



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill:
Department of Justice and
Police Service of Northern Ireland

2 April 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Mr Paul Frew
Mr Patsy McGlone
Miss Rachel Woods

Witnesses:

Dr Veronica Holland	Department of Justice
Ms Jane Maguire	Department of Justice
Mr Anthony McNally	Police Service of Northern Ireland

The Chairperson (Mr Givan): From the Department of Justice I welcome, Dr Veronica Holland, head of violence against the person branch and Jane Maguire, head of family courts and tribunals branch; and, from the Police Service of Northern Ireland, Detective Superintendent Anthony McNally. The session will be recorded by Hansard, and the transcript will be published on the Committee web page. Veronica and Jane will be at the Table to outline the Bill's provisions, and, during the question and answer session, Anthony will replace Jane at the Table and will advise on questions relating to the Police Service and the more operational aspects of the Bill.

I apologise to some of those appearing. The session was due to happen on a previous occasion, but, given the circumstances, it did not. We had to evict people from the Building by 6.00pm *[Interruption.]* Patsy, that is perfect timing: we are just about to hand over to the officials. You are very welcome. We will do our best to get the sound through to you.

Mr McGlone: Thank you.

The Chairperson (Mr Givan): I will now hand over to officials. I invite Dr Holland to provide an overview of the Bill.

Dr Veronica Holland (Department of Justice): Thank you for the opportunity to brief you on the Domestic Abuse and Family Proceedings Bill. We are pleased to have had the Bill introduced and to be bringing it forward for progress through the Assembly. We all want to emphasise that we are keen to work with the Committee and its members. We are more than happy to do whatever we can as part of the process to facilitate your scrutiny of the Bill.

I am Veronica Holland, head of victims and witnesses branch and violence against the person branch in the Department of Justice. With me are Jane Maguire, head of family courts and tribunals branch in the Department, along with Detective Superintendent Anthony McNally from PSNI. If members are content, I will deal with the Bill's substantive and supplementary criminal justice provisions, and Jane will deal with the family proceedings provisions. The three of us are more than happy to deal with any questions that you have about the provisions.

Before looking at the detail of the Bill, it may be helpful if I set out some background and context on how we have got where we are and give an overview of some of the engagement that we have had with our statutory and voluntary sector partners. As part of the Bill development, a multiagency task-and-finish group was established to consider the criminal provisions, which are the core domestic abuse offence and some of the protections in the Bill. That involved a range of our voluntary sector partners, including Action on Elder Abuse, Men's Advisory Project, the National Society for the Prevention of Cruelty to Children (NSPCC), Nexus and the Women's Aid Federation. We also had representatives from the statutory sector, including the police, the probation service and the Public Prosecution Service. All of those organisations were involved as part of the policy and legislative development process. The groups were involved in the development of the original Assembly Bill. We met again when we were taking the legislation through Westminster, and we have kept them updated on the more recent progress through the Assembly. That engagement has been critical to us in ensuring that the provisions are as robust as possible and that we incorporate the views of those groups.

As you will be aware, the new offence is very much focused on non-physical abuse, in particular what is commonly known as "controlling and coercive behaviour". The offence can also capture physical and sexual violence, should that be present in relation to that abusive behaviour. It will apply both to intimate and close familial relationships. Effectively, the legislation is intended to deal with the type of behaviour in which men or women, young or old, are controlled and coerced, be it financially, economically or socially — any type of abusive, controlling behaviour would apply under the new provisions — and their daily activities are controlled to a significant extent and they are unable to freely maintain relations with friends and family members, are no longer financially independent, are belittled or degraded or are subject to unwanted sexual behaviour

The Bill provides for three aggravators. There are two child aggravators associated with the domestic abuse offence, where the victim is a child in the context of an intimate relationship or a family member — the exception there is for an adult parent/young child relationship — or where a child sees, hears or is present in the context of that abusive behaviour. We also have a general aggravator that would apply where there is any other offence — for example, criminal damage — that is aggravated by reason of involving domestic abuse. Where an aggravator applies, there would, of course, be an enhanced sentence available to the courts up to the maximum that would otherwise be available.

