



**Isle of Man**

*Ellan Vannin*

**AT 6 of 1992**

**SEXUAL OFFENCES ACT 1992**





**Isle of Man**

*Ellan Vannin*

## SEXUAL OFFENCES ACT 1992

### Index

Section	Page
<hr/>	
	<b><i>Sexual acts by force etc.</i></b>
1	Rape .....7
2	Procurement by threats or lies .....7
3	Administering drugs to obtain or facilitate sexual act .....8
	<b><i>Sexual acts with young persons etc.</i></b>
4	Intercourse with young person.....8
5	Sexual act with subnormal person .....8
6	Sexual act with mental patient.....8
	<b><i>Incest</i></b>
7	Incest.....9
8	Incitement to commit incest .....10
	<b><i>Unnatural offences</i></b>
9	Unnatural offences.....10
9A	Abuse of position of trust .....10
9B	Meaning of “position of trust” .....11
10	Provisions supplemental to s 9 .....12
11	Assault with intent to commit buggery .....13
12	Bestiality .....13
	<b><i>Other indecent acts</i></b>
13	Indecent assault.....13
14	Indecency with children .....13
	<b><i>Abduction</i></b>
15	Abduction by force .....13
16	Abduction of subnormal person.....14
	<b><i>Prostitution, procurement etc.</i></b>
17	Causing prostitution.....14
18	Procurement of young person .....14
18A	Meeting a person under 16 following sexual grooming etc .....14
19	Procurement of subnormal person.....15
20	Detention of person in brothel .....15

21	Permitting young person to use premises for sexual act.....	15
22	Permitting subnormal person to use premises for sexual act.....	15
23	Causing or encouraging prostitution etc of young person.....	16
24	Causing or encouraging prostitution of subnormal person.....	16
25	Living on or controlling prostitution.....	16
26	Soliciting.....	17
27	Loitering etc by prostitute.....	17
28	Keeping a brothel.....	17
29	Letting premises for use as brothel.....	17
30	Occupier or tenant permitting premises to be used as brothel.....	18
31	Occupier or tenant permitting premises to be used for prostitution.....	18
	<i>Proceedings for offences</i> .....	<b>19</b>
32	Restrictions on proceedings.....	19
33	[Repealed].....	19
34	Anonymity in rape cases.....	19
35	Powers of search.....	19
36	Evidence: general.....	20
37	Proof of exceptions.....	21
	<i>Miscellaneous and supplemental</i> .....	<b>21</b>
38	[Repealed].....	21
39	Persons suffering from severe subnormality.....	21
39A	Abolition of presumption of sexual incapacity.....	21
40	Interpretation.....	22
41	Transitional provisions, amendments and repeals.....	22
42	Short title.....	22
	<b>SCHEDULE 1</b> .....	<b>23</b>
	RIGHTS OF LANDLORD WHERE TENANT CONVICTED OF PERMITTING USE OF PREMISES AS BROTHEL.....	23
	<b>SCHEDULE 2</b> .....	<b>23</b>
	ANONYMITY IN RAPE CASES.....	23
	<b>SCHEDULE 3</b> .....	<b>28</b>
	AMENDMENT OF ENACTMENTS.....	28
	<b>SCHEDULE 4</b> .....	<b>29</b>
	ENACTMENTS REPEALED.....	29
	<b>ENDNOTES</b> .....	<b>31</b>
	TABLE OF LEGISLATION HISTORY.....	31
	TABLE OF RENUMBERED PROVISIONS.....	31
	TABLE OF ENDNOTE REFERENCES.....	31





**Isle of Man***Ellan Vannin*

## SEXUAL OFFENCES ACT 1992

<i>Received Royal Assent:</i>	<i>7 July 1992</i>
<i>Passed:</i>	<i>7 July 1992</i>
<i>Commenced:</i>	<i>7 July 1992</i>

**AN ACT** to make fresh provision for sexual offences; and for connected purposes.

**GENERAL NOTE:** The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

*Sexual acts by force etc.*

### **1 Rape**

- (1) Any man who rapes another person shall be guilty of an offence and liable on conviction on information to imprisonment for life.
- (2) A man commits rape if —
  - (a) he commits a sexual act with a person who at the time of the act does not consent to it; and
  - (b) at the time he knows that that person does not consent to the act or he is reckless as to whether he or she consents to it.
- (3) A man commits rape if he induces a person to allow him to commit a sexual act with him or her by impersonating another person.
- (4) A woman shall not be taken as consenting to sexual intercourse with her husband by reason only of being married to him.
- (5) A boy shall not be taken to be incapable of rape by reason only of being under the age of 14 years.

