Sexual harm prevention orders: effect

99. (1) A sexual harm prevention order prohibits the defendant from doing anything described in the order.

(2) Subject to section 100(1), a prohibition contained in a sexual harm prevention order has effect—

- (a) for a fixed period, specified in the order, of at least five years; 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 Islands.
- (5) In subsection (4), “the public”, “sexual harm”, “child” and “vulnerable adult” each has the meaning given in section 98(1).
- (6) Where a court makes a sexual harm prevention order in relation to a person already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.

Sexual harm prevention orders: prohibitions on foreign travel

- 100.** (1) A prohibition on foreign travel contained in a sexual harm prevention order must be for a fixed period of not more than five years.
- (2) A “prohibition on foreign travel” means—
 - (a) a prohibition on travelling to any country outside the Islands named or described in the order;
 - (b) a prohibition on travelling to any country outside the Islands other than a country named in the order; or
 - (c) a prohibition on travelling to any country outside the Islands.
 - (3) Subsection (1) does not prevent a prohibition on foreign travel being extended for a further period (of not more than five years each time) under section 101.

(4) A sexual harm prevention order that contains a prohibition within subsection (2)(c) must require the defendant to surrender all of that defendant's passports at a police station—

- (a) on or before the date 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 to—

- (a) a passport issued by or on behalf of the authorities 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;
- (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.

Sexual harm prevention orders: variations, renewals and discharges

101. (1) A person within 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 Commissioner of Police.

(3) An application under subsection (1) may be made—

- (a) where the appropriate court is the Supreme Court, 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 person 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 purposes 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 Islands.

(6) In subsection (5) “the public”, “sexual harm”, “child” and “vulnerable adult” each has the meaning given in section 98(1).

(7) The court must not discharge an order before the end of five years beginning with the day on which the order was made, without the consent of the defendant and the Commissioner of Police.

(8) Subsection (7) does not apply to an order containing a prohibition on foreign travel and no other prohibitions.

(9) In this section “the appropriate court” means—

- (a) where the Supreme Court or the Court of Appeal made the sexual harm prevention order, the Supreme Court;
- (b) where an adult Magistrate’s Court made the order, that court;
- (c) where a Juvenile Court made the order and the defendant is under eighteen, that court;
- (d) where a Juvenile Court made the order and the defendant is aged eighteen or over, an adult Magistrate’s Court.

(10) In subsection (9), “adult Magistrate’s Court” means a Magistrate’s Court that is not a Juvenile Court.

Interim sexual harm prevention orders

Interim sexual harm prevention orders

102. (1) This section applies where an application under section 97(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 Commissioner of Police, by complaint to the court to which that application has been made.

(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 applicant or the defendant may by complaint apply to the court that made the interim sexual harm prevention order for the order to be varied, renewed or discharged.

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

103. (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 Part III 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 Part III from the making of the order until the order (as renewed from time to time) ceases to have effect; and
- (b) Part III 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) Where—

(a) a sexual harm prevention order is in effect in relation to a relevant sex offender (within the meaning of section 82(2)); and

(b) by virtue of section 92 or 94 the relevant sex offender ceases to be subject to the notification requirements of Part III,

the sexual harm prevention order ceases to have effect.

(6) In subsection (1) “relevant offender” has the meaning given in section 82(2).

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

104. (1) A defendant may appeal against the making of a sexual harm prevention order—

(a) where the order was made by virtue of section 97(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 97(2)(a)(ii), 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 97(4), to the Supreme Court.

(2) A defendant may appeal to the Supreme Court against the making of an interim sexual harm prevention order.

(3) A defendant may appeal against the making of an order under section 101; or the refusal to make such an order—

(a) where the application for such an order was made to the Supreme Court, to the Court of Appeal;

(b) in any other case, to the Supreme Court.

(4) On an appeal under subsection (1)(c), (2) or (3)(b), the Supreme Court 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 Supreme Court on an appeal under subsection (1)(c) or (2) (other than an order directing that an application be re-heard by a Magistrate's Court) is for the purposes of section 101(9) or 102(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 Supreme Court).

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

105. (1) A person who, without reasonable excuse, does anything that the person is prohibited from doing by—

- (a) a sexual harm prevention order; or
- (b) or an interim sexual harm prevention 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 100(4).

(3) A person guilty of an offence under this section is liable—

- (a) On summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(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.

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

106. (1) Rules of court—

- (a) may provide for a Juvenile Court to give permission for an application under section 97(4) against a person aged eighteen 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 eighteen; 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 eighteen after proceedings against that person by virtue of section 97, 101 or 102 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 Magistrate’s Court that is not a Juvenile Court (including provision applying section 102 with modifications).

(2) A person’s age is treated for the purposes of this Part as being that which it appears to the court to be after considering any available evidence.

PART V

SEXUAL RISK ORDERS

Sexual risk orders: applications, grounds and effect

107. (1) The Commissioner of Police may by complaint to a Magistrate’s Court apply for an order under this section (a “sexual risk order”) in respect of a person (“the defendant”) if it appears to the Commissioner of Police 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 Commissioner of Police may make an application under subsection (1) only in respect of a person—

- (a) who resides in the Islands; or
- (b) who the Commissioner of Police believes is in the Islands or is intending to come to them.

(4) An application under subsection (1) may be made to a Magistrate’s Court.

(5) 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 Islands.

(6) Such an order—

- (a) prohibits the defendant from doing anything described in the order;
- (b) has effect for a fixed period (not less than two years) specified in the order or until further order.

(7) A sexual risk order may specify different periods for different prohibitions.

(8) 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 Islands.

(9) 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.

Section 107: interpretation

108. (1) In section 107—

“child” means a person under eighteen;

“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 Islands;

“vulnerable adult” means a person aged eighteen 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 old age or otherwise.

(2) Where the defendant is a child, a reference in that section to a Magistrate’s Court is to be taken as referring to a Juvenile Court (subject to any rules of court made under section 116(1)).

Sexual risk orders: prohibitions on foreign travel

109. (1) A prohibition on foreign travel contained in a sexual risk order must not be for a period of more than five years.

(2) A “prohibition on foreign travel” means—

- (a) a prohibition on travelling to any country outside the Islands named or described in the order;
- (b) a prohibition on travelling to any country outside the Islands other than a country named or described in the order; or
- (c) a prohibition on travelling to any country outside the Islands.

(3) Subsection (1) does not prevent a prohibition on foreign travel from being extended for a further period (of no more than five years each time) under section 110.

(4) A sexual risk 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 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;
- (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.

Sexual risk order: variations, renewals and discharges

110. (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 Commissioner of Police.

(3) Subject to subsections (4), (5) and (6), on the application the court, after hearing the person making the application and (if they wish to be heard) the other persons mentioned in subsection (2), may make any order, varying, renewing or discharging the sexual risk order, that the court considers appropriate.

(4) An order may be renewed, or varied so as to impose additional prohibitions on the defendant, only if it is necessary to do so for the purpose of—

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

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

(6) The court must not discharge an order before the end of two years beginning with the day on which the order was made, without the consent of the defendant and the Commissioner of Police.

(7) Section 108(1) applies for the purposes of this section.

(8) In this section “the appropriate court” means—

- (a) where an adult Magistrate’s Court made the sexual risk order, that court;
- (b) where a Juvenile Court made the order and the defendant is under the age of eighteen, that court;
- (c) where a Juvenile Court made the order and the defendant is aged eighteen or over, an adult Magistrate’s Court.

(9) In subsection (8), “adult Magistrate’s Court” means a Magistrate’s Court that is not a Juvenile Court.

Interim sexual risk orders

111. (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 person who has made that application, by complaint to the court to which that application has been made.

(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 applicant or the defendant may by complaint apply to the court that made the interim sexual risk order for the order to be varied, renewed or discharged.

Sexual risk orders and interim sexual risk orders: notification requirements

112. (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 three days beginning with the date of service of the order, notify to the police the information set out in subsection (2) (unless the person is subject to the notification requirements of Part III 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 Part III); and
- (b) uses a name which has not been notified under this section (or under any other provision of Part III), or changes home address,

must, within the period of three days beginning with the date on which that happens, notify to the police that name or (as the case may be) the new home address.

(4) Sections 89 (method of notification and related matters) and 95 (offences relating to notification) apply for the purposes of this section—

- (a) with references to section 84(1) being read as references to subsection (1);
- (b) with references to section 85(1) being read as references to subsection (3); and
- (c) with the omission of section 89(2)(b).

Sexual risk orders and interim sexual risk orders: appeals

113. (1) A defendant may appeal to the Supreme Court—

- (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 110, or the refusal to make such an order.

(2) On any such appeal, the Supreme Court 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 Supreme Court on an appeal under subsection (1)(a) or (b) (other than an order directing that an application be re-heard by a Magistrate's Court) is for the purposes of section 110(7) or 111(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 Supreme Court).

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

114. (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 109(4).

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine of \$10,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(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.

Effect of conviction etc., of an offence under section 114 etc.

115. (1) This section applies to a person (“the defendant”) who—

(a) is convicted of an offence under section 114; or

(b) is found not guilty of such an offence by reason of insanity;

(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 Part III 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 Part III 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) Part III 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 or finding within subsection (1) is in respect of a breach of a sexual risk order, that order;

(b) where the conviction or finding within subsection (1) is in respect of a breach of an interim sexual risk order, any 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.

(6) In subsection (1) “relevant offender” has the meaning given in section 82(2).

**Sexual risk orders and interim sexual risk orders:
supplementary**

116. (1) Rules of court—

(a) may provide for a Juvenile Court to give permission for an application under section 107 against a person aged eighteen 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 eighteen; 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 eighteen after proceedings against that person by virtue of section 107, 110 or 111 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 Magistrate’s Court that is not a Juvenile Court (including provision applying section 111 with modifications).

(2) A person's age is treated for the purposes of sections 107 to 115 and this section as being that which it appears to the court to be after considering any available evidence.

PART VI

ANONYMITY OF VICTIMS

Anonymity of victims of certain offences

117. (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 119.

(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.

Offences to which this Part applies

118. This Part applies to the following offences—

- (a) any offence listed in Column A of Schedule 1, except section 58, 59 or 74 of this Ordinance;
- (b) any attempt to commit any of the offences included in paragraph (a);
- (c) any conspiracy to commit any of those offences;
- (d) any incitement of another to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.

Power to displace section 117

119. (1) If, before the commencement of a trial at which a person is charged with an offence to which this Part applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the judge 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 117 shall not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) If at a trial the judge is satisfied—

- (a) that the effect of section 117 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,

he 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 Court of Appeal 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 117 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 117 at any time before the direction is given.

(6) In subsections (1) and (2), “judge” means—

- (a) in the case of an offence which is to be tried summarily or for which a determination has not been made in accordance with Part IV of the Magistrate’s Court Ordinance, the Magistrate;
- (b) in any other case, a judge of the Supreme Court.

(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).

Special rules for cases of buggery

120. (1) In this section “section 44 offence” means an offence of sodomy under section 44 of the Offences Against the Person Ordinance.

(2) Section 117 does not apply to a person against whom a section 44 offence is alleged to have been committed if that person is accused of having committed a section 44 offence against the person who is alleged to have committed the section 44 offence against him.

(3) Subsection (2) does not affect the operation of this Part in relation to anything done at any time before the person mentioned first in that subsection is accused.

Offences

121. (1) If any matter is included in a publication in contravention of section 117, the following persons shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000—

- (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;
 - (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 117 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 Director of Public Prosecutions.

(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 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 117(1),

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.

(7) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

(8) In relation to a body corporate whose affairs are managed by its members “director”, in subsection (6), means a member of the body corporate.

Interpretation etc.

122. (1) In this Part—

“complainant” has the meaning given in section 117(2);

“picture” includes a likeness however produced;

“programme service” means—

(a) a television programme service;

(b) a radio programme service;

(c) any other service which consists in the sending, by means of an electronic communications network, of sounds or visual images or both either—

(i) for reception at two or more places in the Islands (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(ii) for reception at a place in the Islands for the purpose of being presented there to members of the public or to any group of persons,

and includes an advertisement and, in relation to any service, includes any item included in that service.

“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 indictment or other document prepared for use in particular legal proceedings; and

“relevant programme” means a programme included in a programme service whether or not it requires to be licensed.

(2) 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 or buggery, the other party to the act in question shall be taken to be a person against whom the offence was committed even though he consented to that act.

(3) 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 118(a) 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 118(a) 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.

(4) In subsection (3), “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 if—

- (a) a complaint is made, alleging that he has committed the offence,
- (b) a police officer or other public officer acting in the course of his duty presents a formal charge to the Magistrate, alleging that he has committed the offence,

(c) he appears before a court charged with the offence,
or

(d) the Magistrate's Court before which he is appearing
sends him to the Supreme Court for a sufficiency
hearing on a new charge alleging the offence,

and references in subsection (3) and in section 119 to an
accusation alleging an offence shall be construed
accordingly.