Turning to the detail of the Bill, I will provide an overview of the main clauses, before looking at the supplementary provisions. For ease of explanation, they are not necessarily in the same numerical sequence as they are in the Bill.

Clause 1 makes it an offence for someone to engage in a course of abusive behaviour — that is, on two or more occasions — against a partner, former partner, someone with whom they are in an intimate personal relationship or a close family member. The offence is subject to two conditions. The first is that a reasonable person would consider that the course of behaviour would be likely to cause the person to suffer harm. The second condition is that the accused either intended to cause harm or was reckless as to whether or not harm would be caused to that individual. As a result of that, the offence can be committed regardless of whether harm is actually caused to the individual and they are of the view that harm is being caused. That does not necessarily have to be the case.

Clauses 11 and 17 provide that the domestic abuse offence or an aggravated offence would not apply in the context of someone having parental responsibility for a young person. Essentially, we are not seeking to criminalise parents who, for example, remove privileges from their children. We also do not want to legislate where legislation is already in place, as is the case with regard to child protection. The provisions may, however, apply where two teenagers are involved in an abusive relationship or where there is domestic abuse of a parent by an adult child. Importantly, there are also the child aggravators associated with the domestic abuse offence, as well as the other offences, which I will explain in more detail later.

Clause 2 sets out what amounts to abusive behaviour. The description is not exhaustive. It includes violent or threatening behaviour, including sexual violence, as well as abusive behaviour more

generally; that is behaviour that is directed at the victim, their child or another person that may have certain effects on the victim. It does not have to be abusive behaviour that is directly towards that individual. The effects are deliberately broad and capture a range of abusive behaviour: for example, making the victim dependent on the perpetrator; isolating them from friends, family members or sources of social interaction or support; controlling, regulating or monitoring their day-to-day activities; depriving or restricting their freedom of action; and making them feel frightened, humiliated, degraded, punished or intimidated. The types of behaviour could include, for example, preventing a person from having access to money, forcing them to leave their job or education or controlling their movement or access to friends, family or a variety of means of communication. It could also include controlling access to the outside world, what the other person wears or how they behave, as well as preventing them from carrying out day-to-day activities on their own and without being monitored by the perpetrator.

Clause 3 outlines that the effects of the abusive behaviour, such as dependency, subordination, isolation and control, do not have to have caused harm in order for an offence to occur; rather, as set out in Clause 1, it is sufficient that a reasonable person would consider that the behaviour would be likely to result in harm. That is intended to cover situations where a victim may not consider that they have been harmed or that the behaviour has been abusive or situations where, due to their resilience or the abusive behaviour being normalised, it is not considered as such.

Clause 4 sets out what is meant by "behaviour" for the purposes of the Bill and how it can be carried out. It basically provides clarification that abuse can be carried out with or through a third party, whether knowingly or not. The range of those provisions is trying to encapsulate as broad a range of behaviours as possible and that abusive behaviour being carried out through a range of means.

As I noted earlier, the Bill provides for aggravation with the potential for increased sentencing where domestic abuse is involved. Clause 8 provides for aggravation of the domestic abuse offence itself. That would apply where a person under the age of 18 is involved in the context of a young person in a relationship or abuse against a family member. Clause 9 provides that an aggravation of the domestic abuse offence could also occur through abusive behaviour being directed at a young person or their being used to facilitate abusive behaviour, whether knowingly or not. The aggravation under clause 9 would also apply where a child sees, hears or is present during a single incident of domestic abuse that forms part of a course of abusive behaviour. From that, you can see that there is a range of ways in which abusive behaviour involving a child would be engaged under the provisions in the Bill.

Clause 15 provides for any offence other than the domestic abuse offence to be aggravated where it involves domestic abuse. For example, that could be with a charge of criminal damage, assault or sexual offences. Essentially, it is any other offence that is not a domestic abuse offence but is carried out in a domestic setting with abusive behaviour involved.