### **2 Procurement by threats or lies**

Any person who procures another person —

- (a) by threats or intimidation, or
- (b) by false pretences or false representation,

to commit a sexual act anywhere in the world shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

### **3 Administering drugs to obtain or facilitate sexual act**

Any person who applies or administers to, or causes to be taken by, another person any drug, matter or thing with intent to stupefy that person so as thereby to enable himself or a third person to commit a sexual act with him or her shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

*Sexual acts with young persons etc.*

### **4 Intercourse with young person**

- (1) Any person who has sexual intercourse with a person under the age of 13 shall be guilty of an offence and liable on conviction on information to imprisonment for life.
- (2) Any person who has sexual intercourse with a person under the age of 16 shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.
- (3) A person is not guilty of an offence under subsection (2) with respect to another person if he does not know, and has no reason to suspect that that person is under the age of 16.

### **5 Sexual act with subnormal person**

Any person who commits a sexual act with a person referred to in section 39(1) shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

### **6 Sexual act with mental patient**

- (1) Subject to subsection (3), any person, being an officer on the staff of or otherwise employed in, or being one of the managers of, a hospital or mental nursing home, who —
  - (a) commits a sexual act with a person who is for the time being receiving treatment for mental disorder in that hospital or home; or
  - (b) on the premises of which the hospital or home forms part, commits a sexual act with a person who is for the time being receiving such treatment there as an out-patient;shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.



- (2) Subject to subsection (3), any person who commits a sexual act with a person who is a mentally disordered patient and who is subject to his guardianship under the *Mental Health Act 1998* or is otherwise in his custody or care —
- (a) under that Act, or
  - (b) in pursuance of arrangements under the *National Health Service Act 2001* or Part III of the *National Assistance (Isle of Man) Act 1951*, or<sup>1</sup>
  - (c) as a resident in a residential care home within the meaning of the *Nursing and Residential Homes Act 1988*,
- shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.<sup>2</sup>
- (3) It is not an offence under this section for a person to commit a sexual act with another person if he does not know and has no reason to suspect that other person to be mentally disordered.
- (4) Expressions in this section have the same meanings as in the *Mental Health Act 1998*.<sup>3</sup>

### *Incest*

## 7 Incest

- (1) A person aged 16 years or over who commits a sexual act with a person whom he knows to be his child, grandchild, brother, sister, parent or grandparent shall be guilty of an offence and liable on conviction on information —
- (a) if with a person under 13 years and so stated in the information, to imprisonment for life;
  - (b) otherwise, to imprisonment for a term not exceeding 10 years.
- (2) For the purposes of this section —
- (a) any expression importing a relationship between 2 people applies notwithstanding that it is not traced through marriage or civil partnership;<sup>4</sup>
  - (b) any such expression includes a relationship of the half blood as well as of the whole blood; and
  - (c) where a man and a woman (whether or not married to each other) are living together in the same household, the child of one shall be treated as the child of the other also;
  - (ca) where two persons of the same sex (whether or not civil partners) are living together in the same household, the child of one shall be treated as the child of the other also;<sup>5</sup>

- (d) an adopted child shall be treated as the child of his natural parents as well as of his adoptive parents.

## 8 Incitement to commit incest

A person who incites a person aged under 16 years to commit a sexual act which, if he were over that age, would be an offence under section 7 shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

### *Unnatural offences*

## 9 Unnatural offences

- (1) A person ("A") who commits buggery with another person ("B") —
- (a) where A has attained the age of 16 and B is under the age of 16, or
  - (b) elsewhere than in private,
- shall be guilty of an offence.<sup>6</sup>
- (2) A person who is guilty of an offence under subsection (1) shall be liable on conviction on information —
- (a) if with a person under the age of 16 and so charged in the information, to imprisonment for life;
  - (b) otherwise, to imprisonment for a term not exceeding 7 years.
- (3) A person who procures another person to commit with a third person an act of buggery which is not an offence under subsection (1) shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 4 years.
- (4) A man who commits an act of gross indecency with another man —
- (a) where he has attained the age of 16 and the other man is under the age of 16, or<sup>7</sup>
  - (b) elsewhere than in private,
- shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 4 years.

## 9A Abuse of position of trust

- (1) Subject to subsections (2) and (3), it shall be an offence for a person aged 18 or over —
- (a) to commit a sexual act with a person under that age; or
  - (b) to engage in any other sexual activity with or directed towards such a person,

if (in either case) the first mentioned person is in a position of trust in relation to that person.

