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Non-statutory Guidance on the anonymity provisions within the Sexual Offences and Obscene Publications Act 2021

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INTRODUCTION

This non-statutory guidance has been prepared to support the coming into operation of [the Sexual Offences and Obscene Publications Act 2021](#) ("the Act") and fulfils a commitment made alongside the [implementation planning for the Act](#).

The various provisions relating to anonymity for victims and others can be found with Part 8 *Anonymity of victims and others* of the Act.

For ease of reference, the Frequently Asked Questions ("FAQ") information, which can be found at Appendix 1 to this guidance, sets out how and when anonymity applies. This information is intended to assist those agencies reporting on the Criminal Justice System, by ensuring that they are guided to observe the new legislation around anonymity, thereby striking a balance between open reporting and the individual's statutory right to privacy, as set out in the Act.

Background to the debates on anonymity during the passage of the Act through the Manx Parliament, and to the other matters relating to the wider progress of the Act, can be found within the [implementation planning for the Act](#).

During the passage of the Act, it was recognised that it is important that the general public have confidence in the court system and that the press have an important role in ensuring that justice is seen to be done. However, on a small Island there can be serious long-term repercussions for any individual referenced in a court report and implicated in a sexual offence.

For this reason, the Act extends anonymity to alleged suspects and defendants, alleged victims and complainants, and in certain circumstances, witnesses for their lifetimes. The principle of "innocent until proven guilty" is fundamental to the structure of most civilised societies and this application of anonymity enhances this right in a particular set of circumstances, as provided for in Part 8 of the Act.

This anonymity is, however, not unconditional and can be lifted by an application from the police, the prosecution or by the judge themselves, if deemed to be in the public interest or essential to encourage other witnesses to come forward. Separately, and on subsequent conviction for the alleged offence, the anonymity of the convicted offender ceases to have effect.

Anonymity of witnesses may be provided in the case of trial of an offence to which Part 8 of the Act applies, where grounds have been agreed as being satisfied and a court has directed that this is to be the case. This is set out in more detail within the FAQ section below.

The balance between freedom of the press and personal privacy should be kept under review. The intention to grant anonymity for those suspected of committing sexual offences should not be perceived in any way to support the erroneous myth that victims make false allegations of rape. In nearby jurisdictions, where detailed reviews have been undertaken and a focus made on sexual assault and rape offences, statistics have shown that false allegations are very much the minority of allegations made, whereas "victim attrition"¹ occurs much more frequently.²³ The

¹ In essence, the falling away of a case where a victim no longer supports further action being taken.

² <https://www.gov.uk/government/publications/rape-review-progress-report-two-years-on>

³ <https://committees.parliament.uk/publications/9600/documents/166175/default/>

reality is that, at the time that the Act was progressed, only around 15% of those who experience sexual violence on the Isle of Man report it to the police and that conviction rates for rape are far lower than those for other crimes. More recent reporting, within the [Chief Constable's Annual Report 2022-23](#), shows that on the Island, while the charging rate for allegations of rape is above that of England and Wales, there is a parallel in that a significant proportion of allegations do not proceed because the victim does not wish the Island's police to conduct a formal investigation.

There are unfortunately many myths surrounding rape, sexual assault and sexual offences which must not be allowed to perpetuate. Stigma in particular prevents victims from either coming forward, or, if they do not wish a formal investigation to take place, from accessing any other support services which they might require. [All allegations are handled sensitively by the police, and taken seriously](#). Where a victim [does not wish to go directly to the police](#), alternative contacts, such as [Victim Support](#), are available, along with the potential to receive support from an Independent Sexual Violence Advisor⁴. This support is available irrespective of whether the victim has made a police report. Contact information for other agencies which may be useful can be found at Appendix 2.

The Island's bespoke Sexual Assault Referral Centre (SARC) is currently in development. The clear need for a SARC was formally identified within a [needs assessment conducted in 2017](#). As such, an interim SARC service has been in place since late 2021, while work to develop a bespoke centre is ongoing at present.

In concluding the introduction to this guidance, it is noted that in addition to the provisions around anonymity, Part 9 *complainant's history* of the Act provides restrictions on evidence or questions about the complainant's (person against whom the offence is alleged to have taken place) previous sexual history, which are in place to ensure that any victim is supported throughout the court process, with no unnecessary intrusion into their private life. There is a balance which must be upheld between agreed fundamental human rights, such as the right to privacy, and the evidence that is provided for consideration by a court.

Further information about secondary legislation issued under the Act can be found on the [Isle of Man Government Legislation website](#), while and statutory guidance issued in connection with the Act can be found on the Isle of Man Government website [here](#).

⁴ An Independent Sexual Violence Advisor or "ISVA" is an advisor who works with people who have experienced rape and sexual assault, irrespective of whether this has been reported to the police.