The Bill also contains measures to reduce the potential for the perpetrator to use the criminal justice system to further abuse a victim. We felt that it was important that those provisions were included in the Bill. Clause 21 prevents the accused from electing for trial in Crown Court in summary proceedings, where the proceedings could be taken at either magistrates' level or Crown Court level. That is in relation to the domestic abuse offence in order to prevent further abuse of an individual through that more serious or higher-tier court level. Clause 22 will enable those subject to the domestic abuse offence or an aggravated offence to automatically be eligible for consideration of special measures when giving evidence. That includes things like live links, the use of screens etc. Clause 23 would prohibit the cross-examination of an individual in a criminal court by the accused where it relates to either the domestic abuse offence or an offence aggravated by domestic abuse.

I now turn to some of the supplementary criminal provisions in the Bill. Clauses 5 and 18 set out what is covered by "personally connected" respectively for the purposes of the domestic abuse offence and an aggravated offence, and that broadly covers those who are married or civil partners or are living together, who have been in those types of relationships or who are otherwise in an intimate personal relationship. The clauses also set out that "family member" broadly covers parents, grandparents, children, grandchildren and siblings. We have deliberately kept that relatively tight.

Clauses 6 and 7, as well as clauses 19 and 20, make provision that it can be proposed that a relationship between two individuals be taken as established unless that is challenged. Clause 10 relates to extraterritorial jurisdiction. Essentially, that is making provision that, where domestic abuse and abusive behaviour occurs outside this jurisdiction — that is, in a country outside the UK — but the accused is normally resident in Northern Ireland, that behaviour can be encapsulated as part of the

domestic abuse offence locally. For example, if someone were on holiday in Spain or France and abusive behaviour occurred, that could be taken forward in a Northern Ireland context.

Clause 12 provides for a defence where a person can show that the course of behaviour was reasonable — for example, restricting access to household finances where an individual suffers from some form of addiction — or on safety grounds as a result of an illness — for example, if someone has dementia. Essentially, the purpose is to recognise that behaviour that might otherwise be considered abusive in terms of restricting the actions of an individual, where they can go or whom they can see may be justified in certain circumstances.

Clause 13 provides that, where the domestic abuse offence is brought forward but it is not possible to convict, the court may convict for alternative offences under harassment legislation where the evidential threshold for that offence is met. We also intend that this will cover stalking offences in due course.

Clause 14 provides for the penalties under the Bill: up to 12 months at Magistrates' Court level and up to 14 years at Crown Court level as well as a fine or both at each court tier. The potentially significant sentence in relation to Crown Court is intended to reflect the fact that the offence can incorporate non-physical abuse as well as physical and sexual violence.

Finally, clause 25 sets out that the Department will issue guidance related to the domestic abuse offence, and our intention is to develop that in conjunction with our statutory and voluntary sector partners.

That is an overview of the criminal justice provisions. Jane will now provide an overview of the provisions related to family proceedings in the Bill, after which, as I said, the three of us are more than happy to answer any queries that members may have. As I said, we are more than happy to discuss how best we, as officials, may facilitate the Committee as the Bill goes through the Assembly process and as part of the Committee scrutiny process. Thank you.

The Chairperson (Mr Givan): Thank you. Jane?

Ms Jane Maguire (Department of Justice): Thank you. As Veronica said, I will deal with the clause that relates to family proceedings. That is clause 26, which will insert new provisions into the Family Law (Northern Ireland) Order 1993. The purpose of the provisions made by the clause is to protect victims of domestic abuse from being cross-examined in person by perpetrators or alleged perpetrators in family proceedings, in order to prevent perpetrators from exploiting cross-examination as an opportunity to further control and abuse their victim and to support victims to give their best evidence. Before outlining the provision that the clause makes, it will be helpful if I briefly give members some background.