- (2) Where a person (“A”) is charged with an offence under this section of committing a sexual act with, or engaging in any other sexual activity with or directed towards, another person (“B”), it shall be a defence for A to prove that, at the time of the act or activity —
  - (a) A did not know, and could not reasonably have been expected to know, that B was under the age of 18;
  - (b) A did not know, and could not reasonably have been expected to know, that B was a person in relation to whom A was in a position of trust; or
  - (c) A was lawfully married to B.
- (3) It shall not be an offence under this section for a person (“A”) to commit a sexual act with, or engage in any other sexual activity with or directed towards, another person (“B”) if immediately before the commencement of this Act —
  - (a) A was in a position of trust in relation to B; and
  - (b) a sexual relationship existed between them.
- (4) A person guilty of an offence under this section shall be liable —
  - (a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both;
  - (b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.
- (5) In this section, “sexual activity” —
  - (a) does not include any activity which a reasonable person would regard as sexual only with knowledge of the intentions, motives or feelings of the parties; but
  - (b) subject to that, means any activity which such a person would regard as sexual in all the circumstances.<sup>8</sup>

## **9B Meaning of “position of trust”**

- (1) For the purposes of section 9A, a person aged 18 or over (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set in subsections (2) to (5) is fulfilled.
- (2) The first condition is that A looks after persons under the age of 18 who are detained in an institution by virtue of an order of a court or under a statutory provision, and B is so detained in that institution.
- (3) The second condition is that A looks after persons under the age of 18 who are resident in a home or other place in which —
  - (a) accommodation is provided by the Department of Social Care; or<sup>9</sup>

- (b) accommodation is provided or managed by any other organisation,
- and B is resident, and is so provided with accommodation, in that place.
- (4) The third condition is that A looks after persons under the age of 18 who are accommodated and cared for in a home, hospital or institution and B is accommodated and cared for in that home, hospital or institution.
- (5) The fourth condition is that A looks after persons under the age of 18 who are receiving education at any school, college or other educational institution, and B is receiving education at that institution.
- (6) A person looks after persons under the age of 18 for the purposes of this section if that person is regularly involved in caring for, training, supervising or being in sole charge of such persons.
- (7) For the purposes of this section a person receives education at a school, college or other educational institution if that person —
- (a) is registered or otherwise enrolled as a pupil or student at the institution; or
- (b) receives education at the institution under arrangements with another educational institution at which that person is so registered or otherwise enrolled.<sup>10</sup>

## 10 Provisions supplemental to s 9

- (1) For the purposes of section 9(1) and (4), an act shall not be treated as done in private if it is done —
- (a) where more than 2 persons are present, or
- (b) in any place to which the public have or are permitted to have access, whether on payment or otherwise.
- (2) Nothing in section 9(1) or (4) prevents an act being an offence (other than a civil offence) under any provision of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (Acts of Parliament).
- (3) In its application to an act committed on a Manx merchant ship by a man who is a member of the crew of that ship with a man who is a member of the crew of that ship or of another Manx merchant ship, section 9(1) and (4) shall have effect with the omission of paragraphs (a) and (b).
- (4) In subsection (3) —
- “member of the crew”, in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in the ship;
- “Manx merchant ship” means a ship registered in the Island and habitually used at the time of the act charged for the purposes of carrying passengers or goods for reward.

**11 Assault with intent to commit buggery**

Any person who assaults another person with intent to commit buggery shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 10 years.

**12 Bestiality**

A person who commits a sexual act with an animal shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

*Other indecent acts***13 Indecent assault**

- (1) Any person who makes an indecent assault on another person shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.<sup>11</sup>
- (2) A person under the age of 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section.
- (3) Subsection (2) does not apply where the defendant did not know, and had no reason to suspect, that the person concerned was under the age of 16.

**14 Indecency with children**

Any person who —

- (a) incites or procures a person under the age of 16 to commit an act of gross indecency with him or another person; or
- (b) commits an act of gross indecency with or towards a person under that age,

shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.<sup>12</sup>

*Abduction***15 Abduction by force**

Any person who takes away or detains another person against his or her will by force with the intent that he or she shall commit a sexual act shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 14 years.

**16 Abduction of subnormal person**

Any person who takes away or detains a person referred to in section 39 (1) against the will of his or her parent or guardian with the intent that he or she shall commit a sexual act shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 14 years.

*Prostitution, procurement etc.*

**17 Causing prostitution**

Any person who —

- (a) procures a person to become a prostitute anywhere in the world;  
or
- (b) procures a person to leave the Island, intending him or her to become an inmate of or frequent a brothel elsewhere; or
- (c) procures a person to leave the Island, intending him or her to become an inmate of or frequent a brothel anywhere in the world for the purposes of prostitution,

shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

**18 Procurement of young person**

Any person who procures a person under the age of 18 years to commit a sexual act anywhere in the world shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

**18A Meeting a person under 16 following sexual grooming etc**

- (1) A person aged 18 or over (“A”) commits an offence if —
  - (a) A intentionally meets, or travels with the intention of meeting, another person (“B”), having met or communicated with B on at least two earlier occasions; and
  - (b) at the time, A intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence; and
  - (c) B is under the age of 16; and
  - (d) A does not reasonably believe that B is aged 16 or over.
- (2) In subsection (1) —
  - (a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