FREQUENTLY ASKED QUESTIONS AROUND ANONYMITY PROVISIONS WITHIN THE SEXUAL OFFENCES AND OBSCENE PUBLICATIONS ACT 2021

As noted above, this non-statutory guidance and the FAQ document as below have been prepared to assist with the interpretation of Part 8 *anonymity of victims and others* of [the Sexual Offences and Obscene Publications Act 2021](#) ("the Act").

Additionally, and due to its relevance in offering protections on both the specific evidence that might be raised in court, or within cross examination, about the complainant (the person against whom the offence is alleged to have taken place), Part 9 *complainant's history* is also referenced.

Generally, the information provided in the FAQ document should assist in interpreting Parts 8 and 9 of the Act and their application to court proceedings for offences alleged to have been committed under the Act (or, where section 142 of the Act applies, offences committed under any other provision to which Part 8 of the Act applies).

Please note that this tabulated information is provided for ease of reference and does not constitute either a legal position or substitute for legal advice being obtained prior to publication of anything to which Part 8 (or Part 9) applies, or any other matter.

Appendix 1 – FAQ document

<u>Sample Question</u>	<u>Information in response to sample question</u>
<p>Who is anonymous and when does it automatically apply?</p>	<p>A combination of sections 139 and 140 of the Act automatically apply anonymity to the alleged victim/complainant and the alleged suspect/defendant when an allegation is made of an offence being committed, to which Part 8 of the Act applies.</p> <p>Further information about which offences this applies to can be found below (see below sample question <i>What are the offences that anonymity applies to?</i>).</p> <p>Anonymity of witnesses is set out in section 141 of the Act and is not automatic but must be applied for. When considered and granted by the court, it will require that certain grounds for anonymity have been met and that the fairness of the trial and the views of the witness, along with any other factors, have first been considered by the court (see below sample question <i>When does anonymity apply to witnesses?</i>).</p>
<p>Who is a complainant?</p>	<p>A complainant – as interpreted for the purposes of Part 8, has the meaning given in section 139(2) of the Act.</p> <p>This is the individual against whom the offence, which Part 8 applies to, is alleged to have been committed. In other words, the alleged victim / complainant of the offence.</p> <p>The same terminology, complainant, is used elsewhere in the Act, including within Part 9 <i>complainant's history</i> and within Part 2 <i>sexual offences</i>, which includes the sections in connection with consent (see sections 91 to 94).</p> <p><i>The term "alleged" in these instances and elsewhere through the Act are used to denote that while the facts of the alleged offence may have been stated, they have not yet been proved (in a court) to be true. This is not a reflection on the status of the victim but instead the definition of the term.</i></p>
<p>What are the offences that anonymity applies to?</p>	<p>Section 142 sets out the full list of offences to which Part 8 applies and reference should be made to that section to ensure that the correct current references are drawn.</p> <p>However for ease of reference, it is noted that these include offences:</p> <ul style="list-style-type: none"> • under Part 2 of the Act (unless excluded by 142(1)(d)); • under Part 6 of the Act;

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	<ul style="list-style-type: none"> • prescribed offences under section 142(2) referred to from the Sexual Offences Act 1992 (an Act otherwise repealed by the enactment of the Act); or • an offence corresponding to any offence referred to in the Sexual Offences Act 1992 that is from an Act repealed by the 1992 Act or any earlier Act dealing with sexual misconduct. <p>Also included are stipulated offences from other Acts where the motivation of the offences is generally sexual in nature, e.g. burglary to commit rape under the Theft Act 1981 and any offence under section 4 of the Organised and International Crime Act 2010 (which includes offences of physical exploitation of trafficked persons that could include sexual exploitation).</p> <p>This also includes comparative offences when committed under the Armed Forces Act 2006 (of Parliament), where these are the same as those set out at section 142(1) of the Act.</p> <p>In addition, any attempt to commit any of those offences, any conspiracy to commit any of those offences or any incitement of another to commit any of those offences, is also covered under section 142 (specifically at 1(g), (h) and (i)).</p>
<p>What does anonymity mean in practice – and what if someone breaches it?</p>	<p>A combination of the anonymity provisions at sections 139, 140, 141 and section 145 mean that where any publication identifies a person who has been granted anonymity by Part 8, in contravention of sections 139, 140 or 141, an offence has been committed. The person liable for the offence is identified in section 145(1) and might include the proprietor, editor or publisher of a newspaper or periodical, or the body corporate responsible for providing the programme service, or, in the case of any other publication, the person publishing it.</p> <p>This means that no matter relating to the individual protected by anonymity, that is likely to lead members of the public to identify that anonymous person, can be included in any publication about the alleged offence. This is information that identifies either the alleged suspect/defendant or the alleged victim / complainant, or, witnesses.</p> <p>For ease of reference it is noted that section 146 provides interpretation of the term “publication” as follows:</p> <p><i>“publication”</i> includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to</p>