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

PART VII

MISCELLANEOUS

Disapplication of time limit for complaints

123. Section 20(2) of the Magistrate's Court Ordinance (time
limits) does not apply to a complaint under any provision of Parts
III, IV and V.

Regulations

124. (1) The Governor may make regulations for giving effect
to this Ordinance.

(2) The Governor may make regulations—

(a) as prescribed in sections 84(3)(i), 85(6)(a)(ii) and
88(1); and

(b) respecting any other matter the Governor considers
necessary or advisable to carry out effectively the
purposes of this Ordinance.

Rules of court

125. The Chief Justice may make rules of court for the purposes
of sections 106(1) and 116(1), and otherwise for carrying into
effect the provisions of this Ordinance.

Repeals and consequential amendments

126. The instruments specified in Column A of Schedule 2 are
repealed or amended by the directions specified in Column B, in
accordance with the Notice issued pursuant to section 1(2).

SCHEDULE 1

*Sections 82(1), 83(3), 91(10), 93(2)(h), 93(3)(b), 97(2)(a), 98(1),
(2) and (4)*

OFFENCES

	Column A	Column B
1.	An offence under section 29 of the Offences Against the Person Ordinance (Rape).	
2.	An offence under section 30 of that Ordinance (Procuration).	
3.	An offence under section 31 of that Ordinance (Carnally knowing girl under thirteen years of age).	
4.	An offence under section 32 of that Ordinance (Carnally knowing girl between the ages of thirteen and sixteen).	
5.	An offence under section 33 of that Ordinance (Indecent assault on girl under thirteen years of age).	
6.	An offence under section 34 of that Ordinance (Indecent assault on girl between the ages of thirteen and sixteen).	
7.	An offence under section 35 of that Ordinance (Attempt to commit rape or indecent assault).	
8.	An offence under section 36 of that Ordinance (Abduction of woman from motives of lucre), where there was an intent for the woman to be carnally known.	
9.	An offence under section 37 of that Ordinance (Forcible abduction of any woman with intent to marry her), where there was an intent for the woman to be carnally known.	
10.	An offence under section 44 of that Ordinance (Sodomy and bestiality).	
11.	An offence under section 45 of that Ordinance (Sexual intercourse with boy under thirteen years).	
12.	An offence under section 46 of that Ordinance (Sexual intercourse with boy between the ages of thirteen and sixteen).	

13.	An offence under section 47 of that Ordinance (Indecent assault on boy under thirteen years).	
14.	An offence under section 48 of that Ordinance (Indecent assault on boy between ages of thirteen and sixteen).	
15.	An offence under section 49 of that Ordinance (Indecent assault on male).	
16.	An offence under section 9(2) of the Trafficking in Persons (Prevention) Ordinance (Trafficking of a child for sexual exploitation).	
17.	An offence under section 9(3) of that Ordinance (Sexual exploitation of a child).	
18.	An offence under section 20 of that Ordinance (Transporting a person for the purpose of exploiting that person's prostitution).	
19.	An offence under sections 8 (Directing, conspiring, inciting etc., the commission of trafficking in persons), 11 (Using the services of trafficked person), 14 (Fraudulent travel or identity documents), 15 (Unlawful withholding of travel documents or identification papers), 16 (Recruiting persons), 17 (Providing facilities in support of trafficking in persons), 18 (Providing services for purposes of trafficking in persons), 19 (Harbouring persons) of that Ordinance where the trafficking of a person involved, or was intended to involve exploitation by— (1) keeping a person in a state of sexual servitude, (2) child pornography, (3) the exploitation of the prostitution of another, or (4) engaging in any other form of commercial sexual exploitation, including, but not limited to, pimping, pandering, procuring, profiting from prostitution and maintaining a brothel.	

20.	An offence under section 3 or 4 of this Ordinance (Rape, assault by penetration).	
21.	An offence under section 5 of this Ordinance (Sexual assault).	(1) Where the offender was under eighteen, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least twelve months; (2) in any other case— (a) the victim was under eighteen, or (b) the offender, in respect of the offence or finding, is or has been— (i) sentenced to a term of imprisonment, (ii) detained in a hospital, or (iii) made the subject of a community sentence of at least twelve months.
22.	An offence under any of sections 6 to 8 of this Ordinance (Causing sexual activity without consent, rape of a child under thirteen, assault of a child under thirteen by penetration).	
23.	An offence under section 9 of this Ordinance (Sexual assault of a child under thirteen).	The offender— (1) was eighteen or over, or (2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
24.	An offence under any of sections 10 to 14 of this Ordinance (Causing or inciting a child under thirteen to engage in sexual activity, child sex offences committed by adults).	
25.	An offence under section 15 of this Ordinance (Child sex offences committed by children or young persons).	The offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least twelve months.
26.	An offence under section 16 of this Ordinance (Arranging or facilitating the commission of a child sex offence).	The offender— (1) was eighteen or over, or (2) is or has been sentenced, in respect of the

		offence, to imprisonment for a term of at least twelve months.
27.	An offence under section 17 of this Ordinance (Meeting a child following sexual grooming etc).	
28.	An offence under section 18 of this Ordinance (Sexual communication with a child).	
29.	An offence under any of sections 19 to 22 of this Ordinance (Abuse of a position of trust).	The offender, in respect of the offence, is or has been— (1) sentenced to a term of imprisonment, (2) detained in a hospital, or (3) made the subject of a community sentence of at least twelve months.
30.	An offence under section 28 or 29 of this Ordinance (Familial child sex offences).	The offender— (1) was eighteen or over, or (2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
31.	An offence under section 34 of this Ordinance (Paying for sexual services of a child).	The victim or (as the case may be) other party was under sixteen, and the offender— (1) was eighteen or over, or (2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
32.	An offence under section 35 of this Ordinance (Causing or inciting child prostitution or pornography).	The offender – (1) was eighteen or over, or (2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
33.	An offence under section 36 of this Ordinance (Controlling a child prostitute or a child involved in pornography).	The offender – (1) was eighteen or over, or

		(2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
34.	An offence under section 37 of this Ordinance (Arranging or facilitating child prostitution or pornography).	The offender – (1) was eighteen or over, or (2) is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.
35.	An offence under any of section 39 of this Ordinance (Indecent photographs of children).	The indecent photographs or pseudo-photographs showed persons under sixteen and the offender— (1) was eighteen or over, or (2) is sentenced in respect of the offence to imprisonment for a term of at least twelve months.
36.	An offence under any of section 43 of this Ordinance (Possession of prohibited images of children).	The offender— (1) was eighteen or over, and (2) is sentenced in respect of the offence to imprisonment for a term of at least two years.
37.	An offence under any of sections 50 to 57 of this Ordinance (Offences against persons with a mental disorder impeding choice, inducements etc. to persons with mental disorder).	
38.	An offence under section 58 or 59 of this Ordinance (Sex with an adult relative).	(1) Where the offender was under eighteen, he is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months; (2) in any other case, the offender, in respect of the offence or finding, is or has been— (a) sentenced to a term of imprisonment, or (b) detained in a hospital.

39.	An offence under section 65 of this Ordinance (Causing or encouraging prostitution of girl under sixteen).	
40.	An offence under section 67 of this Ordinance (Administering a substance with intent).	
41.	An offence under section 68 or 69 of this Ordinance (Committing an offence or trespassing, with intent to commit a sexual offence).	<p>(1) Where the offender was under eighteen, he is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months;</p> <p>(2) in any other case—</p> <p>(a) the intended offence was an offence against a person under eighteen, or</p> <p>(b) the offender, in respect of the offence or finding, is or has been—</p> <p>(i) sentenced to a term of imprisonment,</p> <p>(ii) detained in a hospital, or</p> <p>(iii) made the subject of a community sentence of at least twelve months.</p>
42.	An offence under section 70 of this Ordinance (Exposure).	<p>(1) Where the offender was under eighteen, he is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months;</p> <p>(2) in any other case—</p> <p>(a) the victim was under eighteen, or</p> <p>(b) the offender, in respect of the offence or finding, is or has been—</p> <p>(i) sentenced to a term of imprisonment,</p> <p>(ii) detained in a hospital, or</p> <p>(iii) made the subject of a community sentence of at least twelve months.</p>
43.	An offence under section 71 of this Ordinance (Voyeurism).	<p>(1) Where the offender was under eighteen, he is or has been sentenced in respect of the offence to</p>

		<p>imprisonment for a term of at least twelve months;</p> <p>(2) in any other case—</p> <p>(a) the victim was under eighteen, or</p> <p>(b) the offender, in respect of the offence or finding, is or has been—</p> <p>(i) sentenced to a term of imprisonment,</p> <p>(ii) detained in a hospital, or</p> <p>(iii) made the subject of a community sentence of at least twelve months.</p>
44.	An offence under section 72 of this Ordinance (Voyeurism: additional offences).	<p>(1)(a) The offence was committed for the purpose mentioned in section 72(3)(a) (Sexual gratification), and</p> <p>(b) the relevant condition is met.</p> <p>(2) Where the offender was under eighteen, the relevant condition is that the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months.</p> <p>(3) In any other case, the relevant condition is that—</p> <p>(a) the victim was under eighteen, or</p> <p>(b) the offender, in respect of the offence or finding, is or has been—</p> <p>(i) sentenced to a term of imprisonment,</p> <p>(ii) detained in a hospital, or</p> <p>(iii) made the subject of a community sentence of at least twelve months.</p>
45.	An offence under section 74 or 75 of this Ordinance (Intercourse with an animal, sexual penetration of a corpse).	<p>(1) Where the offender was under eighteen, he is or has been sentenced in respect of the offence to imprisonment for a term of at least twelve months;</p>

		<p>(2) in any other case, the offender, in respect of the offence or finding, is or has been—</p> <ul style="list-style-type: none">(a) sentenced to a term of imprisonment, or(b) detained in a hospital.
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SCHEDULE 2*Section 123*

REPEALS AND CONSEQUENTIAL AMENDMENTS

Column A	Column B
Section 29 of the Offences Against the Person Ordinance (Rape)	Repealed
Section 30 of that Ordinance (Procuration)	Repealed
Section 31 of that Ordinance (Carnally knowing girl under thirteen years of age)	Repealed
Section 32 of that Ordinance (Carnally knowing girl between the ages of thirteen and sixteen)	Repealed
Section 33 of that Ordinance (Indecent assault on girl under thirteen years of age)	Repealed
Section 34 of that Ordinance (Indecent assault on girl between the ages of thirteen and sixteen)	Repealed
Section 35 of that Ordinance (Attempt to commit rape and indecent assault)	Repealed
Section 36 of that Ordinance (Abduction of woman from motives of lucre)	The two instances of the words “or carnally know” and the two instances of the words “or carnally known” are repealed
Section 37 of that Ordinance (Forcible abduction of any woman with intent to marry her)	The one instance of the words “or carnally know” and the one instance of the words “or carnally known” are repealed
Section 44 of that Ordinance (Sodomy and bestiality)	Repealed
Section 45 of that Ordinance (Sexual intercourse with boy under thirteen years)	Repealed
Section 46 of that Ordinance (Sexual intercourse with boy between the ages of thirteen and sixteen)	Repealed

Section 47 of that Ordinance (Indecent assault on boy under thirteen years)	Repealed
Section 48 of that Ordinance (Indecent assault on boy between ages of thirteen and sixteen)	Repealed
Section 49 of that Ordinance (Indecent assault on male)	Repealed
Section 12 of the Summary Offences Ordinance (Prostitution)	

PASSED by the House of Assembly this day of 2020.

.....
Tracey Parker
Clerk of the House of Assembly

.....
Dwayne Taylor
Speaker

EXPLANATORY MEMORANDUM

This Bill seeks to introduce, replace and amend laws relating to sexual offences, creating a comprehensive suite of provisions. In addition to criminal offences, this Bill also provides for new schemes of notification requirements, sexual harm prevention orders and sexual risk orders, together with new measures to protect the anonymity of victims of sexual offences.

The clauses within this Bill are primarily drawn from the UK Sexual Offences Act 2003 (as amended) (“SOA 2003”), suitably modified and adjusted to fit the circumstances within the Islands. The Bill also includes provisions from the UK Sexual Offences Act 1956, Criminal Justice Act 1988, the Sexual Offences (Amendment) Act 1992, the Coroners and Justice Act 2009 and the Criminal Justice and Courts Act 2015.