- (b) “relevant offence” means —
  - (i) an offence under this Act;
  - (ii) anything done outside the Island which is not an offence within sub-paragraph (i) but would be if done in the Island.
- (3) A person guilty of an offence under this section shall be liable —
  - (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000, or to both;
  - (b) on conviction on information, to custody for a term not exceeding 5 years or to a fine, or to both.<sup>13</sup>

## **19 Procurement of subnormal person**

Any person who procures a person referred to in section 39(1) to commit a sexual act anywhere in the world shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

## **20 Detention of person in brothel**

Any person who —

- (a) detains a person against his or her will on any premises with the intention that he or she shall commit a sexual act with any person;  
or
- (b) detains a person against his or her will in a brothel,

shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 7 years.

## **21 Permitting young person to use premises for sexual act**

- (1) Any person, being the owner or occupier of any premises, or having or acting or assisting in the management or control of any premises, who induces or knowingly suffers a person under the age of 16 years to resort to or be on those premises for the purpose of committing a sexual act with any person shall be guilty of an offence and liable on conviction on information —
  - (a) if the second-named person is under the age of 13 years and so stated in the information, to imprisonment for life;
  - (b) otherwise, to imprisonment for a term not exceeding 7 years.

## **22 Permitting subnormal person to use premises for sexual act**

Any person, being the owner or occupier of any premises, or having or acting or assisting in the management or control of any premises, who induces or knowingly suffers a person referred to in section 39(1) to resort to or be on those premises for the purpose of committing a sexual act with any person shall be

guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 10 years.

### **23 Causing or encouraging prostitution etc of young person**

- (1) Any person who causes or encourages the prostitution of, or the commission of a sexual act with or an indecent assault on, a person under the age of 16 for whom he is responsible shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 10 years.
- (2) Where a person has become a prostitute, has committed a sexual act or has been indecently assaulted, a person shall be deemed for the purposes of this section to have caused or encouraged it if he knowingly allowed him or 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 person under the age of 16 are —
  - (a) any person who is his or parent or guardian; or
  - (b) any other person who has custody, charge or care of him or her.

### **24 Causing or encouraging prostitution of subnormal person**

Any person who causes or encourages the prostitution anywhere in the world of a person referred to in section 39(1) shall be guilty of an offence and liable on conviction on information to imprisonment for a term not exceeding 10 years.

### **25 Living on or controlling prostitution**

- (1) Any person who knowingly lives wholly or in part on the earnings of prostitution of another person shall be guilty of an offence.
- (2) Any person who exercises control, direction or influence over a prostitute's movements in a way which shows that he is aiding, abetting or compelling his or her prostitution with others shall be guilty of an offence.
- (3) For the purposes of this section a person who lives with or is habitually in the company of a prostitute shall be presumed to be knowingly living on the earnings of prostitution, unless the contrary is proved.
- (4) A person guilty of an offence under this section shall be liable —
  - (a) on conviction on information to imprisonment for a term not exceeding 14 years;
  - (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.



**26 Soliciting**

Any person who in a street or public place persistently solicits or importunes another person or persons to commit a sexual act shall be guilty of an offence and liable —

- (a) on conviction on information to imprisonment for a term not exceeding 7 years;
- (b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

**27 Loitering etc by prostitute**

Any prostitute who loiters or solicits in a street or public place for the purpose of prostitution shall be guilty of an offence and liable —

- (a) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

**28 Keeping a brothel**

Any person who keeps a brothel, or manages or acts or assists in the management of a brothel, shall be guilty of an offence and liable —

- (a) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

**29 Letting premises for use as brothel**

If the landlord of any premises or his agent —

- (a) lets the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel, or
- (b) where the whole or part of the premises is used as a brothel, is knowingly a party to the use continuing,

he shall be guilty of an offence and liable —

- (i) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine, or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

**30 Occupier or tenant permitting premises to be used as brothel**

- (1) If the occupier or tenant or person in charge of any premises knowingly permits the premises or part of them to be used as a brothel, he shall be guilty of an offence and liable —
  - (a) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.
- (2) Where the tenant of any premises is convicted of an offence under this section, Schedule 1 applies to enlarge the rights of the landlord with respect to the assignment or determination of the lease under which the premises are held by the tenant.
- (3) Subsection (4) applies where the tenant of any premises is so convicted and either —
  - (a) the landlord, after having the conviction brought to his notice, fails or has failed to exercise his rights under Schedule 1 in relation to the lease under which the premises are or were held by the tenant; or
  - (b) the landlord, after exercising his rights under Schedule 1 so as to determine that lease, grants or granted a new lease of the premises to or for the benefit of the tenant, without having all reasonable provisions to prevent the recurrence of the offence inserted in the new lease.
- (4) Where this subsection applies and an offence under this section is committed in respect of the premises in question during the subsistence of the lease or new lease referred to in subsection (3)(a) or (b), as the case may be, the landlord shall be treated as being a party to that offence unless he shows that he took all reasonable steps to prevent the recurrence of the offence.
- (5) In this section and Schedule 1 “landlord” includes a lessor and a person permitting another to occupy any premises or part thereof, and “lease” and “tenant” shall be construed accordingly.