At present, courts hearing family proceedings have no specific powers to prevent cross-examination in person. That contrasts with the position in criminal proceedings, where there is specific legislative provision that prohibits an unrepresented defendant from cross-examining their alleged victim in certain circumstances and enables the court to appoint a legal representative to carry out the cross-examination instead. The Gillen review of family justice, which reported in 2017, highlighted that difference between family proceedings and criminal proceedings and recommended the introduction of legislation to afford victims giving evidence in family proceedings the same protection as is available in criminal proceedings. The Department therefore consulted on options for legislation last summer, and a large majority of respondents strongly supported the introduction of legislation.

I turn to the provisions in the Bill. There are three main elements. The first is that there will be an automatic prohibition of cross-examination in person in family proceedings in certain circumstances. They are where one party has been convicted of, given a caution for or charged with certain offences against the witness or vice versa. Those offences will be specified in secondary legislation, but we anticipate that they will include, for example, offences related to domestic abuse or violence, sexual abuse and child abuse. The automatic prohibition would also apply where an on-notice protective injunction is in place between the party and a witness. Again, relevant orders will be specified in secondary legislation but would include, for example, non-molestation orders. An automatic prohibition will also apply where there is other evidence of domestic abuse perpetrated by a party to the proceedings against a witness or vice versa. The forms of evidence, again, will be prescribed in secondary legislation. The provision has been included in response to views expressed by consultees who considered that the scope of automatic prohibition should be wider than the other four triggers

that I have described — relevant conviction, caution, charge and protective injunction — which were all specifically consulted on.

The second main element is that, where the automatic prohibition does not apply, the court hearing family proceedings will have a discretionary power to prohibit cross-examination in person where that would be likely to diminish the quality of the witness's evidence or cause significant distress to the witness or party.

The third element is that, where cross-examination in person is prohibited, whether under the automatic prohibition or at the direction of the court, the court will have power to appoint a legal representative to conduct the cross-examination instead. The judge will have to consider whether there is a satisfactory alternative means by which the witness can be cross-examined. If there is none, the court must invite the prohibited party to appoint a qualified legal representative to carry out cross-examination on their behalf. If they do not do that, the court can appoint a qualified legal representative for the purpose of conducting the cross-examination on the prohibited party's behalf, if it considers that that would be in the interests of justice. The costs of a legal representative appointed by the court will be met by the Department, and there is a power for the Department to issue guidance about the scope and nature of the role. The ability for the court to appoint a publicly funded legal representative is to ensure that, where a party is prohibited from cross-examining in person, their article 6 right to a fair trial is still protected.

To conclude, I reiterate what Veronica said about how we are very willing to work with the Committee. That also applies from the family justice perspective, and I am happy to take any questions that members may have.

The Chairperson (Mr Givan): Thank you very much. Anthony, we will make sure that you have an opportunity to contribute. There may be a microphone on that bench. If you sit there, we will be able to pick you up.

Thank you for that information. I appreciate that we are at the First Stage. We need to get into Second Stage, and then there will be Committee scrutiny and all of that to come, so we will be able to get into a lot of the detail on this in the weeks and months ahead. There are just a couple of brief questions that I wanted to ask.

Jane, you helpfully laid out some of the new provisions for family courts, like criminal courts, to protect witnesses from personally having to give evidence, and I think that that will be welcomed. In terms of the Bill overall, one of the obvious questions that people will ask is how this new proposed law does a more effective job than the current law and how we ensure that we are legislating because we have identified gaps, not just that there has not been enforcement or implementation of existing law. Veronica, can you outline how the new legislation would build on what is there already and how it addresses that?

Dr Holland: The main thing, really, in terms of the gap around the offence itself, is the fact that, at the moment, the police enforcement powers and prosecutions and taking people to court are restricted to situations where there is physical or sexual violence. The abusive, controlling behaviours that are abusive of individuals and are much less obvious are the ones that we will be able to tackle once this is taken forward. In addition to that, there is the fact that there will be additional protections for those individuals as they go through court — for example, that automatic eligibility for consideration for special measures. Victims of domestic abuse are obviously able to avail themselves of special measures at the moment; the change will allow that to be an automatic consideration as part of the process. It will obviously still be for the judge to decide whether those special measures are granted. Then there is the prohibition of cross-examination. At the moment, there is provision in relation to that, but it is in relation to a fairly restricted number of offences: sexual offences and trafficking offences.