Part I provides the preliminaries, including the short title and commencement, and the general interpretation provisions. Clause 1 has been drafted to enable different Parts, or clauses, to come into force at different times. Given the significant changes that the implementation of this Bill would produce, it may be considered prudent to bring Part II (offences) into force earlier than Parts III, IV and V. Alternatively, the civil process contained in Part V could be brought into force at a later time than the rest of the Bill. Clause 1 would facilitate any of these approaches.

Part II of the Bill contains the clauses relating to sexual offences. These have been categorized as follows:

Penetrative and non-penetrative offences - Clauses 3 to 6

Rape and other offences against children under thirteen – Clauses 7 to 10

Child sex offences – Clauses 11 to 18

Abuse of position of trust – Clauses 19 to 27

Familial child sex offences – Clauses 28 to 33

Sexual exploitation of children – Clauses 34 to 38

These Clauses have all been drawn from the SOA 2003.

Indecent photographs of children – Clauses 39 to 42

These Clauses have been drawn from the Criminal Justice Act 1988.

Possession of prohibited images of children – Clauses 43 to 46

These Clauses have been drawn from the Coroners and Justice Act 2009.

Unlawfully disclosing private sexual photographs and films –
Clauses 47 to 49

*These Clauses have been drawn from the Criminal Justice and
Courts Act 2015.*

Offences against a person with a mental disorder – Clauses 50 to
53

Inducements etc. to persons with a mental disorder – Clauses 54 to
57

Sex with an adult relative – Clauses 58 to 59

Prostitution – Clauses 60 to 64

These Clauses have all been drawn from the SOA 2003.

Causing or encouraging prostitution of girl under sixteen – Clause
65

Keeping a brothel used for prostitution – Clause 66

*These two Clauses have been drawn from sections 28 and 33A of
the Sexual Offences Act 1956. These two provisions were
preserved upon enactment of the SOA 2003.*

Preparatory offences – Clauses 67 to 69

Other offences – Clauses 70 to 75

Supplementary and general – Clauses 76 to 81

These Clauses have all been drawn from the SOA 2003.

Part III introduces notification requirements which are automatically activated upon conviction for an offence listed in Schedule 1, where a person is found not guilty of such an offence by reason of insanity, or where a person becomes subject to an order under Part IV.

Schedule 1 is split into two columns. This is of particular importance because there are occasions where reference to one or both of these columns will be of importance. An example of this is shown in clause 98. It also provides for a comprehensive list of sexual offences in Column A. This list can, if desired, be used as a reference point in other legislation.

If a person becomes subject to the notification requirements, the relevant notification period is shown in the Table at Clause 83.

In practical terms, the notification requirements enable the police to keep a check on the whereabouts of specific sexual offenders. They also require the person concerned to notify the police if he or she will be absent from a notified address.

Where a person has become subject to indefinite notification requirements, there are provisions which enable a review to be carried out by the Commissioner of Police, for a determination as to whether the requirements should continue (Clauses 90 to 93). The person subject to the review may appeal the determination that has been made (Clause 94).

If a person fails to comply with the notification requirements, offences may be committed (Clause 95) and police officers may seek a warrant for entry and search of that person's home address (Clause 96).

It can be noted that the Governor may establish a "responsible body" (Clause 91), to assist the Commissioner of Police in reaching a determination. In the UK, this function is generally carried out by the probation service.

Part IV introduces new sexual harm prevention orders which may be made by a court, after conviction (or a finding of insanity) for an offence which is set out in Schedule 1. These orders may prohibit the defendant from doing anything described in the order (Clause 99). The orders are made to protect the public or any particular members of the public from sexual harm from the defendant, or to protect children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the Islands.

Sexual harm prevention orders may place prohibitions or restrictions on foreign travel (Clause 100).

In some circumstances, interim sexual harm prevention orders may be made (Clauses 102 and 103).

In relation to both sexual harm prevention orders and interim sexual harm prevention orders, the decisions of the court may be appealed (Clause 104) and offences are provided for non-compliance (Clause 105).

Part V introduces new sexual risk orders, which are not reliant upon a person being convicted of a criminal offence. As such, they amount to a civil order, which may be imposed by a court, where strict conditions have been met (Clause 107).

An application for a sexual risk order may be made by the Commissioner of Police, to a Magistrate's Court. If made, the order prohibits the defendant from doing anything described in the order. This can include restrictions or prohibitions on foreign travel.

As with sexual harm prevention orders, the court may make interim sexual risk orders (Clauses 111 and 112).

Both sexual risk orders and interim sexual risk orders may be appealed (Clause 113) and offences are provided for non-

compliance (Clause 114). If a person is subject to a sexual risk order, that person will also be subject to the notification requirements in Part III (Clause 115).

Part VI provides measures which protect the anonymity of victims of sexual offences. These measures have a correlation with section 28 of the Sexual Offences Act (Jamaica), but are more detailed in line with the corresponding provisions contained in the Sexual Offences (Amendment) Act 1992 (England and Wales). The provisions have been modified to apply to the Islands.

Part VII provides miscellaneous provisions relating to regulations (Clause 124) and rules of court (Clause 125). Clause 123 also prevents the six-month time limit provisions in section 20(2) of the Magistrate's Courts Ordinance from applying to complaints made under any provision within Parts III, IV or V.

Lastly, the repeals and amendments are set out in Schedule 2, as provided by Clause 126.

TURKS AND CAICOS ISLANDS

VULNERABLE WITNESSES BILL 2020

ARRANGEMENT OF CLAUSES

CLAUSE

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TURKS AND CAICOS ISLANDS

**A
PROPOSAL
FOR
A
BILL
FOR**

AN ORDINANCE TO MAKE PROVISION WITH RESPECT TO SPECIAL MEASURES DIRECTIONS ON CASE OF VULNERABLE AND INTIMIDATED WITNESSES; THE USE OF LIVE LINK IN CRIMINAL AND CIVIL PROCEEDINGS; THE ADMISSIBILITY AND STATUS OF EVIDENCE BY VIDEO RECORDING; THE PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON; THE PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES; AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARIES

Short title and commencement

1. This Ordinance may be cited as the Vulnerable Witnesses Ordinance 2020 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

Interpretation

2. (1) In this Ordinance—

“accused”, in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate, whether or not he has been convicted;

“the appointed day” means the day appointed by the Governor under section 1(2);

“Attorney” means a person who has been admitted as an Attorney in accordance with either section 4(1) or section 8(1) of

the Legal Profession Ordinance and whose name has been entered on the Roll of Attorneys;

“the complainant”, in relation to any offence, or alleged offence, means a person against or in relation to whom the offence was, or is alleged to have been, committed;

“court”, except in Part V, means a Magistrate’s Court, the Supreme Court or the Court of Appeal;

“criminal proceedings” means proceedings before any court in which a person is charged on information or indictment with a criminal or quasi-criminal offence;

“eligible witness” means a witness eligible for assistance by virtue of section 3 or 4;

“the Laws of Perjury” means The Perjury Act 1562 and the Perjury Act 1728, insofar as the provisions within those Acts apply to the Islands;

“live link” has the meaning given by section 12(7);

“mental disorder” shall have the meaning assigned to those words by section 2 of the Mental Health Ordinance;

“oral evidence” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“the prosecutor” shall have the meaning prescribed by section 2 of the Criminal Procedure Ordinance;

“quality”, in relation to the evidence of a witness, shall be construed in accordance with section 3(5);

“sexual offence” means any offence listed in Column A of Schedule 1 to the Sexual Offences Ordinance;

“special measures direction” means, in accordance with section 6(5), a direction under section 6;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track;

“witness”, in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings.

(2) In this Ordinance references to the special measures available in relation to a witness shall be construed in accordance with section 5.

(3) In this Ordinance references to a person being able to see or hear, or be seen or heard by, another person are to be read

as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing.

(4) In the case of any proceedings in which there is more than one accused—

(a) any reference to the accused in sections 11 to 16 may be taken by a court, in connection with the giving of a special measures direction, as a reference to all or any of the accused, as the court may determine; and

(b) any such direction may be given on the basis of any such determination.

(5) For the purposes of this Ordinance as it applies in relation to a witness who is the complainant in respect of a relevant offence, where the age of the witness is uncertain and there are reasons to believe that the witness is under the age of eighteen years, that witness is presumed to be under the age of eighteen years.

(6) In subsection (5) “relevant offence” means—

(a) a sexual offence; and

(b) an offence under Part II of the Trafficking in Persons (Prevention) Ordinance.

(7) Nothing in this Ordinance shall affect any power of a court to exclude evidence at its discretion, whether by preventing questions being put or otherwise, which is exercisable apart from this Ordinance.

(8) In this Ordinance 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.

PART II

SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND
INTIMIDATED WITNESSES

**Witness eligible for assistance on grounds of age or
vulnerability**

3. (1) For the purposes of this Ordinance a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this section—

- (a) if under the age of eighteen years at the time of the hearing; or
- (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

- (a) that the witness—
 - (i) suffers from mental disorder; or
 - (ii) otherwise has a significant impairment of intelligence and social functioning; or
 - (iii) is otherwise vulnerable;
- (b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 6(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court shall consider any views expressed by the witness.

(5) In this Ordinance references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Witnesses eligible for assistance on grounds of fear or distress about testifying

4. (1) For the purposes of this Ordinance a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within subsection (1) the court shall take into account, in particular—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of—
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court shall in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence, or to that offence and any other offences, the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

Special measures available to eligible witnesses

5. (1) For the purposes of this Ordinance and subject to subsection (2)—

- (a) the provision which may be made by a special measures direction by virtue of each of sections 11 to 18 is a special measure available in relation to a witness eligible for assistance by virtue of section 3; and
- (b) the provision which may be made by such a direction by virtue of each of sections 11 to 16 is a special measure available in relation to a witness eligible for assistance by virtue of section 4.

(2) Where, apart from this subsection, a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—

- (a) the court has been notified by the Director of Public Prosecutions that relevant arrangements may be made available in the court in which the proceedings will take place; and
- (b) the notice has not been withdrawn.

(3) In subsection (2)(a) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness’s evidence has been made by the court before the notice is withdrawn.

(5) The Governor may by order make such amendments of this Ordinance as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 3 or, as the case may be, section 4, whether—

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness;
- (b) by the addition—
 - (i) with or without modifications, of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections; or
 - (ii) of any new measure; or
- (c) by the removal of any measure.

Special measures direction relating to eligible witness

6. (1) This section applies where in any criminal proceedings—

- (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused; or
- (b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for assistance by virtue of section 3 or 4, the court shall then—

- (a) determine whether any of the special measures available in relation to the witness, or any combination of them, would, in its opinion, be likely to improve the quality of evidence given by the witness; and
- (b) if so—
 - (i) determine which of those measures, or combination of them, would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Ordinance whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court shall consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and
- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) In this Ordinance “special measures direction” means a direction under this section.

(6) Nothing in this Ordinance is to be regarded as affecting any power of a court to make an order or give leave of

any description, in the exercise of its inherent jurisdiction or otherwise,—

- (a) in relation to a witness who is not an eligible witness; or
- (b) in relation to an eligible witness where, as, for example, in a case where a foreign language interpreter is to be provided, the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Further provisions about directions: general

7. (1) Subject to subsection (2) and section 8(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

- (a) determined, by acquittal, conviction or otherwise; or
- (b) abandoned,

in relation to the accused or, if there is more than one, in relation to each of the accused.

(2) The court may discharge or vary, or further vary, a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(3) In subsection (2) “the relevant time” means—

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

(4) Nothing in section 12(4) and (5), 15(4) to (7) or 16(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).

(5) The court shall state in open court its reasons for—

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging,

a special measures direction and, if it is a court of summary jurisdiction, the Magistrate shall cause the reasons to be entered in the register of its proceedings.

(6) Rules of court may make provision—

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;
- (d) 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, a party to the proceedings.

Special provisions relating to child witnesses

8. (1) For the purposes of this section—

- (a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 3(1)(a), whether or not he is an eligible witness by reason of any other provision of section 3 or 4; and
- (b) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 6(2), determines that a witness in criminal proceedings is a child witness, the court shall—

- (a) first have regard to subsections (3) to (7); and
- (b) then have regard to section 6(2),

and for the purposes of section 6(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 6(2)(a) and (b)(i), to be ones that, whether on their own or with any other special measures, would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court shall give a special measures direction in relation to the witness which complies with the following requirements—

- (a) it shall provide for any relevant recording to be admitted under section 15; and
- (b) it shall provide for any evidence given by the witness in the proceedings which is not given by means of a video recording, whether in chief or otherwise, to be given by means of a live link in accordance with section 12.