**31 Occupier or tenant permitting premises to be used for prostitution**

If the occupier or tenant or person in charge of any premises knowingly permits the whole or part of the premises to be used for the purposes of habitual prostitution, he shall be guilty of an offence and liable —

- (a) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

*Proceedings for offences***32 Restrictions on proceedings**

- (1) No proceedings for —
  - (a) an offence under section 4(2) (intercourse with person under 16), section 7 or 8 (incest etc.) or section 26 or 27 (soliciting etc.), or
  - (b) aiding, abetting, counselling or procuring any such offence, or
  - (c) attempting to commit any such offence,may be commenced without the consent of the Attorney General.
- (2) This section is without prejudice to sections 11 and 35 of the *Children and Young Persons Act 1966*.

**33 [Repealed]<sup>14</sup>****34 Anonymity in rape cases**

Schedule 2 shall have effect in relation to the anonymity of the complainant in proceedings for rape and related offences.

**35 Powers of search**

- (1) Where it is made to appear by information on oath before a justice that there is reasonable cause to suspect —
  - (a) that any house or part of a house is used by a person for purposes of prostitution, and
  - (b) that another person residing in or frequenting the house is living wholly or in part on his or her earnings,the justice may issue a warrant authorising a constable to enter and search the house and to arrest that other person.
- (2) Where it is made to appear by information on oath before a justice by a parent, relative or guardian of any person, or by any other person who in the justice's opinion is acting in that person's interests, that there is reasonable cause to suspect that —
  - (a) that person is detained in any place in order that other persons or a particular person may have unlawful sexual intercourse with that person; and
  - (b) that person is —
    - (i) so detained against his or her will, or
    - (ii) under the age of 16, or
    - (iii) a person referred to in section 39(1), or

- (iv) under the age of 18 and is so detained against the will of his or her parent or guardian,

the justice may issue a warrant authorising a constable to search for that person and to take him or her to and detain him or her in a place of safety until he or she can be brought before a justice.<sup>15</sup>

- (3) A constable executing a warrant under subsection (2) —
  - (a) may enter (by force, if need be) any premises specified in the warrant and remove the person concerned from the premises, and
  - (b) shall be accompanied by the person applying for the warrant, if that person so desires, unless the justice issuing it otherwise directs.
- (4) A justice before whom a person is brought in pursuance of subsection (2) may cause him or her to be delivered up to his or her parent or guardian or otherwise dealt with as circumstances may require.
- (5) The powers conferred by this section are in addition to and not in derogation of those conferred by Part 5 of the *Children and Young Persons Act 2001*.<sup>16</sup>

### 36 Evidence: general

- (1) If at a trial any person is for the time being charged with an offence under this Act to which he pleads not guilty, no evidence and no question in cross-examination shall, without the leave of the court, be adduced or asked at the trial by or on behalf of any defendant at the trial about any sexual experience of a complainant with a person other than that defendant.
- (2) Leave shall not be given under subsection (1) except on an application in that behalf, made (in the case of a trial on information) in the absence of the jury.
- (3) Leave shall not be given under subsection (1) unless the court is satisfied that it would be unfair to the defendant to refuse to allow the evidence to be adduced or the question asked.
- (4) Where a court of summary jurisdiction inquires into an offence under this Act pursuant to section 5 of the *Summary Jurisdiction Act 1989*, no evidence and no question shall, without the leave of the court, be adduced or asked at the inquiry which, if-
  - (a) the inquiry were a trial at which a person is charged as mentioned in subsection (1); and
  - (b) each of the accused were at the trial charged with the offences of which he is accused,could not be adduced or asked without leave under subsection (1).

- (5) Leave shall be given under subsection (4) if, and only if, the court is satisfied that leave under subsection (1) in respect of the evidence or question would be likely to be given at the relevant trial.
- (6) If at a trial for an offence under this Act the jury has to consider whether a person believed that a person with whom he was committing a sexual act was consenting to the act, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.
- (7) In this section “complainant” means a person with respect to whom, in a charge for an offence under this Act to which the trial relates, it is alleged that the sexual act was committed, attempted or proposed.

### **37 Proof of exceptions**

Where a person accused of an offence under this Act seeks to rely in his defence on any exemption or excuse, the burden of proving the exemption or excuse shall lie on him unless express provision is made to the contrary in this Act.