I suppose that those are some of the key new changes or additionality that the Bill will provide. As you say, it is about closing a gap in terms of what are offences at the moment and what is criminal or non-criminal behaviour. We are obviously all of the view that abusive behaviour is very wrong and should not happen, but, at the moment, we do not have the powers to charge individuals in relation to that and to imprison them or subject them to a fine. As I say, closing that gap and the additional protections at court are probably the main things.

The Chairperson (Mr Givan): In looking at what was put into the legislation, what models of best practice did you look at, both in these islands and internationally? Was evidence taken that has helped inform the legislation?

Dr Holland: That was one of the key pieces of work that we undertook in relation to the multiagency task-and-finish group that had been set up to look at other jurisdictions and the types of offences that they had in place. At that time, the Republic of Ireland did not have an offence in place. We looked closely at the provisions in England and Wales and the provisions that had been put in place in Scotland and some other jurisdictions. That task-and-finish group was very much of the view that the Scottish provisions were robust and were the ones that it was most attracted to, and, I suppose, that is the model on which we have most closely based our provisions at the moment.

The Chairperson (Mr Givan): Can you elaborate a little on how evidence of behaviour that occurs outside the UK will be used, if you are committing it in Spain or wherever outside these jurisdictions? How will that be used to get a successful prosecution?

Dr Holland: The offence would effectively work in the same way as it would at home. It would be for information and evidence to be gathered about the abusive behaviour that has happened in the other jurisdiction. The offence could be taken forward on the basis of all of the behaviours occurring abroad, where the individuals are based here. It could be that there is some abusive behaviour here and some abroad. There would be the same principles, I suppose, in terms of what the police would have to consider. What the Public Prosecution Service and the court would have to look for would be the same regardless of where that abusive behaviour had taken place. I suppose that it will be a matter of seeing how best that evidence and information can be gathered.

Ms Dillon: I have a couple of wee questions. In relation to Paul's last point, I welcome the fact that what happens abroad can be taken into consideration, because it is well known that, very often, domestic violence can be worse when people are out of the country, completely isolated from their family. It often happens on honeymoon, which is that person's first opportunity to have a real go at the person they have just married and committed to looking after and being good to. That is their opportunity to abuse them. That is a positive step.

You said that secondary legislation would deal with the non-molestation orders. Is there a possibility for that to be dealt with in an amendment to primary legislation? It is an issue that comes up repeatedly, and we have raised it in the Committee. Often, victims cannot afford to apply for a non-molestation order, and they are often time-limited. Where they borrow money or gather money together to get a non-molestation order, the perpetrator will take them back to court within a number of weeks, and they are back to the same position, where they have to reapply and pay again. I think that, in the stalking Bill, there is something around the PSNI rather than the victim taking that element forward. It is not a non-molestation order, but it is a similar thing. Is there a way of doing that and ensuring help for low-income families, in particular, who are outside the bracket for help with legal aid and cannot afford to apply for a non-molestation order and certainly cannot afford to repeatedly have to apply for them and get a solicitor to go to court on their behalf? That is a real issue, as is the fact that they have to go to court and take time off work.

That leads into my next point. In the South, in the Twenty-six Counties, there is provision for special leave and time off work in cases where domestic abuse is taking place, rather than people having to use up their holidays or take sick time and then get into trouble with their work and potentially becoming unemployed because of their circumstances. Is that something that could be addressed?