(4) The primary rule is subject to the following limitations—

- (a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability, within the meaning of section 5(2), of the special measure in question in relation to the witness;
- (b) the requirement contained in subsection (3)(a) also has effect subject to section 15(2);
- (c) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence, and
- (d) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable, whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason.

(5) Where as a consequence of all or part of the primary rule being dis-applied under subsection (4)(c) a witness's evidence or any part of it would fall to be given as testimony in court, the court shall give a special measures direction making such provision as is described in section 11 for the evidence or that part of it.

(6) The requirement in subsection (5) is subject to the following limitations—

- (a) if the witness informs the court of the witness's wish that the requirement in subsection (5) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying

with it would not diminish the quality of the witness's evidence; and

- (b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable, whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason.

(7) In making a decision under subsection (4)(c) or (6)(a), the court shall take into account the following factors, and any others it considers relevant,—

- (a) the age and maturity of the witness;
- (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in subsection (3) or, as the case may be, in accordance with the requirement in subsection (5);
- (c) the relationship, if any, between the witness and the accused;
- (d) the witness's social and cultural background and ethnic origins;
- (e) the nature and alleged circumstances of the offence to which the proceedings relate.

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 3(1)(a), then—

- (a) subject to subsection (9); and
- (b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of eighteen years.

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 3(1)(a) and—

- (a) the direction provides—
 - (i) for any relevant recording to be admitted under section 15 as evidence in chief of the witness; or

- (ii) for the special measure available under section 16 to apply in relation to the witness; and
- (b) if it provides for that special measure to so apply, the witness is still under the age of eighteen years when the video recording is made for the purposes of section 16,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii), the direction shall continue to have effect in accordance with section 7(1) even though the witness subsequently attains that age.

Extension of provisions of section 8 to certain witnesses over eighteen years

9. (1) For the purposes of this section—

- (a) a witness in criminal proceedings, other than the accused, is a “qualifying witness” if he—
 - (i) is not an eligible witness at the time of the hearing, as defined by section 3(3), but
 - (ii) was under the age of eighteen years when a relevant recording was made; and
- (b) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Subsections (2) to (4) and (7) of section 8, so far as relating to the giving of a direction complying with the requirement contained in section 8(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness, within the meaning of that section.

Special provisions relating to sexual offences

10. (1) This section applies where in criminal proceedings relating to a sexual offence, or to a sexual offence and other offences, the complainant in respect of that offence is a witness in the proceedings.

(2) This section does not apply if the place of trial is a Magistrate’s Court.

(3) This section does not apply if the complainant is an eligible witness by reason of section 3(1)(a), whether or not the complainant is an eligible witness by reason of any other provision of section 3 or 4.

(4) If a party to the proceedings makes an application under section 6(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 15 (video recorded evidence in chief).

(5) Subsection (6) applies if—

(a) a party to the proceedings makes a request under subsection (4) with respect to the complainant; and

(b) the court determines for the purposes of section 6(2) that the complainant is eligible for assistance by virtue of section 3(1)(b) or 4.

(6) The court shall—

(a) first have regard to subsections (7) to (9); and

(b) then have regard to section 6(2),

and for the purposes of section 6(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 6(2)(a) and (b)(i), to be one that, whether on its own or with any other special measures, would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

(7) The court shall give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 15.

(8) The requirement in subsection (7) has effect subject to section 15(2).

(9) The requirement in subsection (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable, whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason.

(10) In this section “relevant recording”, in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.

Screening witness from accused

11. (1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be

prevented by means of a screen or other arrangement from seeing the accused.

(2) The screen or other arrangement shall not prevent the witness from being able to see, and to be seen by—

- (a) the Judge or Magistrate and the jury (if there is one);
- (b) Attorneys acting in the proceedings;
- (c) any interpreter or other person appointed, in pursuance of the direction or otherwise, to assist the witness; and
- (d) any other person having the authority to hear and receive evidence.

(3) Where two or more Attorneys are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by live link

12. (1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(3) In determining who may accompany the witness, the court shall have regard to the wishes of the witness.

(4) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(5) The court may give permission for the purposes of subsection (4) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(6) In subsection (5) “the relevant time” means—

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

(7) In this Ordinance, except in Part V, “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 11(2)(a) to (c).

Evidence given in private

13. (1) A special measures direction may provide for the exclusion from the court, during the giving of the witness’s evidence, of persons of any description specified in the direction.

(2) The persons who may be so excluded do not include—

- (a) the accused;
- (b) Attorneys acting in the proceedings; or
- (c) any interpreter or other person appointed, in pursuance of the direction or otherwise, to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—

- (a) is a representative of such an organisation; and
- (b) has been nominated for the purpose by one or more such organisations, unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section where—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section, whether or not those persons include representatives of news gathering or reporting organisations, shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Removal of wigs and gowns

14. A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief

15. (1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court shall consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if—

(a) it appears to the court that—

- (i) the witness will not be available for cross-examination, whether conducted in the ordinary way or in accordance with any such direction; and
- (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

(b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) Where a recording is admitted under this section—

- (a) the witness shall be called by the party tendering it in evidence, unless—
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be

given in any recording admissible under section 16; or

(ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and

(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony.

(6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b) if it appears to the court to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings; or

(b) of its own motion.

(8) The court may, in giving permission for the purposes of subsection (5)(b), direct that the evidence in question is to be given by the witness by means of a live link.

(9) If the court directs under subsection (8) that evidence is to be given by live link, it may also make such provision in that direction as it could make under section 12(2) in a special measures direction.

(10) The Supreme Court, when conducting a sufficiency hearing under Part II of the Criminal Procedure Ordinance, may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.

(11) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination

16. (1) Where a special measures direction provides for a video recording to be admitted under section 15 as evidence in chief of the witness, the direction may also provide—

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) A recording pursuant to subsection (1) shall be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which—

- (a) the Judge or Magistrate and Attorneys acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the accused is able to see and hear any such examination and to communicate with any Attorney acting for him.

(3) Where two or more Attorneys are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings, whether in any recording admissible under section 15 or this section or otherwise than in such a recording, unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party

having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or

(b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person, in a case where the accused is to be able to conduct any such cross-examination.

Examination of witness through intermediary

17. (1) A special measures direction may provide for any examination of the witness, however and wherever conducted, to be conducted through an interpreter or other person approved by the court for the purposes of this section (“an intermediary”).

(2) The function of an intermediary is to communicate—

(a) to the witness, questions put to the witness; and

(b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) shall take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—

(a) the Judge or Magistrate and Attorneys acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

(b) except in the case of a video recorded examination, the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more Attorneys are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be

prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 15 if the interview was conducted through an intermediary and—

- (a) that person complied with subsection (5) before the interview began; and
- (b) the court's approval for the purposes of this section is given before the direction is given.

(7) The Laws of Perjury shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication

18. A special measures direction may provide for the witness, while giving evidence, whether by testimony in court or otherwise, to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Status of evidence given under Part II

19. (1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement shall be treated as if made by the witness in direct oral testimony in court; and accordingly—

- (a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 15 or 16 which is not made by the witness on oath even

though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight, if any, to be attached to the statement, the court shall have regard to all the circumstances from which an inference can reasonably be drawn, as to the accuracy of the statement or otherwise.

(5) Nothing in this Part, apart from subsection (3), affects the operation of any rule of law relating to evidence in criminal proceedings.

(6) Where any statement, made by a person on oath in any proceeding which is not a proceeding before a court for the purposes of the Laws of Perjury, is received in evidence in pursuance of a special measures direction, that proceeding shall be taken for the purposes of those laws to be part of the proceeding before a court in which the statement is so received in evidence.

(7) Where in any proceeding which is not a proceeding before a court for the purposes of the Laws of Perjury—

(a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence in pursuance of a special measures direction; and

(b) the statement is made in such circumstances that had it been given on oath in any such proceeding before a court that person would have been guilty of perjury,

he shall be guilty of an offence and liable to any punishment which might be imposed on conviction of an offence of perjury.

(8) In this section “statement” includes any representation of fact, whether made in words or otherwise.

Warning to jury

20. Where on a trial on an information with a jury evidence has been given in accordance with a special measures direction, the Judge shall give the jury such warning, if any, as the Judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

PART III

USE OF LIVE LINK FOR EVIDENCE OF PERSONS OTHER THAN THE
ACCUSED

Live links in criminal proceedings

21. (1) A witness, other than the accused, may, if the court so directs, give evidence through a live link in the following criminal proceedings.

(2) They are—

- (a) a summary trial;
- (b) an appeal to the Supreme Court arising out of such a trial;
- (c) a trial on an information;
- (d) an appeal to the Court of Appeal; and
- (e) a hearing before a Magistrate's Court or the Supreme Court which is held after the accused has entered a plea of guilty.

(3) A direction may be given under this section—

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(4) But a direction may not be given under this section unless—

- (a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link;
- (b) it has been notified by the Director of Public Prosecutions that suitable facilities for receiving evidence through a live link are available in the area in which it appears to the court that the proceedings will take place; and
- (c) that notification has not been withdrawn.

(5) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.

(6) In deciding whether to give a direction under this section the court shall consider all the circumstances of the case.

(7) Those circumstances include in particular—

- (a) the availability of the witness;

- (b) the need for the witness to attend in person;
- (c) the importance of the witness's evidence to the proceedings;
- (d) the views of the witness;
- (e) the suitability of the facilities at the place where the witness would give evidence through a live link;
- (f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(8) The court shall state in open court its reasons for refusing an application for a direction under this section and, if it is a Magistrate's Court, shall cause them to be entered in the register of its proceedings.

Effect of, and rescission of, direction

22. (1) Subsection (2) applies where the court gives a direction under section 21 for a person to give evidence through a live link in particular proceedings.

(2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link, but this is subject to the following provisions of this section.

(3) The court may rescind a direction under section 21 if it appears to the court to be in the interests of justice to do so.

(4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 21 in relation to him.

(5) A direction under section 21 may be rescinded under subsection (3)—

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(6) But an application may not be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court shall state in open court its reasons—

- (a) for rescinding a direction under section 21; or
- (b) for refusing an application to rescind such a direction,

and, if it is a Magistrate's Court, shall cause them to be entered in the register of its proceedings.

Warning to jury

23. (1) This section applies where, as a result of a direction under section 21, evidence has been given through a live link in proceedings before the Supreme Court.

(2) The Judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

PART IV

USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS

Live link directions

24. (1) This section applies to any proceedings, whether in a Magistrate's Court or before the Supreme Court, against a person for an offence.

(2) The court may, on the application of the accused, give a live link direction if it is satisfied—

- (a) that the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the accused; and
- (b) that it is in the interests of justice for the accused to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the accused is to be given through a live link.

(4) Where the accused is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
- (b) use of a live link would enable him to participate more effectively in the proceedings as a witness, whether by improving the quality of his evidence or otherwise.

(5) Where the accused has attained the age of eighteen years at that time, the conditions are that—

- (a) he suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function;
- (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (c) use of a live link would enable him to participate more effectively in the proceedings as a witness, whether by improving the quality of his evidence or otherwise.

(6) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so, but this does not affect the power to give a further live link direction in relation to the accused.

The court may exercise this power of its own motion or on an application by a party.

- (8) The court shall state in open court its reasons for—
 - (a) giving or discharging a live link direction; or
 - (b) refusing an application for or for the discharge of a live link direction,

and, if it is a Magistrate’s Court, it shall cause those reasons to be entered in the register of its proceedings.

Section 24: meaning of “live link”

25. (1) In section 24 “live link” means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—

- (a) to see and hear a person there; and
- (b) to be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

- (2) The persons are—
 - (a) the Judge or Magistrate and the jury (if there is one);

- (b) where there are two or more accused in the proceedings, each of the other accused;
- (c) Attorneys acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the accused.

Warning to jury

26. (1) This section applies where, as a result of a direction under section 24, evidence has been given through a live link in proceedings before the Supreme Court.

(2) The Judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the accused in the courtroom or other place where the proceedings are held.

Saving

27. Nothing in this Part affects—

- (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness, including an accused; or
- (b) the operation of any rule of law relating to evidence in criminal proceedings.

PART V

USE OF LIVE LINK FOR EVIDENCE OF WITNESSES IN CIVIL PROCEEDINGS

Interpretation of Part V

28. In this Part—

“civil proceedings” means any proceedings, other than proceedings in any criminal matter, before a court;

“court” means any civil court having jurisdiction pursuant to any Ordinance of the Turks and Caicos Islands;

“court point” means the courtroom;

“live link” means facilities, including closed circuit television, that enable audio and visual communication between persons at different places;

“remote point” means any place other than the courtroom.

Evidence of witness via live link

29. (1) A court may, having heard representation from the parties in any civil proceedings, direct that a witness may give evidence to the court by live link from any remote point if the requirements in section 30 are met.