#### *Miscellaneous and supplemental*

### **38 [Repealed]<sup>17</sup>**

### **39 Persons suffering from severe subnormality**

- (1) This section applies to a person suffering from severe subnormality within the meaning of the *Mental Health Act 1974*.
- (2) A person is not guilty of an offence under section 5 (sexual act), 16 (abduction), 19 (procurement), 22 (permitting use of premises) or 24 (causing prostitution) with respect to a person to whom this section applies, if he does not know and has no reason to suspect that he or she is a person to whom this section applies.
- (3) A person to whom this section applies cannot in law give any consent which would prevent an act being an assault for the purposes of section 13 (indecent assault), but a person is only to be treated as guilty of an offence with respect to such a person by reason of that incapacity to consent if he knew or had reason to suspect that he or she was a person to whom this section applies.

### **39A Abolition of presumption of sexual incapacity**

Without prejudice to section 1(5), any presumption of criminal law that a boy under the age of 14 years is incapable of sexual intercourse (whether natural or unnatural) is hereby abolished.<sup>18</sup>

#### 40 Interpretation

(1) In this Act —

“**justice**” means a justice of the peace;

“**prostitute**” means a person who commonly offers his or her body for lewd acts for payment;

“**sexual act**” means sexual intercourse or buggery;

“**street**” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and

(i) the doorways and entrances of premises abutting on a street, and

(ii) any ground adjoining and open to a street,

shall be treated as forming part of the street.

(2) Where on the trial of any offence under this Act it is necessary to prove a sexual act it shall not be necessary to prove the completion of the act by the emission of seed, but the act shall be deemed complete on proof of penetration only.

(3) For the purposes of sections 20 and 28 to 30 premises shall be treated as a brothel if people resort to them for the purposes of lewd homosexual practices in circumstances in which resort to them for lewd heterosexual practices would have led to their being treated as a brothel for the purposes of those sections.

(4) The use in this Act of words importing either gender (such as “he or she”) shall not be taken as excluding the operation, in relation to words importing the masculine gender only, of section 35(1) (rules as to gender) of the *Interpretation Act 1976*.

#### 41 Transitional provisions, amendments and repeals

(1) Nothing in this Act applies to an offence committed before the passing of this Act.

(2) The enactments specified in Schedule 3 are amended in accordance with that Schedule.

(3) The enactments specified in Schedule 4 are repealed to the extent specified in column 3 of that Schedule.

#### 42 Short title

This Act may be cited as the Sexual Offences Act 1992.

**SCHEDULE 1****RIGHTS OF LANDLORD WHERE TENANT CONVICTED OF  
PERMITTING USE OF PREMISES AS BROTHEL**

## Section 30(2)

1. (1) After the conclusion of proceedings against the tenant, the landlord may require the tenant to assign the lease under which the premises are held or occupied by him to some person approved by the landlord.  
(2) For the purposes of this paragraph, proceedings against the tenant shall be regarded as concluded —
  - (a) if an appeal is brought against his conviction, when the appeal is determined or abandoned;
  - (b) if no such appeal is brought, on the expiry of the time within which the appeal might have been brought.
2. If the tenant fails to do so within 3 months, the landlord may determine the lease (but without prejudice to the rights or remedies of any party thereto accrued before the date of the determination).
3. Where the lease is determined under this Schedule, the court by which the tenant was convicted may make a summary order for delivery of possession of the premises to the landlord.
4. The approval of the landlord for the purposes of paragraph 1 shall not be unreasonably withheld.

**SCHEDULE 2****ANONYMITY IN RAPE CASES**

## Section 34 [1979/19/Sch 1]

*Restriction on identification of complainant*

1. Except as authorised by a direction given in pursuance of this Schedule —
  - (a) after an allegation that a person has been the victim of a rape offence has been made by that or any other person, neither the person's name nor his or her address nor his or her picture shall be published in the Island during his lifetime in a written publication available to the public or be included in a relevant programme for reception in the Island, if that is likely to lead members of the public to identify him or her as a victim or alleged victim of such an offence; and<sup>19</sup>

- (b) after a person is accused of a rape offence no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation shall be published in the Island during his or her lifetime in a written publication available to the public or be included in a relevant programme for reception in the Island.<sup>20</sup>

*Removal of restriction before trial*

2. (1) If, before the commencement of a trial at which a person is charged with a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a Deemster for a direction in pursuance of this paragraph and satisfies the Deemster —

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; 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 Deemster shall direct that paragraph 1 shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(2) If, after the commencement of a trial at which a person is charged with a rape offence, a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of sub-paragraph (1).