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	<p><i>the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an information or other document prepared for use in particular legal proceedings;</i></p> <p>Specific information identified as that which cannot be published <i>in particular</i> includes:</p> <ul style="list-style-type: none"> • Person’s name; • Person’s address; • Identity of school or educational establishment that person attends; • Identity of place of work; and / or • Still or moving pictures of that person. <p>However, it should be borne in mind that the above list is not exhaustive and that where several facts pertaining to an individual might give rise to their identification – i.e. a combination of significant criteria (e.g. age, occupation, nationality) are included and allow an individual to be singled out from others and therefore identified, this might also constitute an offence under section 145 of the Act.</p> <p>Anonymity of witnesses is not automatic and reference should be made to the sample question <i>When does anonymity apply to witnesses</i> below for further information in connection with that particular provision (found at section 141 of the Act).</p>
<p>What displaces anonymity for suspects or complainants?</p>	<p>The anonymity provisions applied under the Act have effect for the lifetime of the individual they protect, unless they are displaced by a judge / court⁵, or, in the case of the alleged suspect / defendant, fall away if that person is convicted of the alleged offence.</p> <p>Specifically, the displacement of anonymity provisions is undertaken under section 143 where this relates to section 139, and, section 144 where this relates to section 140, of the Act respectively.</p> <p>Displacement happens only where a judge / court has determined⁶ that the anonymity provision will no longer apply for reasons that might include the following:</p>

⁵ The specifics of whether a judge or a court is stated to make this determination are found within section 143, or 144, in relation to alleged victim / complainant, and alleged suspect / defendants, respectively.

⁶ This might be prior to the commencement of a trial – or at a trial – or where a person is suspected but not yet charged. The person who makes the application for a direction and the timeline for such an application (whether pre or during trial etc.) are all given in fulsome detail within sections 143 and 144.

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	<ul style="list-style-type: none"> • In the case of an alleged victim/ complainant – under section 143(1), before commencement of a trial, reasons for this could include that this is necessary for the purposes of inducing witnesses to come forward and that a trial will be prejudiced if this does not happen. <p>It might also be the case, under section 143(2), at a trial, that a judge will indicate that partial displacement of anonymity in regard to a certain matter takes place. This would happen in circumstances where a judge is satisfied that there is a substantial and unreasonable restriction on the reporting of the offence / trial of the offence, and it is in the public interest to remove or relax that restriction.</p> <ul style="list-style-type: none"> • In the case of an alleged suspect / defendant – under section 144(1), where a person is suspected but not yet charged, reasons for this could include that this is necessary for the protection of the victim or any other person, or is otherwise necessary in the public interest. <p>Additionally, under section 144(2), before or during a trial, reasons for this could include that this is necessary for the purposes of inducing witnesses to come forward and that a trial will be prejudiced if this does not happen.</p> <p>It might also be the case, under section 144(3), at a trial, that a judge will indicate that partial displacement of anonymity in regard to a certain matter takes place. This would happen in circumstances where a judge is satisfied that there is a substantial and unreasonable restriction on the reporting of the offence / trial of the offence, and it is in the public interest to remove or relax that restriction.</p> <p>Other portions of sections 143 or 144 are applicable in relation to restrictions, application processes, or in connection with the appeal of a conviction for an offence to which sections 139 or 140 has applied, or in relation to retrials etc. Sections 143 and 144 in their entirety should be reviewed for a detailed understanding of their application in particular circumstances.</p> <p>See also – sample question <i>When can complainant's sexual history be discussed in court?</i></p>
<p>Are there any other restrictions on reporting?</p>	<p>Sections 139(5) and 140(4) provide that nothing in either of those sections prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at,</p>

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	<p>or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.</p> <p>In other words, inclusion of any matter in a publication that directly relates to the current trial, any other trial for that offence (for example - a retrial), or a subsequent appeal of the offence, all of which might give rise to a substantial risk of prejudice to the administration of justice in a retrial.</p>
<p>When does anonymity apply to witnesses?</p>	<p>Section 141 <i>Anonymity of witnesses to certain offences</i> provides anonymity for witnesses in particular specified instances where an application has been made in connection with an offence to which Part 8 applies, and a court has directed that anonymity will apply.</p> <p>This anonymity is not automatic and a court must have directed that this is to be the case, following an application on behalf of the prosecution or defence, and where such a direction meets with grounds set out in section 141. This includes grounds such as the age or maturity of the witness, the trauma they have suffered, and/or the nature of proceedings. The full list of grounds within the Act are given in section 141(2).</p> <p>Specific information identified as that which cannot be published in the Island includes:</p> <ul style="list-style-type: none"> • Person's name; • Person's address; • Still or moving pictures of that person; <p>and the duration of the anonymity is the witness's lifetime.</p> <p>Prior to making any direction about anonymity of witnesses, section 141(3) further requires that the fairness of the trial and the views of the witness, along with any other factors, are first considered by the court.</p>
<p>When can complainant's sexual history be discussed in court?</p>	<p>In addition to the anonymity provisions found at section 139 of the Act, additional provisions found in Part 9 of the Act <i>Complainant's history</i>, set out other restrictions on evidence being presented, or question that might be raised, except with the leave of the court, about the complainant's sexual history.</p> <p>For more information about what the term Complainant means – see above sample question - <i>Who is a complainant?</i></p> <p>In brief, for the purposes of Part 9, the complainant is the alleged victim against whom the alleged offence was perpetrated.</p>