(2) The court shall not make a direction under subsection (1) unless it is satisfied that the making of the direction is consistent with the interests of justice.

Requirements for use of live link

30. The requirements for a live link are as follows—

- (a) both the court point and the remote point are equipped with facilities that—
 - (i) enable all appropriate persons at the court point to see and hear the person appearing before the Court or giving the evidence; and
 - (ii) enable all appropriate persons at the remote point to see and hear appropriate persons at the court point;
- (b) any requirements prescribed by rules of court for or with respect to—
 - (i) the form of live link;
 - (ii) the equipment, or class of equipment, used to establish the link;
 - (iii) the layout of cameras;
 - (iv) the standard, or speed, of transmission;
 - (v) the quality of communications;
 - (vi) any other matter relating to the link; and
- (c) any other requirements imposed by the Chief Justice.

PART VI

EVIDENCE BY VIDEO RECORDING

Evidence by video recording

31. (1) This section applies where—

- (a) a person is called as a witness in proceedings for a prescribed offence;

- (b) the person claims to have witnessed, whether visually or in any other way,—
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence; or
 - (ii) events closely connected with such events,
- (c) he has previously given an account of the events in question, whether in response to questions asked or otherwise;
- (d) the account was given at a time when those events were fresh in the person's memory, or would have been, assuming the truth of the claim mentioned in paragraph (b);
- (e) a video recording was made of the account,
- (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded; and
- (g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they shall be treated as if made by him in that evidence.

(3) A direction under subsection (1)(f)—

- (a) may not be made in relation to a recorded account given by the accused;
- (b) may be made only if it appears to the court that—
 - (i) the witness's recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings; and
 - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

- (a) the interval between the time of the events in question and the time when the recorded account was made;

- (b) any other factors that might affect the reliability of what the witness said in that account;
- (c) the quality of the recording;
- (d) any views of the witness as to whether his evidence in chief should be given orally or by means of the recording.

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

(6) In this section “prescribed” means an offence set out in section 34(3).

Video evidence: further provisions

32. (1) The reference in subsection (1)(f) of section 31 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness’s recorded account shall, where appropriate, be read accordingly.

(2) In considering whether any part of a recording should be not admitted under section 31, the court shall consider—

- (a) whether admitting that part would carry a risk of prejudice to the accused; and
- (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) A court may not make a direction under section 31(1)(f) in relation to any proceedings unless—

- (a) the Director of Public Prosecutions has notified the court that arrangements can be made, in the area in which it appears to the court that the proceedings will take place, for implementing directions under that section; and
- (b) the notice has not been withdrawn.

(4) Nothing in section 31 affects the admissibility of any video recording which would be admissible apart from that section.

PART VII

PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY
ACCUSED IN PERSON

Complainants in proceedings for sexual offences

33. No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

- (a) in connection with that offence; or
- (b) in connection with any other offence, of whatever nature, with which that person is charged in the proceedings.

Child complainants and other child witnesses

34. (1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either—

- (a) in connection with that offence; or
- (b) in connection with any other offence, of whatever nature, with which that person is charged in the proceedings.

(2) For the purposes of subsection (1) a “protected witness” is a witness who—

- (a) either is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies; and
- (b) either is a child or falls to be cross-examined after giving evidence in chief, whether wholly or in part,—
 - (i) by means of a video recording made, for the purposes of section 15, at a time when the witness was a child; or
 - (ii) in any other way at any such time.

(3) The offences to which this section applies are—

- (a) any offence under—
 - (i) Parts VI, VIII and XI of the Offences Against the Person Ordinance;
 - (ii) sections 5, 6 and 32(2) of the Juveniles Ordinance;

- (iii) Part II of the Trafficking in Persons (Prevention) Ordinance;
 - (b) kidnapping or false imprisonment;
 - (c) any offence, not within any of the preceding paragraphs, which involves an assault on, or injury or a threat of injury to, any person.
- (4) In this section “child” means—
- (a) where the offence falls within subsection (3)(a), a person under the age of eighteen years; or
 - (b) where the offence falls within subsection (3)(b) or (c), a person under the age of fourteen years.
- (5) For the purposes of this section “witness” includes a witness who is charged with an offence in the proceedings.

Direction prohibiting accused from cross-examining particular witness

35. (1) This section applies where, in a case where neither of sections 33 and 34 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—

- (a) the prosecutor makes an application for the court to give a direction under this section in relation to the witness; or
 - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) If it appears to the court—
- (a) that the quality of evidence given by the witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination, or further cross-examination, is conducted by the accused in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
 - (b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the accused from cross-examining, or further cross-examining, the witness in person.

(3) In determining whether subsection (2)(a) applies in the case of a witness the court shall have regard, in particular, to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
 - (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far, if any;
 - (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
 - (d) any relationship, of whatever nature, between the witness and the accused;
 - (e) whether any person, other than the accused, is or has at any time been charged in the proceedings with a sexual offence or an offence to which section 34 applies, and, if so, whether section 33 or 34 operates or would have operated to prevent that person from cross-examining the witness in person;
 - (f) any direction under section 6 which the court has given, or proposes to give, in relation to the witness.
- (4) For the purposes of this section—
- (a) “witness”, in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and
 - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with section 3(5).

Further provisions about directions under section 35

36. (1) Subject to subsection (2), a direction has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
 - (b) of its own motion.
- (3) In subsection (2) “the relevant time” means—

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

(4) The court shall state in open court its reasons for—

- (a) giving; or
- (b) refusing an application for, or for the discharge of; or
- (c) discharging,

a direction and, if it is a Magistrate’s Court, shall cause them to be entered in the register of its proceedings.

(5) Rules of court may make provision—

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) 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, a party to the proceedings.

(6) In this section “direction” means a direction under section 35.

Defence representation for purposes of cross-examination

37. (1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of section 33, 34 or 35.

(2) Where it appears to the court that this section applies, it shall—

- (a) invite the accused to arrange for an Attorney to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether an Attorney is to act for him for that purpose.

(3) If by the end of the period mentioned in subsection (2)(b) either—

- (a) the accused has notified the court that no Attorney is to act for him for the purpose of cross-examining the witness; or
- (b) no notification has been received by the court and it appears to the court that no Attorney is to so act,

the court shall consider whether it is necessary in the interests of justice for the witness to be cross-examined by an Attorney appointed to represent the interests of the accused.

(4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court shall appoint an Attorney, chosen by the court, to cross-examine the witness in the interests of the accused.

(5) A person so appointed shall not be responsible to the accused.

(6) Rules of court may make provision—

- (a) as to the time when, and the manner in which, subsection (2) is to be complied with;
- (b) in connection with the appointment of an Attorney under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

(7) For the purposes of this section any reference to cross-examination includes, in a case where a direction is given under section 35 after the accused has begun cross-examining the witness, a reference to further cross-examination.

Warning to jury

38. (1) Where on a trial on an information with a jury an accused is prevented from cross-examining a witness in person by virtue of section 33, 34 or 35, the Judge shall give the jury such warning, if any, as the Judge considers necessary to ensure that the accused is not prejudiced—

- (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person;
- (b) where the witness has been cross-examined by an Attorney appointed under section 37(4), by the fact that the cross-examination was carried out by

such an Attorney and not by a person acting as the accused's own Attorney.

(2) Subsection (8)(a) of section 37 applies for the purposes of this section as it applies for the purposes of section 37.

Funding of defence representation

39. (1) This section applies where an Attorney has been appointed by the court pursuant to section 37(4).

(2) Rules of court may make provision—

(a) for prescribing the reasonable professional fees to be paid to the Attorney that has been appointed, for and in connection with—

(i) the consideration of any evidence or other material relating to the proceedings, that has been provided in accordance with section 37(6)(b);

(ii) the consideration of the examination in chief of the witness;

(iii) the conduct of cross examination of the witness on behalf of the accused; and

(b) for enabling the payment of those fees at public expense.

(3) The Treasurer is hereby authorised to pay out of the general revenue of the Islands the reasonable professional fees of the Attorney, as determined in accordance with the provisions of this section.

PART VIII

PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES

Restriction on evidence or questions about complainant's sexual history

40. (1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(a) no evidence may be adduced; and

(b) no question may be asked in cross-examination,

by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied—

- (a) that subsection (3) or (5) applies; and
- (b) 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.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

- (a) that issue is not an issue of consent; or
- (b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
- (c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—
 - (i) to any sexual behaviour of the complainant which, according to evidence adduced or to be adduced by or on behalf of the accused, took place as part of the event which is the subject matter of the charge against the accused; or
 - (ii) to any other sexual behaviour of the complainant which, according to such evidence, took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) 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.

(5) 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.

(6) For the purposes of subsections (3) and (5) the evidence or question shall 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).

(7) 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.

(8) 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.

Interpretation and application of section 40

41. (1) In section 40—

“relevant issue in the case” means any issue falling to be proved by the prosecution or defence in the trial of the accused;

“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;

“sexual behaviour” means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding, except in section 40(3)(c)(i) and (5)(a), anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused; and

“sexual offence” shall, subject to any order made under subsection (2), be construed in accordance with section 2.

(2) The Governor may by order make such provision as he considers appropriate for adding or removing, for the purposes of section 39, any offence to or from the offences which are sexual offences for the purposes of this Ordinance by virtue of section 2.

(3) Section 40 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 40 or this section, to a person charged with an offence accordingly include a person convicted of an offence.

Procedure on applications under section 40

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

(2) Where such an application has been determined, the court shall 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 Magistrate’s Court, shall 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 (3) or (5) of section 40;
- (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.

(4) In this section “leave” means leave under section 40.

PART IX

WITNESS ANONYMITY ORDERS

Witness anonymity orders

43. (1) In this Part a “witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—

- (a) that the witness’s name and other identifying details may be—
 - (i) withheld;
 - (ii) removed from materials disclosed to any party to the proceedings;
- (b) that the witness may use a pseudonym;
- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
- (d) that the witness is screened to any specified extent;
- (e) that the witness’s voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require—

- (a) the witness to be screened to such an extent that the witness cannot be seen by—
 - (i) the judge or other members of the court (if any), or
 - (ii) the jury (if there is one);

- (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) or (ii).

(5) In this section "specified" means specified in the witness anonymity order concerned.

Applications

44. (1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.

(2) Where an application is made by the prosecutor, the prosecutor—

- (a) must (unless the court directs otherwise) inform the court of the identity of the witness, but
- (b) is not required to disclose in connection with the application—
 - (i) the identity of the witness, or
 - (ii) any information that might enable the witness to be identified,

to any other party to the proceedings or his legal representatives.

(3) Where an application is made by the accused, the accused—

- (a) must inform the court and the prosecutor of the identity of the witness, but
- (b) (if there is more than one accused) is not required to disclose in connection with the application—
 - (i) the identity of the witness, or
 - (ii) any information that might enable the witness to be identified,

to any other accused or his legal representatives.

(4) Accordingly, where the prosecutor or the accused proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

- (a) the identity of the witness, or
- (b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) “Relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) But subsection (6) does not prevent the court from hearing one or more parties in the absence of an accused and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(8) Nothing in this section is to be taken as restricting any power to make rules of court.

Conditions for making order

45. (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make such an order only if it is satisfied that Conditions A to C are met.

(3) Condition A is that the proposed order is necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or

(b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused receiving a fair trial.

(5) Condition C is that the importance of the witness’s testimony is such that in the interests of justice the witness ought to testify and—

(a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness—

- (a) that the witness or another person would suffer death or injury, or
- (b) that there would be serious damage to property, if the witness were to be identified.

Relevant considerations

46. (1) When deciding whether Conditions A to C in section 45 are met in the case of an application for a witness anonymity order, the court must have regard to—

- (a) the considerations mentioned in subsection (2), and
- (b) such other matters as the court considers relevant.

(2) The considerations are—

- (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings;
- (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his evidence comes to be assessed;
- (c) whether evidence given by the witness might be the sole or decisive evidence implicating the accused;
- (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his identity being disclosed;
- (e) whether there is any reason to believe that the witness—
 - (i) has a tendency to be dishonest, or
 - (ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused;

- (f) whether it would be reasonably practicable to protect the witness by any means other than by

making a witness anonymity order specifying the measures that are under consideration by the court.

Warning to jury

47. (1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

Discharge or variation of order

48. (1) A court that has made a witness anonymity order in relation to any criminal proceedings may in those proceedings subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 45 and 46 that apply to the making of an order.

(2) The court may do so—

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or

(b) on its own initiative.

(3) The court must give every party to the proceedings the opportunity to be heard—

(a) before determining an application made to it under subsection (2);

(b) before discharging or varying the order on its own initiative.