When he was here, the Chief Constable said that there was a gap in the legislation that prevented the PSNI from doing what is done under Operation Encompass. If the gap were closed, it would mean that, where there is a domestic violence incident in a home, the PSNI would be able to contact the school before 8 o'clock the next morning. There would be a point of contact so that the school would know that, when a child comes into school, they potentially will not have homework done, will not have the correct uniform, may not have eaten, may not have slept all night, may have been sitting in a police station for the best part of a night or may be coming from a care background when they normally came from their own home. Those things are extremely important in terms of the follow-up, if we can get it into the legislation. I do not know whether it can be included, but I know that the Chief Constable said that the gap was a legislative one at this stage. If it could be included in this, it would be a good step forward.

I suppose that, in the round, it is about not having this legislation on its own; there is more work around it in terms of educating people about what a healthy relationship looks like, particularly in cases where there is violence and coercive behaviour and there are young people of school age. That is the opportunity to have time, hopefully, to alter behaviour. We all know that it is often intergenerational and it is stuff that they have seen and learned in their own home. Often, our only opportunity to change that or to address that behaviour is in the education setting. It is important that we have a more rounded picture. In Justice Gillen's recommendations, obviously, there is a massive focus on education on what healthy relationships look like and on what is sexual violence and what is domestic violence. That is as important as the legislation itself, because prevention will always be better than cure.

Dr Holland: If it is OK, I will deal with the later queries and then turn to Jane on the non-molestation one.

In terms of a provision for special leave and giving time off work, it is not something that I am aware of, but I am more than happy that the team will look at that and see what the provisions are in the Republic of Ireland and how that operates and works. It is certainly something that we can give some consideration to, but, as I said, I am not familiar with that but am more than happy to look at it.

We have a task-and-finish group set up in relation to Operation Encompass, involving representatives from the Department of Justice, the Department of Health, the health trusts, the police and the Department of Education. There is a range of organisations sitting on that at the moment. We hope to do some form of pilot of that type of model and look at how best, in a Northern Ireland and with our current provisions, we can make provision for notifying schools about those incidents, so that they are aware of the trauma that a child may have suffered the night before. As you say, there is certainly an issue around the legislative provisions. Further discussions are needed between us and officials in the Department of Health about exactly what legislative change would be needed to give effect to that, but it is certainly being looked at by the Department and our partners at the moment. We would like to be in a position that some form of pilot of an Operation Encompass-type approach could be introduced later in the year. It is certainly being looked at.

I certainly agree with your final point about the importance of education, awareness raising and healthy relationships. In terms of the work that we, as a Department, will take forward work on that, there will need to be a significant programme of training and awareness raising. I imagine that we will look at rerunning and tweaking the advertising campaign that we previously had about domestic abuse and the disclosure scheme, running that on TV, radio, billboards etc. We will obviously also want to continue to engage through our strategic delivery board and our stakeholder assurance group on the educational side of things and, as you say, on the importance of healthy relationship advice in ensuring that those changes and that change in culture can be introduced at the earliest stage possible.

I will turn to Jane on non-molestation?

Ms Maguire: In terms of what the Bill does, the secondary legislation will simply prescribe what is almost a list of current protective injunctions that are available that would, if they are in place, trigger the automatic prohibition. In terms of the wider point about applying for orders such as non-molestation orders and the financial considerations, I think, in terms of the legal aid provision — this is slightly off the top of my head; it is not my area — that there is special provision where the application is for a domestic violence remedy, such as a non-molestation order. I can take that away to my colleagues, who would be better placed to comment.

Ms Dillon: It is an issue that has repeatedly come up, and I have dealt with people directly who are in that position. What is in place is not sufficient to protect low-income people, who usually end up being single parents at the point where they are trying to get support.

Ms Maguire: Are you referring to the legal aid provision?