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	<p>This means that no evidence can be introduced or question asked in cross examination of the alleged victim / complainant without the leave of the court.</p> <p>In addition to the restriction on evidence or questions about sexual history, the court might also direct that cross examination of the complainant must not involve any matter relating to:</p> <ul style="list-style-type: none"> • the complainant’s appearance; or • the complainant’s sexual behaviour with a third party (not related to the proceedings for the offence). <p>This would be precluded if these matters are, in the view of the court, raised with the intention of undermining the credibility of the complainant. Such evidence or question would only be permitted where it would be, in the view of the court, unjust to prevent them being raised.</p> <p>For the purposes of section 147 of the Act – sexual behaviour is interpreted at section 148(1)(c) as sexual behaviour or other sexual experience whether or not it involves the alleged suspect / defendant or another person.</p> <p>Other provisions found in section 147 of the Act include section 147(4), that itself precludes the admission of any “issue of consent” rather than a “relevant issue in the case”.</p> <p>Consent more widely as a detailed concept is explored within Part 2 <i>Sexual Offences</i> which includes the particular sections in connection with consent (see sections 91 to 94).</p>
<p>Is there other legislation about anonymity?</p>	<p>Anonymity is provided for in connection with witnesses in criminal proceedings within the Criminal Justice (Witness Anonymity) Act 2001 (“the 2001 Act”).</p> <p>The 2001 Act provides for the making of court orders to secure the anonymity of witnesses when deemed appropriate by a court.</p> <p>Section 3 of the 2001 Act clearly states that (on amendment by the Act):</p> <p><i>“This Act does not affect the operation of the Sexual Offences and Obscene Publications Act 2021”.</i></p>

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	<p>Separate to either the Sexual Offences and Obscene Publications Act 2021 or the 2001 Act, other provisions within Manx law, or proceedings within a Manx court, may be protected by anonymity. Such proceedings include those which relate to a child in any way, in particular those provided for in the Children and Young Persons Act 2001, Part 8 <i>Proceedings involving Children and Young Persons</i>, where section 80 <i>Identification of child or young person in media</i> is of particular note.</p> <p>Family proceedings may also take place in a closed court and the information provided above is not intended to be exhaustive.</p>
<p>Will there be more legislation about anonymity in the future?</p>	<p>Anonymity is an area of notable public interest. Indeed within the passage of the Sexual Offences and Obscene Publications Act 2021, there was much debate around both the provisions in that Act, and the wider implications of anonymity and its application to the Island’s Criminal Justice System.</p> <p>Further consideration of anonymity is proposed to take place in due course, as part of wider consideration of matters relating to the Criminal Justice System and future legislation, however currently no specific provisions are planned in this area.</p>

Appendix 2 – Useful Contacts

<u>Organisation</u>	<u>Contact Information</u>
Isle of Man Constabulary	<p>Police Headquarters Dukes Avenue Douglas Isle of Man IM2 4RG</p> <p>Telephone: 01624 631212 In an emergency contact 999. Email: Police@gov.im</p> <p>Website: https://www.iompolice.im/</p>
Victim Support	<p>Head Office 6 Albert Street Douglas Isle of Man IM1 2QA</p> <p>Telephone: 01624 679950 Email: enquiries@victimsupport.im</p> <p>Website: https://victimsupport.im/</p>
Women's Refuge	<p>Telephone: 01624 677900</p> <p>Email: womensrefuge3.iom@gmail.com</p> <p>Website: https://www.womensrefuge.im/</p>
Mental Health Crisis Response and Home Treatment Team	<p>Mannanan Court Noble's Hospital Douglas</p> <p>Telephone: 01624 642860</p> <p>Webpage: https://www.gov.im/categories/caring-and-support/mental-health-service/manannan-court-acute-services/crisis-response-and-home-treatment-team/</p>
Crimestoppers	<p>Telephone: 0800 555111</p> <p>This is not an advice line; it is a confidential answer phone to enable people to leave information for the police. All calls are confidential and acted upon accordingly.</p> <p>Webpage: https://www.iompolice.im/report-it/crimestoppers/</p>