*Removal of restriction at trial*

3. If at a trial before a Court of General Gaol Delivery the Deemster is satisfied that the effect of paragraph 1 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that paragraph shall not apply to such matter as is specified in the direction; but a direction shall not be given in pursuance of this paragraph by reason only of the trial.

*Removal of restriction on appeal*

4. If a person who has been convicted of an offence and given notice of appeal to the High Court against the conviction, or notice of an application for leave so to appeal, applies to the High Court for a direction in pursuance of this paragraph 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 paragraph 1 shall not, by virtue of an accusation which alleges a rape offence and is specified in the direction, apply in relation to a complainant so specified.

*Removal of restriction at complainant's request*

5. If the complainant, before or after the commencement of a trial at which a person is charged with a rape offence, applies to a Deemster for a direction under this paragraph, the Deemster shall direct that paragraph 1 shall not apply in relation to the complainant.

*Offences*

6. (1) If any matter is published or included in a relevant programme in contravention of paragraph 1, the following persons, namely –

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it;
- (c) in the case of matter included in a relevant programme, any body corporate which is engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,<sup>21</sup>

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(2) When an offence under this paragraph which has been 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, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subparagraph (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Proceedings for an offence under this paragraph shall not be instituted except by or with the consent of the Attorney General.

(5) Where a person is charged with such an offence under this paragraph, 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 or broadcast in question was such as to contravene paragraph 1.

(6) Where a person is charged with an offence under this paragraph, it shall be a defence to prove that the publication or programme in which the matter in

question appeared was one in respect of which the person concerned had given written consent to the appearance of matter of that kind, unless it is proved that any person interfered unreasonably with his or her peace or comfort in order to obtain that consent.<sup>22</sup>

*Exemptions etc.*

7. (1) Nothing in this Schedule —
- (a) prohibits the publication or inclusion in a relevant programme 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 a rape offence; or<sup>23</sup>
  - (b) affects any prohibition or restriction imposed by virtue of any other enactment upon publication or inclusion in a relevant programme.<sup>24</sup>
- (2) A direction given in pursuance of this Schedule does not affect the operation of paragraph 1 at any time before the direction is given.

*Marital rape*

8. (1) The foregoing provisions of this Schedule have effect subject to the following modifications in a case of a rape offence where, at the time of the alleged offence, the person accused of the offence or alleged to have committed the offence (“the accused”) and the person against whom the offence is alleged to have been committed (“the victim”) are married to each other.

(2) The prohibition in paragraph 1 of the publication or other disclosure (except as authorised by a direction) of —

- (a) the victim’s name or address or a picture of her, and
- (b) matter likely to lead members of the public to identify the victim,

apply in relation to the accused as it applies to the victim, but continues in force for the duration of the victim’s life only.

(3) Any direction given in pursuance of this Schedule may disapply the prohibition either in relation to the accused and the victim or in relation to the accused only (but not in relation to the victim only) and, where given in pursuance of an application, whether or not the application sought that form of direction.

(4) Subject to sub-paragraph (5), the defence conferred by paragraph 6(6) on proof of the written consent of the victim to the appearance of matter of the description in question shall only be available on proof of the written consent of the victim and the accused; and the exception in paragraph 6(6) on proof of unreasonable interference with the victim’s peace or comfort applies also on proof of unreasonable interference with the accused’s peace or comfort.

(5) Where the accused is convicted of the rape offence sub-paragraph (4) does not apply as respects any time after the conviction.

*Interpretation*

9. (1) For the purposes of this Schedule, a person is accused of a rape offence if —

- (a) a complaint is made alleging that he has committed a rape offence; or
- (b) he appears before a court charged with a rape offence; or
- (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence.

(2) In this Schedule —

“**broadcast**” [Repealed]

“**cable programme**” [Repealed]<sup>25</sup>

“**complainant**”, in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the person against whom the offence is alleged to have been committed; and

“**picture**” means a still or moving picture, and includes any likeness however produced;

“**rape offence**” means —

- (i) rape;
- (ii) attempting to commit rape;
- (iii) aiding, abetting, counselling or procuring the commission of rape or attempted rape; or
- (iv) incitement to commit rape;

“**relevant programme**” means a programme included in a programme service (within the meaning of Part 1 of the *Broadcasting Act 1993*);<sup>26</sup>

“**written publication**” includes a film, a sound track and any other record in permanent form, but does not include an information or other document prepared for use in particular legal proceedings.

## SCHEDULE 3

### AMENDMENT OF ENACTMENTS

#### Section 41(2)

[Sch 3 amended by Criminal Jurisdiction Act 1993 Sch 4, and amends the following Acts —

Firearms Act 1947 q.v.

Children and Young Persons Act 1966 q.v.

Adoption Act 1984 q.v.

Summary Jurisdiction Act 1989 q.v.

Criminal Justice Act 1991 q.v.]