Ms Dillon: The legal aid provision is fine, if you are below a certain income. You could still be on a low income and earning, for example, £20,000 gross per year, which sounds and is OK, but some people on benefits earn that and will be automatically entitled to legal aid. For a single parent with three or four children that is not a big income, and they struggle to meet their financial commitments. You are often talking about people who have a large mortgage because they were part of a couple and probably were, in some cases, financially doing OK when they were part of a couple but, all of a

sudden, find themselves on their own, trying to meet all of those bills. They literally do not have the money to get a non-molestation order. Those people are left in a position where they cannot afford to protect themselves and cannot afford to put something in place that keeps that person away from them. I know that it is a challenge that the PSNI comes up against all the time. They ask, "Do you have something in place that can make it easy for us to arrest that person?". That is what they really need. Those are the powers that they need, so that they can come, if that person is anywhere near your home, and their position is so much easier. It makes it so much easier for them to do their job to be able to say, "They have broken their non-molestation or restraining order. We can deal with this easily". That is important, and we should ensure that somebody who is ten, twenty or thirty pounds over the threshold should not be left in a position that they cannot afford to protect themselves because they cannot afford to put in place a non-molestation order.

Ms Maguire: I hear what you say, and I know that the issue has certainly been raised with the Department. If I may, I will take it back to colleagues in the Department who deal with legal aid for them to consider.

Miss Woods: Thank you for your presentation and for going over the clauses. I completely agree with everything that Linda has said. In terms of looking at the provisions for time off, I know that it happens elsewhere in the world, so it would be good to get some further information on that, if that could be considered.

My question is with regard to one of the clauses — I believe it is clause 12 — on intention and reasonableness and is mostly around those who are in care, in caring relationships, and those who are mentally or physically disabled and the concerns that were brought up and were well known with the experience of the English and Welsh legislation. Has that been addressed in the provisions here, or is it the same? Specifically, could person A, who is a carer and is related to person B, be found to be acting abusively but be excused on the grounds of reasonableness? How is that covered? I do not think that it is specific enough to protect elderly or vulnerable people, which we obviously need to make sure it is. Additionally, then, has the creation of a domestic abuse commissioner or the grant of secure tenancies for those who are victims of domestic abuse been looked at? If so, can we have more detail about that, and, if not, is it something that we could look at?

Dr Holland: In relation to the defence provision, I do not think England and Wales have something akin to this, but certainly I will double-check what their provision is. The type of situation that we are thinking of is where, for example, someone has dementia, so it is not possible to let them out of the house or to let them go somewhere on their own, or if someone has a gambling or alcohol addiction and you want to prevent them associating with individuals who might exacerbate that problem or difficulty. The defence will be looked at very much in the context of whether a reasonable person would consider that behaviour to be abusive, and that is something that the courts would need to look at. We are satisfied that, in terms of the way it has been drafted, it should not basically enable those with caring responsibilities to abuse the person in their care. We also want to deal with this clearly in the guidance, and we will, of course, work with our statutory and voluntary sector partners on the content of that.

We will certainly go back and look at the England and Wales provisions. As I said, ours are quite different from England and Wales; our model is much more closely based on the Scottish one. I am more than happy to look at the content of that and can come back to the Committee separately if there are further concerns after looking at it.

It is not our intention to bring forward a domestic abuse commissioner at this stage. There have been discussions with the Minister about it. One of the reasons why they have a domestic abuse commissioner in England and Wales has been, in part, to try to ensure consistency in the application and provision of services and, because there is such a vast number of local authorities there with very different approaches, to try to ensure consistency in the services that are available to individuals and ensure that there is the same application across that jurisdiction. We obviously do not have that issue locally. It is a single jurisdiction and a relatively small region. We are comparable to one local authority in England or Wales. The other issue that, I suppose, we have taken into account in relation to that is that the introduction of a commissioner typically entails a cost in the region of £1 million. That would need to be looked at in the context, if a commissioner were to be introduced, of how it would impact on service provision more generally or on the moneys that are available to support victims going through the system.

In relation to secure tenancies, unfortunately, neither of us is able to answer that query, but we can certainly raise the issue with the Department for Communities, whose responsibility that would fall under, and come back to the Committee on that.

Miss Woods: That would be good. Just to come back on the reasonableness test, if, say, I restrained a person who is disabled, if I was caring for them and they were related to me, to stop them hurting themselves, but, in the process, physically hurt them, could that be used as a defence?