(4) But subsection (3) does not prevent the court hearing one or more of the parties to the proceedings in the absence of an accused in the proceedings and his legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) “The relevant time” means—

(a) the time when the order was made, or

(b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

Discharge or variation after proceedings

49. (1) This section applies if—

- (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (“the old proceedings”), and
- (b) the old proceedings have come to an end.

(2) The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—

- (a) the provisions of sections 45 and 46 that apply to the making of a witness anonymity order, and
- (b) such other matters as the court considers relevant.

(3) The court may do so—

- (a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time, or
- (b) on an application made by the witness if there has been a material change of circumstances since the relevant time.

(4) The court may not determine an application made to it under subsection (3) unless in the case of each of the parties to the old proceedings and the witness—

- (a) it has given the person the opportunity to be heard, or
- (b) it is satisfied that it is not reasonably practicable to communicate with the person.

(5) Subsection (4) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was an accused in the old proceedings and that person’s legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) “The relevant time” means—

- (a) the time when the old proceedings came to an end, or
- (b) if a previous application has been made under subsection (3), the time when the application (or the last application) was made.

Discharge or variation by the Court of Appeal

50. (1) This section applies if—

- (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (“the trial proceedings”), and
- (b) an accused in the trial proceedings has in those proceedings—
 - (i) been convicted, or
 - (ii) been found not guilty by reason of insanity.

(2) The Court of Appeal may in proceedings on or in connection with an appeal by the accused from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—

- (a) the provisions of sections 45 and 46 that apply to the making of a witness anonymity order, and
- (b) such other matters as the court considers relevant.

(3) The Court of Appeal may not discharge or vary the order unless in the case of each party to the trial proceedings—

- (a) it has given the person the opportunity to be heard, or
- (b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) But subsection (3) does not prevent the Court of Appeal hearing one or more of the parties to the trial proceedings in the absence of a person who was an accused in the trial proceedings and that person’s legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In this section a reference to the doing of an act includes a reference to a failure to act.

Public interest immunity

51. Nothing in this Chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity.

Interpretation of this Part

52. In this Part—

“criminal proceedings” means criminal proceedings consisting of a trial or other hearing at which evidence falls to be given;

“witness anonymity order” has the meaning given by section 43.

PART X

FINAL PROVISIONS

Orders and rules

53. (1) Any order made by the Cabinet under this Ordinance may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Cabinet considers appropriate.

(2) The power conferred on the Chief Justice to make rules of court under section 16 of the Supreme Court Ordinance shall be deemed to extend to permit the making of any rules of court mentioned within this Ordinance and generally for carrying into effect the provisions of this Ordinance.

Apparent age

54. (1) For the purposes of this Ordinance the age of a person shall be taken to be that which it appears to the court to be after considering any available evidence.

(2) Subsection (1) is subject to section 2(5) of this Ordinance.

Repeals and consequential amendments

55. The instruments specified in Column A of the Schedule are repealed or amended by the directions specified in Column B, with effect from the appointed day.

SCHEDULE

Section 55

REPEALS AND CONSEQUENTIAL AMENDMENTS

Column A	Column B
Section 98 of the Evidence Ordinance	<p>1. Add “(1)” to the start of the paragraph.</p> <p>2. Add, after the newly created subsection (1):</p> <p>“(2) Any order made pursuant to subsection (1) is without prejudice to a special measures direction that may be made under the Vulnerable Witnesses Ordinance.”</p>
Section 100 of the Evidence Ordinance	<p>1. Delete the words “Notwithstanding any rule of law”.</p> <p>2. Replace the deleted words with:</p> <p>“Subject only to section 40 of the Vulnerable Witnesses Ordinance”</p>
Section 131 of the Evidence Ordinance	<p>1. Add at the start of the section:</p> <p>“Subject to section 40 of the Vulnerable Witnesses Ordinance,”</p>
Section 135(d) of the Evidence Ordinance	<p>1. Add after the word “ravish,”:</p> <p>“subject to section 40 of the Vulnerable Witnesses Ordinance,”</p>
Section 4(2) of the Criminal Procedure Ordinance	<p>1. Delete all the words following “shall examine only”.</p> <p>2. After the words “shall examine only” add:</p> <p>“ –</p> <p>(a) such documentary evidence as the prosecution may submit including, but not limited to, the complainant and victim’s and witnesses’ statements, and</p> <p>(b) any video recording submitted by the prosecution in accordance with section 15(10) of the Vulnerable Witnesses Ordinance.”</p>
Section 4(4) of the Criminal Procedure Ordinance	<p>1. Add after the words “copies of all documents” the words:</p> <p>“and, if applicable, video recordings”</p>

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Section 4(6) of the Criminal Procedure Ordinance	1. Add after the words “documentary evidence” the following: “and any video recording”
Section 4(7) of the Criminal Procedure Ordinance	1. Add after the words “documentary evidence” the following: “and any video recording” 2. Add after the words “taking the written” the following: “and, if applicable, the video recorded”
Section 5 of the Criminal Procedure Ordinance	1. Add the following at the end of the section: “(6) This section is without prejudice to the provisions contained in the Vulnerable Witnesses Ordinance.”
Section 9(7)(a) of the Criminal Procedure Ordinance	1. After the words “pre-trial motions” add the words: “, applications for special measures”
Section 35 of the Criminal Procedure Ordinance	1. After the words “Evidence (Special Provisions) Ordinance” add the words: “and the Vulnerable Witnesses Ordinance”
Section 36 of the Criminal Procedure Ordinance	1. In subsection (1), after the words “the statement” add the words: “or video recording” 2. In subsection (1), after the words “be read” add the words: “, or, in the case of a video recording, be played,” 3. In subsection (2), after the words “Part II” add the words: “, or any video recording admitted in evidence in accordance with section 31 of the Vulnerable Witnesses Ordinance,”
Section 4 of the Audio Visual Link Ordinance	1. Section 4 is revoked.
Section 6(a)(i) of the Audio Visual Link Ordinance	1. The words “or giving the evidence” are revoked.

PASSED by the House of Assembly this day of 2020.

.....
Tracey Parker
Clerk of the House of Assembly

.....
Dwayne Taylor
Speaker

EXPLANATORY MEMORANDUM

This Bill seeks to introduce a range of new special measures to assist vulnerable and intimidated witnesses, expand the ability to use live links in both criminal and civil proceedings, protect witnesses from cross-examination by unrepresented accused persons, provide additional protection for complainants in proceedings for sexual offences and enable courts to make anonymity orders for witnesses. In almost every regard, the Bill is drawn from provisions that are established in the region, or England and Wales. These sources include:

- The Evidence Law (2011 Revision) (Cayman Islands) (“the Evidence Law (Cayman)”)
- The Criminal Procedure (No. 2) Code (Montserrat) (“the Montserrat Code”)
- The Youth Justice and Criminal Evidence Act 1999 (England and Wales) (“the YJCEA”)
- The Criminal Justice Act 2003 (England and Wales) (“the CJA”)
- The Coroners and Justice Act 2009

Many provisions of this Bill are also reflected in clauses contained within the Criminal Justice Reform Bill (“the Anguilla Bill”), which is currently before the Legislative Assembly in Anguilla.

Part I concerns the preliminaries, and the definitions within clause 2 have been adjusted to apply to the Islands. In particular, the following can be noted:

- (a) the Bill has adopted the use of the word “Attorney”, rather than the words “legal representative” which appear in the laws of some other jurisdictions. The definition of this word takes account of the two ways in which a person may be admitted pursuant to the Legal Profession Ordinance.
- (b) the perjury laws have been defined by reference to the Perjury Acts, to the extent that they apply in the Islands.
- (c) the words “sexual offence” are defined by reference to those offences that appear in Column A of Schedule 1 of the Sexual Offences Bill (Ordinance). There is scope to amend this list for the purposes of this Bill, as provided by clause 41(1) and (2). The use of this list assumes that the

Sexual Offences Bill will be passed before this bill, or that the two bills will be passed together. The words “sexual offence” are not defined in the Evidence Law (Cayman), but the incorporation of this list of offences in the Bill is in line with other jurisdictions and should enable greater clarity.

Clauses 3 to 10 (inclusive) of Part II represent the gateway provisions for directions concerning special measures. Clauses 3 and 4 provide eligibility for assistance based on grounds of age or vulnerability, or fear or distress about testifying. These provisions are almost identical to those in other jurisdictions, although it can be noted that in Cayman the relevant age is 17, rather than 18. Also, additional criteria in clause 3(2)(a)(iii) has been added, as it has been in the Anguilla Bill.

Clause 5 determines the type of special measures that are available on an application pursuant to clauses 3 or 4. Before any of these special measures may be taken by a court to be available, the Director of Public Prosecutions is required to notify the court that relevant arrangements may be made available in the court in which the proceedings will take place. This mirrors the process that is applied in Cayman.

Clauses 6 and 7 are standard provisions which guide the court in determining which special measures (if any) should be provided and the criteria to take into account when reaching that decision. Additional provisions concerning directions are provided, together with the capacity for rules of court to be made in specific circumstances.

There are various clauses within the Bill under which rules of court can be made. In relation to all, it can be noted that clause 53(2) of the Bill enables the Chief Justice to make these rules, in the same manner as set out in section 16 of the Supreme Court Ordinance.

Special provisions relating to child witnesses, certain witnesses over 18 and where the criminal proceedings relate to a sexual offence are provided in clauses 8, 9 and 10. The wording in these clauses is, in some instances, different to that contained within the Evidence Law (Cayman). The Evidence Law (Cayman) contains similar provisions to clauses 8 and 9 of the Bill, but with the additional requirement that the witness is “in need of special protection”. This was also a requirement set out in the YJCEA between 2003 and 2009. This Act has since been amended to remove this additional burden, thereby providing further protection for young witnesses. The current wording in the YJCEA (as modified to apply in the Islands) has been adopted for the Bill.

The content of clause 10 does not appear in the Evidence Law (Cayman). As described in the preceding paragraph, this Law does not reflect amendments that were made to the YJCEA after 2009. Clause 10 provides additional assistance to complainants in criminal proceedings that relate to a sexual offence, or to a sexual offence and other offences. It is drawn from section 22A of the Act, which came into force in England and Wales in 2011.

Clauses 11 to 18 (inclusive) are the special measures which may be available under the Bill.

Screening witnesses from the accused (clause 11). These are standard provisions, adopted throughout the region.

Evidence by live link (clause 12). These are also standard provisions, although it can be noted that sub-clauses (2) and (3) have been added to reflect recent changes to the YJCEA.

Evidence to be given in private (clause 13). These provisions do not appear in the Evidence Law (Cayman), but do appear in the YJCEA and the Montserrat Code.

Removal of wigs and gowns (clause 14). These are standard provisions in the region (where both wigs and gowns are worn).

Video recorded evidence in chief (clause 15). These are standard provisions in the region, although sub-clauses (5) to (11) reflect the current position in England and Wales, rather than the pre-2009 position as set out in the Evidence Law (Cayman).

Video recorded cross-examination or re-examination (clause 16). These are standard provisions in the region. There is a slight difference in wording between that contained in the Evidence Law (Cayman) and the YJCEA. The Cayman wording is slightly clearer than the Act in this regard and that wording has been adopted.

Examination of witness through intermediary (clause 17). This special measure is a relatively recent addition to the YJCEA and does not appear in the Evidence Law (Cayman). These provisions may be of particular benefit to the Islands.

Aids to communication (clause 18). As with clause 17, this is a relatively recent addition to the YJCEA and does not appear in the Evidence Law (Cayman).

Clause 19 of the Bill concerns the status of evidence given under Part II. The contents of this clause do not appear within the Evidence Law (Cayman), or Anguilla Bill, but it does offer significant provisions concerning the admissibility and effect of certain statements made by witnesses, in accordance with a special measures direction. These provisions do appear in the Montserrat Code and the YJCEA.

The wording in clause 20 also reflects the provisions contained in the Montserrat Code and the YJCEA. The Evidence Law (Cayman) refers to a “trier of fact”, rather than a “jury”. In the circumstances pertaining to the Islands, the latter, rather than the former choice of wording may be more appropriate.

Part III of the Bill reflects sections 51, 52 and 53 of the CJA. The definitions provided in section 56 of that Act have been retained and incorporated into clause 2 of the Bill. The wording in section 37 of the Evidence Law (Cayman) is slightly different and limits the effect of the provisions to more specified circumstances.

Clause 21(4)(b) has been modified to bring the wording into line with clause 5(2)(a).

Part IV of the Bill provides for the use of live link for evidence of certain accused persons. This reflects the wording of Chapter 1A of the YJCEA and (in part) replaces section 4 of the Audio Visual Link Ordinance.