*The Visiting Forces Act 1952 (of Parliament) SI 1962/170*

7. For the Schedule, as it has effect in the Island, substitute —

“1 “Offence against the person” means any of the following offences —

- (a) murder, manslaughter, rape, buggery, robbery, assault and any offence of aiding, abetting, counselling or procuring suicide or an attempt to commit suicide;
- (b) an offence under any of the following Acts of Tynwald —
  - (i) the *Criminal Code 1872* sections 19 and 23 to 83 (except section 70);
  - (ii) the *Infanticide and Infant Life (Preservation) Act 1938*;
  - (iii) the *Children and Young Persons Act 1966* sections 1, 3, 4, 5 and 9;
  - (iv) the *Child Custody Act 1987* sections 50 and 51;
  - (v) the *Sexual Offences Act 1992* sections 2 to 23;
- (c)
  - (i) an offence under section 1(3)(a) of the *Internationally Protected Persons Act 1978*, as it has effect in the Isle of Man;
  - (ii) an offence under section 2 of the *Explosive Substances 1883* (an Act of Tynwald) of causing an explosion likely to endanger life, against a protected person within the meaning of section 1 of the said Act of 1978.

2 “Offence against property” means —

- (a) an offence under any of the following Acts of Tynwald —

- (i) the *Criminal Code 1872* sections 116, 119, 130 and 131;
  - (ii) the *Bankruptcy Code 1892* section 88;
  - (iii) the *Criminal Damage Act 1981*;
  - (iv) the *Theft Act 1981* (except section 8);
- (b) an offence under section 2 of the *Explosive Substances Act 1883* (an Act of Tynwald) of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in section 1 of the Act of 1978 referred to in paragraph 1(c) above.”.

## SCHEDULE 4

### ENACTMENTS REPEALED

[Sch 4 repeals the following Acts wholly —

Sexual Offences Act 1967

Sexual Offences (Modification) Act 1979

and the following Acts in part —

Mental Health Act 1974

Criminal Law Act 1981

Marriage Act 1984

Fines Act 1986

Nursing and Residential Homes Act 1988

Summary Jurisdiction Act 1989

Family Law Act 1991.]



## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> Para (b) amended by National Health Service Act 2001 Sch 4.
- <sup>2</sup> Subs (2) amended by Mental Health Act 1998 Sch 5.
- <sup>3</sup> Subs (4) amended by Mental Health Act 1998 Sch 5.
- <sup>4</sup> Para (a) amended by Civil Partnership Act 2011 Sch 14.
- <sup>5</sup> Para (ca) inserted by Civil Partnership Act 2011 Sch 14.
- <sup>6</sup> Subs (1) substituted by Sexual Offences (Amendment) Act 2006 s 4.
- <sup>7</sup> Para (a) substituted by Sexual Offences (Amendment) Act 2006 s 4.
- <sup>8</sup> S 9A inserted by Sexual Offences (Amendment) Act 2006 s 1.
- <sup>9</sup> Para (a) amended by SD155/10 Sch 11.
- <sup>10</sup> S 9B inserted by Sexual Offences (Amendment) Act 2006 s 1.
- <sup>11</sup> Subs (1) substituted and applied by Criminal Justice (Penalties, Etc.) Act 1993 s 5.
- <sup>12</sup> S 14 substituted by Criminal Justice (Penalties, Etc.) Act 1993 s 5.
- <sup>13</sup> S 18A inserted by Sexual Offences (Amendment) Act 2006 s 2.
- <sup>14</sup> S 33 repealed by Criminal Jurisdiction Act 1993 Sch 4.
- <sup>15</sup> Subs (2) amended by Police Powers and Procedures Act 1998 Sch 5.
- <sup>16</sup> Subs (5) amended by Children and Young Persons Act 2001 Sch 12.
- <sup>17</sup> S 38 repealed by Sexual Offences (Amendment) Act 2006 s 5.
- <sup>18</sup> S 39A inserted by Criminal Justice Act 2001 s 4.
- <sup>19</sup> Subpara (a) amended by Broadcasting Act 1993 Sch 4.
- <sup>20</sup> Subpara (b) amended by Broadcasting Act 1993 Sch 4.
- <sup>21</sup> Item (c) substituted by Broadcasting Act 1993 Sch 4.
- <sup>22</sup> Subpara (6) amended by Broadcasting Act 1993 Sch 4.
- <sup>23</sup> Item (a) amended by Broadcasting Act 1993 Sch 4.

<sup>24</sup> Item (b) amended by Broadcasting Act 1993 Sch 4.

<sup>25</sup> Definitions of “broadcast” and “cable programme” repealed by Broadcasting Act 1993 Sch 5.

<sup>26</sup> Definition of “relevant programme” inserted by Broadcasting Act 1993 Sch 4.