Dr Holland: I suppose that cases will be looked at very much on a case-by-case basis, and the court and the police and the prosecution service would have to consider, in the context of that situation, whether the behaviour that that individual undertook was reasonable. If the restraint of that individual was such that it was going to actually physically harm them, that would have to be looked at in the context of the situation, the two individuals involved etc. We see that reasonableness defence being used in a fairly limited number of circumstances where there are clear problems in relation to individuals. I suppose that it would be looked at in the context of that behaviour being necessary for the purposes of ensuring the safety of that individual. As I said, it will be very much a case-by-case basis, depending on the circumstances of the case.

The Chairperson (Mr Givan): I do not want to put pressure on folks, but Paul is next and then Doug. Linda has also indicated that she wants to come in. We are under time pressure.

Mr Frew: I will be sharp as always, Chair. This one is probably for Jane. It is about family proceedings in Part 2, and it is a wee bit along the lines that Linda queried but also flipping it over. It is the case — very limited, I am sure — that some people use court as a control or as an offensive weapon to administer control. We have seen an example of a lady who has tried to get on with her life as a single parent but whose ex-husband or ex-partner is using access to the children or fighting for access to the children and going to court regularly over a long time, basically to diminish the resources of the lady, because she cannot claim legal aid but he can. That is just one example. I am sure that it is a limited case, but is there any provision in this that prevents a perpetrator from using court as an arbitrary tool and a weapon against a person?

Dr Holland: There is probably not a specific provision as such, but my view is that, again, it will very much depend on the circumstances of the case and the form that that takes. It could be considered in the context of the abusive behaviour. If an individual is deliberately and obviously going to court or using other means to further exert control over those individuals, that could be considered as part of domestic abuse more generally and, I suppose, what is deemed to be abusive behaviour.

Mr Frew: Everybody has the redress of a day in court if they so wish, so it is a hard one to grapple with. If it was a consistent thing, there might be something that could be put down, used and tightened up in that regard.

Under clause 13, then, "Alternative available for conviction":

"This clause provides that, where the court is not satisfied that the domestic abuse offence has been committed, it can convict the accused of a specified alternative offence of harassment or putting people in fear of violence under the Protection from Harassment (Northern Ireland) Order 1997."

What examples can you give the Committee of typical crimes that would fall under the harassment order, as opposed to this new legislation? Is it just trying to catch all?

Dr Holland: I suppose that there is an element of catch-all. As we said, there is that harassment provision. The stalking provisions will also come in there. I suppose, if there is not sufficient evidence demonstrated of abusive behaviour to enable the domestic abuse offence to be applied but one of the other offences would potentially be applicable to try to ensure that the court can convict of a charge or an offence, those are being put forward as specified alternatives that the court could consider as part of that process.

Mr Frew: Can you be convicted of both or charged with both?

Dr Holland: You could, I suppose, be taken to court originally charged with both. I do not think, as part of the Bill's provisions, you would end up with an individual being charged with both, if that makes

sense. It is really that, where the domestic abuse offence will not be progressed and there is not the necessary evidence in relation to that, one of the other offences could then come in as an alternative to that. However, I suppose that, as part of the process, if you did not start out with harassment or stalking as a charge against the individual, it is not that you could end up coming out the other side of the process with both of those applying, but an individual could, of course, be charged with both the domestic abuse offence and a harassment offence or, for argument's sake, a stalking offence, once that comes through.

Mr Frew: I will leave it there, Chair. Thank you very much for bringing this to us. We look forward to the Committee Stage.

The Chairperson (Mr Givan): Doug is content that his question has now been covered by Paul. Linda, you wanted a final —? You are content. OK, great.

I thank you all. Sorry, Anthony, we did not get an opportunity with you, but I have no doubt that we will and that there will be questions in the future. It is hoped that the Second Stage of this will be taken on 28 April. On the basis of a conversation that Linda and I had with the Minister, that is the intended date for the Second Stage in the Assembly. Then it will come to the Committee for our Committee Stage. I have no doubt that we will have lots more engagement with all of you. Thank you for your time this afternoon.