The contents of clause 26 do not appear in the YJCEA, but given the effect of clause 20, it has been added to facilitate a balance between the warnings to a jury that should be provided in both instances.

Part V of the Bill concerns the use of live link for evidence of witnesses in civil proceedings. Together with the provisions contained in Part IV, the contents of this Part replace section 4 (together with some parts of section 6) of the Audio Visual Link Ordinance. This results in a position where the laws relating to witnesses giving evidence via live link have been gathered together in this Bill and the Audio Visual Link Ordinance solely relates to accused persons appearing before a court via audio visual link prior to trial.

Part VI of the Bill reflects the provisions contained in sections 137 and 138 of the CJA. The interpretation provisions contained in section 140 of the Act have been adopted and incorporated into clause 2. Clause 32(3)(a) has been modified, to bring it into line with clause 5(2)(a).

Parts VII and VIII contain provisions that are relatively standard across the region, providing protection to specified witnesses from cross-examination by an accused in person and protection to complainants in proceedings for sexual offences. By numerical coincidence, the wording within clauses 33 to 42 almost completely reflects the most up to date provisions contained within sections 33 to 42 of the YJCEA (as modified to apply to the Islands). Save for the contents of clause 39, the Montserrat Code also incorporates these provisions (at sections 287 to 295).

Clause 39 makes special provision for the funding of defence representation, where an Attorney has been appointed by the

court pursuant to clause 37(4). The wording within this clause has been drawn, in part, from section 8 of the Court of Appeal Ordinance and section 16 of the Supreme Court Ordinance. The content of clause 39 is slightly different from these sections because the funding of defence representation in these circumstances is not dependent on the means of the accused. The reasoning for this is that it would be for the court to appoint the Attorney concerned (possibly against the will of the accused), and the person so appointed would not be responsible to the accused (clause 37(5)).

Part IX of the Bill contains measures that enable the court to make witness anonymity orders. Three conditions need to be met before such an order may be issued (clause 45). In reaching a determination on these conditions, relevant considerations must be taken into account by the court (clause 46). Orders that have been made may be discharged or varied (clauses 48, 48 and 50).

Various revocations and consequential amendments to other laws would be required by the introduction of this Bill and these are shown in the Schedule. These changes are unlikely to be contentious.

PRACTICE DIRECTION NO 4 OF 2020

TO PROVIDE FOR TRANSITIONING FROM REMOTE TO IN-PERSON COURT BUSINESS

AUTHORITY: This Practice Direction is issued by the Chief Justice acting in conjunction with the Chief Magistrate pursuant to Section 17 of the Supreme Court Ordinance, and section 150 of the Magistrate’s Court Ordinance.

Whereas section 17 of the Supreme Court Ordinance vests authority in the Chief Justice to give directions for the practice and procedure of the Supreme Court.

Whereas, section 150 of the Magistrate’s Court Ordinance vests power in the Magistrate to make rules for the effective execution of court business.

Whereas the necessity to remove, reduce or limit human to human contact in response to the COVID-19 pandemic has been reduced, and the physical distancing protocols in place under the Emergency Powers (Covid-19) (No.5) Regulations 2020 permit the resumption of operation of in-person activities.

And Whereas the duty of the courts to ensure the proper administration of justice in a safe and healthy environment remains paramount.

Now therefore the following directions are made for the transition from the remote conduct of court business to the resumption of normal court business, including in-person hearings by the courts in the Turks and Caicos Islands whenever and wherever possible.

INTRODUCTION: This Practice Direction seeks to vary Practice Direction No. 3 of 2020 (issued on 23rd April 2020), in response to the easing up of certain COVID-19 pandemic measures, while continuing with measures for the protection of the health and safety of court personnel and court users.

DURATION: This Practice Direction will be in force from 22nd July 2020 when the borders of the Turks and Caicos Islands open to international traffic, until 31st of December 2020, unless sooner varied, revoked or replaced by the Chief Justice.

VARIATION: Practice Direction No. 3 of 2020 is hereby varied and to the extent that it may be in conflict with this Practice Direction, will to that extent be varied, and substituted with this Practice Direction.

INTERPRETATION: ‘Court Users’ shall, for the purposes of this Practice Direction, refer to persons necessary to hearings in any of the courts on a particular day, as well as persons appointed to meet with the Registrar, or to use the dropbox for filing and submission of documents.

‘Necessary Persons’ to a hearing are: the Judge/Magistrate, Clerk of Court or Registrar, Interpreter, Prosecutors, litigants, Police Officers, Prison Officers, defence counsel, defendants, witnesses to be called in the day’s proceedings, and members of the media who have given notice of participation to the Registrar.

‘Court Registry’ refers to the Registry of the Supreme Court, and the Magistrate’s Court as applicable.

RESUMPTION OF IN-PERSON COURT BUSINESS:

1. PRELIMINARY MATTERS

(1). This Practice Direction is not intended to do away with remote hearings enabled under Practice Direction No. 3 of 2020.

(2). Remote hearings may be ordered by the Judge/Magistrate/Registrar (where applicable); this discretion may be exercised by them on their own motion, or upon the application of parties or counsel on either side.

(3). A Judge or Magistrate may make an order for a hearing which is partly remote, and partly in person.

(4). Except where a Judge/Magistrate makes an order for a remote hearing, or for a hearing which is partly remote and partly in person, all court proceedings in both civil and criminal trials shall be held in person.

(5). Except where this Practice Direction (which varies Practice Direction No. 3) provides to the contrary, all the business of the court shall be carried out in person, as was done in the period immediately preceding the revoked Practice Direction No. 2 of 2020.

2. CRIMINAL TRIALS

(1). For maximum public access, criminal trials shall as much as possible, be streamed live.

(2). The live-streaming link will be supplied by public notice.

JUDGE ALONE:

1. Judge alone trials shall continue to be at the election of a party, or the court, subject to the right of a defendant to object thereto in accordance with S. 58 of the Criminal Procedure Ordinance Cap.3:03

2. Judge alone trials shall be held in person subject to the provisions of paragraph 1(2) and (3) and paragraphs 6 (5) - 6 (9) .

BY JURY:

By reason of the lack of adequate infrastructure to accommodate jury trials in accordance with physical distancing requirements, there will be no jury trials until further notice.

3. CIVIL TRIALS

All civil trials shall be heard in person, unless the court otherwise orders in accordance with paragraphs 1(2) and (3).

4. GENERAL PROTOCOLS FOR COURT ATTENDANCE

- (1). All court staff and court users will wear face masks to enter the court building.
- (2). The masks will be worn for the duration of their time in the court buildings, and even during court proceedings.
- (3). Apart from court staff, only necessary persons will be permitted to enter the court building; and only necessary persons to a particular hearing shall be in the designated courtroom or in the area immediately outside the courtroom.
- (4). Court users will enter the court building one after the other, keeping the six feet physical distancing protocol, as directed by the court's security guards.
- (5). Court users will be required to continue to keep the six feet physical distancing protocol once they enter the court building and also in the court room, Registrar's office, and everywhere else in the court building.
- (6). Court users will be required to sanitize their hands by accepting and using the hand sanitizers provided at the entrance to the court building.
- (7). Any person who refuses to comply with these general protocols for court attendance will be denied entry to the court building.
- (8). Where wash basins are provided with soap and water, court users are encouraged to wash their hands before entering or leaving their place of business in the building.
- (9). All court users without exception will submit to temperature checks by use of a handheld thermometer.

(10). Any person displaying flu-like symptoms or whose temperature exceeds 99.5(°F)/37.5 (°C) will be denied entry to the court building.

(11). Witnesses will testify wearing masks unless permitted to do otherwise by the Judge or Magistrate.

(12). Counsel will address the court and make submissions as well as lead witnesses with masks on unless permitted to do otherwise by the Judge/Magistrate.

(13). Counsel are required to robe for physical court appearance, as was done immediately before the coming into force of Practice Direction No. 3 of 2020.

5. THE PROCEEDINGS - GENERAL PROVISIONS

(1). At any time, there will be no more than ten persons in a courtroom in line with directives provided by the Environmental Health Department.

(2). While the courtrooms will be sanitised, no in-person court proceedings shall be held for a period exceeding three hours at any time.

(3). Notwithstanding the availability of live streaming, members of the media who wish to observe the trial from the court premises may do so remotely from an assigned room in the court building upon giving notice to the Registrar, not less than forty-eight hours before the hearing.

(4). The Registrar is hereby authorised to deny access to members of the media and the public to the assigned room having regard to the necessary observance of physical distancing protocols.

(5). Witnesses shall be kept at a place within the court premises where the physical distancing protocol will be observed, and be escorted by a court official into the courtroom as needed.

(6). Only counsel of record in the case, and if the number limitation of ten persons permits, their junior counsel, may be in the courtroom.

(7). If more than one counsel represents parties on either side, one lead counsel for one side may sit at the end of the front row of the Bar, along with opposing counsel who may sit at the end of the opposite side.

(8). The other attorneys for the other parties may sit in the second row to observe the physical distancing protocol.

(9). It is where there is only one lead counsel on either side that junior counsel (only two of whom may be permitted at the hearing) may sit after the said lead counsel at the end of the row on opposite ends.

(10). Where a defendant participates in the proceedings by video link from the Prison, the room from which he appears and participates in the proceedings shall for all purposes, be designated the dock.

6. THE HEARING – JUDGE ALONE TRIALS

(1). Unless it is inconvenient or impracticable for defendants in custody to be physically present in court for pretrial matters or for trial, all defendants shall appear in court for in-person proceedings.

(2). Notwithstanding this provision, no person shall be transported from Prison custody at Grand Turk to the Supreme Court at Providenciales for trial.

(3). All criminal trials scheduled for hearing at the Supreme Court, Providenciales, shall take place before a Judge in person at Providenciales.

(4). Where a defendant is in custody at HM Prisons, Grand Turk, he will stand trial at the Supreme Court before a Judge in person at Grand Turk.

(5). Notwithstanding the preceding provision, a Judge, being unable to travel to Grand Turk to conduct the trial by reason of continuing COVID-19 restrictions, may decide to conduct the hearing from Providenciales by video link over a matter in which the defendant is at Grand Turk, whether or not he is in Prison custody.

(6). A defendant may participate in the proceedings set out in the preceding paragraph, being physically present at the Supreme Court in Grand Turk, by video link.

(7). Where in the circumstances set out in the preceding paragraph, it is impracticable for the defendant being in Prison custody to be present at the Supreme Court in Grand Turk for the hearing by video link before a judge at Providenciales, the defendant shall participate in the proceedings from the Prison by video link.

(8). Where a trial takes place at the Supreme Court, Providenciales, with the defendant participating from the Supreme Court at Grand Turk, or from Prison custody at Grand Turk, witnesses in Providenciales shall testify from the witness box in the courtroom before the Judge; while witnesses in Grand Turk shall testify from the Supreme Court in Grand Turk by video link.

(9). Where more than one defendant is arraigned or stands trial on criminal charges and appears physically in court, whether physically before the Judge at Providenciales, or by video link from the Supreme Court in Grand Turk, the defendants may stand in the dock, and any area in the courtroom designated the dock, for the purpose of the arraignment/trial.

(10). Where a trial is held at the Supreme Court at Providenciales, counsel being physically present, may take instructions/communicate with defendants being physically present in the dock, on the mobile telephones provided in the dock and in the witness box.

(11). Before court proceedings, counsel may take instructions from defendants whether on bail or in custody, in the conference/robing room provided for such in the Supreme Court building which will observe the physical distancing protocol.

7. THE HEARING - MAGISTRATE'S COURT

(1). Unless it is inconvenient or impracticable for defendants in custody to be physically present in court for pretrial matters or for trial, or unless the Magistrate decides to conduct a hearing remotely, all defendants must appear in person in court proceedings.

8. FILING OF DOCUMENTS – GENERAL PROVISIONS

(1). A document may be filed by email or physically at the Registry.

(2). The procedure for the filing of documents/processes/exhibits by email in the Supreme Court and the Magistrate's Court in Practice Direction No. 3 of 2020, shall remain unaltered.

(3). Where filing is done physically, counsel/parties shall leave the documents along with payment receipts at the Registry in a dropbox provided at the Registry.

(4). Where filing is done physically, the paper documents/processes/exhibits/bundles shall be submitted whether in files, envelopes or boxes, encased in plastic or other impermeable or water resistant material that may be sanitized by wiping.

(5). In addition to the foregoing provisions, and the provisions on the filing of documents in Practice Direction No. 3, a document sent by email or lodged at the Court Registry will not be filed unless a payment receipt accompanies the documents or (with the Registrar's permission), a cheque covering the requisite fees is received.

(6). Documents submitted with incorrect filing fees or that do not comply with the relevant rules of court or with this Practice Direction will be rejected/returned.

(7). Where a party files a document by email he must not send a hard copy of that document to the Court Registry unless directed to do so by the court; filed hard copies of documents must not be resent by email, unless the court directs otherwise.

(8). Documents filed by email shall be sent as attachments and not text in the body of the email; and must be in (PDF) format.

(9). Draft orders shall be filed in Microsoft Word (MSWord) format.

(10). All documents, except documents exceeding 20 pages, may be filed by email.

(11). Attendance at the Registry for physical filing of documents shall be by appointment only to be made at the addresses provided in the schedule to this Practice Direction.

(12). Documents for filing by email shall be sent to courtregistry@gov.tc or magistratecourttci@gov.tc as applicable .

(13). Requests for searches or copies of court records (which must be accompanied by payment receipts); requests for payment vouchers, inquiries or communications about court proceedings or any other court related matter at the Supreme Court or at the Magistrate's Court shall be sent to: supremecourttci@gov.tc or magistratecourttci@gov.tc as applicable.

(14). Documents shall not be sent for filing to the personal email addresses of court staff or any other court email address, unless directed by the Court.

(15). In addition to the provisions on the time of filing set out in PD3, the court shall treat a document as filed on the date and time the documents are received by email

at courtregistry@gov.tc or magistratecourttci@gov.tc as applicable, along with a payment receipt indicating that the appropriate fees have been paid.

(16). A document purportedly filed by email that is not a specified document, shall not be treated as filed.

(17). The description of a document to be contained in the email by which it is filed shall be as in the Schedule to these directions.

(18). The court takes no responsibility for the security of the information (flagged as sensitive, confidential, or otherwise) sent by email.

9. FILING FEES

(1). All filing fees, whether or not documents are submitted by email or physically lodged at the Court Registry, or any other fees or payments made to the Supreme Court or the Magistrate's Court in relation to a court proceeding, shall be paid online.

(2). The payment shall be made to TCIG via an on-line transfer of funds, unless the Registrar/ Clerk of Court (as the case may be) gives permission to present a cheque for payment.

(3). Online payments shall be made in this manner:

- i. The payer shall request a payment voucher from the Registry by sending an email to supremecourttci@gov.tc or magistratecourttci@gov.tc as applicable.
- ii. For the verification of filing fees, the document(s) being filed must be attached to the email.
- iii. No request for a payment voucher may be sent to the personal email addresses of court staff or any other court email address.

- iv. The subject line of the email shall read: “Request for Payment Voucher”, followed by the file number.
- v. An email for a payment voucher for a new matter at the Supreme Court shall have the following subject line: **“Request for Payment Voucher – NEW CIVIL”**; **“Request for Payment Voucher – NEW PROBATE**, or **“Request for Payment Voucher – NEW DIVORCE”** for the filing of Civil & Commercial matters, Probate & Administration matters, or Divorce matters respectively.
- vi. An email for a payment voucher for a new matter at the Magistrate’s Court shall have the following subject line: **“Request for Payment Voucher – NEW CIVIL”**; **“Request for Payment Voucher – NEW DOMESTIC**; **“Request for Payment Voucher – NEW CRIMINAL** or **“Request for Payment Voucher – NEW NIB”** for filing of Civil, Domestic, Criminal and NIB matters respectively.
- vii. The body of the email requesting for a payment voucher in either court shall include:
 - 1. *The file number (if available);*
 - 2. *The title of the matter;*
 - 3. *The document(s) to be filed;*
 - 4. *The amount to be paid; and*
 - 5. *The name and telephone number of the person sending the email.*
- viii. Upon receipt of a request, the court will send an email with the voucher attached.
- ix. Online payments shall be made only upon receipt of the payment voucher.

- x. Persons seeking to make online payments shall upon receipt of the payment voucher, verify that it reflects the correct filing fees. Documents submitted for filing with incorrect filing fees will be rejected/returned.
- xi. Online payment shall be made by on-line transfer from your bank account to any of **TCIG's** account listed below:
***CIBC FCIB:** Account # 1575027, Name – Treasury*
***SCOTIABANK:** Account # 000754415, Transit – 94045, Name – Turks and Caicos Islands Government.*
***RBC** Account # 4020087, Transit – 05395, Name – Turks and Caicos Islands Government.*
- xii. The online payer shall send an email containing a copy of the payment voucher and a screenshot showing proof of payment on-line to: treasuryreceipts@gov.tc .
- xiii. The Treasury after verifying the payment, shall send a confirmation email with the payment voucher stamped “**PAID**”.
- xiv. Upon payment, documents may be filed either by:
 - a. Leaving a copy of the payment receipt along with the documents to be filed at the Court Registry, or
 - b. Sending a copy of the payment receipt and documents to be filed to courtregistry@gov.tc or magistratecourttci@gov.tc as applicable.

10. URGENCY

- (1). An urgent application at the Supreme Court must be accompanied by a “Certificate of Urgency” signed by counsel or by the applicant if he acts in person.

(2). The certificate must set out in an accompanying affidavit, the relevant facts which make the matter fit for urgent hearing.

11. SERVICE OF PROCESSES/DOCUMENTS:

(1). Service of documents, processes and bundles may be done either electronically in accordance with the procedure set out in Practice Direction No. 3 of 2020, or physically.

(2). Acknowledgement of, and proof of service shall be done either electronically or at the direction of the Registrar/Clerk of Court, by filing same at the Registry.

SCHEDULE A

DESCRIPTION OF DOCUMENTS FOR FILING BY EMAIL

1. The file names of all documents submitted for filing by email must start with the file number (if available), followed by the name of the document. Example: **“CL 00/20 – Notice of Change of Attorney”**.

2. For filing at the Supreme Court, the subject line of the email must read as follows:

Civil: CIVIL [File number] [Names of the parties] example: **“CIVIL - CL 00/20 John Doe v Jane Doe”**.

Criminal: CRIMINAL [File number] [Names of the parties], example: **“CRIMINAL - CR 00/20 R v Jane Doe”**.

Divorce: DIVORCE [File number] [Names of the parties], example **“DIVORCE – D 00/20 Jane Doe v John Doe.**

Probate: PROBATE [File number] [Names of the matter] example: “**PROBATE – PA 00/20 In the Estate of John Doe**”.

3. For filing at the Magistrate’s Court, subject line of the email must read as follows:

Civil: CIVIL [File number] [Names of the parties] example: “**CIVIL No. 00/20 John Doe v Jane Doe**”.

Criminal: CRIMINAL [File number] [Names of the parties], example: “**CRIMINAL No. 00/20 R v Jane Doe**”.

NIB: NIB [File number] [Names of the parties], example: “**NIB No. 00/20 NIB v John Doe**”

Domestic: DOMESTIC [Type of Application] [File number] [Names of the parties], example:

“**DOMESTIC – PROTECTION No. 00/20 Jane Doe v John Doe.**”

SCHEDULE B

ADDRESSES

i. The address for appointments for the filing of documents is: supremecourtci@gov.tc; magistratecourtci@gov.tc as applicable.

ii. The telephone numbers for making appointments and for making enquiries at **the Supreme Court**, are:

Supreme Court Registry **Grand Turk: 338-3968/231-7409**

Supreme Court Registry **Providenciales: 338-4203/232-2460**

NOTE: The email address: courtregistry@gov.tc is for filing of documents only, it is not designed or intended to receive any inquiries or other communications about court proceedings.

iii The telephone numbers for making appointments and for making enquiries at **the Magistrate's Court** are:

Magistrate's Court Registry (**Grand Turk**): **338-3967/ 232-3949**

Magistrate's Court Registry (**Providenciales**): **338-4201/ 338-4205 /232-7240**

ISSUED THIS 22ND DAY OF JUNE 2020

BY:

MABEL M. AGYEMANG

CHIEF JUSTICE



PUBLIC NOTICE 2020-9

AFF Installation Ltd. - Application for additional Spectrum

June 19, 2020

AFF Installation Ltd. has applied for additional spectrum to facilitate wireless broadband internet services in the Turks and Caicos Islands using the following frequencies:

FREQUENCY NO. 3550 – 3650 MHz

The Commission provides the following particulars:

1. That the above submission is made pursuant to Telecommunications (Administrative Procedure) Regulations Part II, Section 6 (5) and Telecommunications & Frequency Licensing Regulations Part II, Section 4 (2) of the Chapter 14.02 Telecommunications Ordinance 2018.
2. The proposed applicant is a Telecommunications Commission's Licensee.

The Commission hereby advises that this application is available at our Office for Public Scrutiny and, requests that any party having any comments, make their views known in writing within 21 days of the publication of this notice in the gazette. Comments must be delivered by hand to the Commission at their office at Business Solutions Building, Leeward Highway, Providenciales, Turks and Caicos Islands, or by mail to P.O. Box 203 or electronically via email at consultations@tcitelecommission.tc on or before 3.30 p.m. of the deadline herein.

G.N.



TRADEMARK:

CLASS (ES):

33

APPLICANT:

RUM ENTERPRISE

APPLICATION NO(s):

20206

APPLICANT'S AGENT:

MISICK & STANBROOK

**APPLICANT'S ADDRESS
FOR SERVICE:**

MISICK & STANBROOK
P.O. BOX 127
RICHMOND HOUSE
LEEWARD HIGHWAY
PROVIDENCIALES
TURKS AND CAICOS ISLANDS

DATE OF ACCEPTANCE:

21ST MAY 2020

**NOTICE OF APPOINTMENT OF RECEIVER OVER CC
PROPERTIES LTD.**

**TO: CC PROPERTIES LTD.
P.O. BOX 481, BUILDING A SUITE 201, GRACEWAY HOUSE, LEEWARD
HIGHWAY, PROVIDENCIALES, TURKS AND CAICOS ISLANDS**

AND TO: THE REGISTRAR OF COMPANIES

1. The Registered name of the company is **CC PROPERTIES LTD.** (“THE COMPANY”)
2. The date of the appointment is Friday 19th June, 2020.
3. It is believed that the Company has not traded or been registered under any other name.
4. The Appointment was made by **DR. CHRISTOPHER STEPHEN BOURNE, OBE** c/o: Griffiths & Partners, 82 Cherokee Road, Providenciales, Turks and Caicos Islands,
5. The instrument conferring the power under which the appointment is made is a Debenture dated 22nd November, 2012 and duly stamped and as amended on 28th March, 2013 and duly upstamped and made between the Company as borrower and Dr. Bourne, as the lender under a loan agreement dated 22nd November 2012 as amended on 28th March, 2013
6. The Company owns Parcel 70200/18, Central, West Caicos.
7. The Company is an asset holding company holding the above parcel of land.

DATED this 19th day of June 2020

SIGNED: RYAN BLAIN, CPA OF WB FINANCIAL, REGENT VILLAGE WEST, SUITE 205, P.O. BOX 137, GRACE BAY ROAD, PROVIDENCIALES, TURKS AND CAICOS ISLANDS, a licensed Insolvency Practitioner

Contact:

t. 649-941-7299 f. 649-941-7498 www.wbfinancial.tc and rblain@wbfinancial.tc

**NOTICE OF APPOINTMENT OF RECEIVER OVER CC
HOLDINGS LTD.**

**TO: CC HOLDINGS LTD.
P.O. BOX 481, BUILDING A SUITE 201, GRACEWAY HOUSE, LEEWARD
HIGHWAY, PROVIDENCIALES, TURKS AND CAICOS ISLANDS**

AND TO: THE REGISTRAR OF COMPANIES

1. The Registered name of the company is **CC HOLDINGS LTD.** (“**THE COMPANY**”)
2. The date of the appointment is Friday 19th June, 2020.
3. It is believed that the Company has not traded or been registered under any other name.
4. The Appointment was made by **DR. CHRISTOPHER STEPHEN BOURNE, OBE** c/o: Griffiths & Partners, 82 Cherokee Road, Providenciales, Turks and Caicos Islands,
5. The instrument conferring the power under which the appointment is made is a Debenture dated 18th April, 2012 and duly stamped and made between the Company as borrower and Dr. Bourne, as the lender under a loan agreement dated 18th April, 2012.
6. The Company owns Parcel 70200/19, Central, West Caicos.
7. The Company is an asset holding company holding the above parcel of land.

DATED this 19th day of June 2020

SIGNED: RYAN BLAIN, CPA OF WB FINANCIAL, REGENT VILLAGE WEST, SUITE 205, P.O. BOX 137, GRACE BAY ROAD, PROVIDENCIALES, TURKS AND CAICOS ISLANDS, a licensed Insolvency Practitioner

Contact:

t. 649-941-7299 f. 649-941-7498 www.wbfinancial.tc and rblain@wbfinancial.tc