Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

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

3 September 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
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Gordon Dunne
Mr Paul Frew
Miss Rachel Woods

Witnesses:

Dr Veronica Holland	Department of Justice
Ms Jane Maguire	Department of Justice
Acting Det Ch Supt Anthony McNally	PSNI

The Chairperson (Mr Givan): I welcome Veronica Holland, head of violence against the person branch in the Department of Justice; Jane Maguire, head of family courts and tribunals branch in the Department; and Anthony McNally, acting detective chief superintendent from the Police Service. This session will be recorded by Hansard, and a transcript of it will be published on the Committee's web page in due course. Members, I emphasise that this session focuses on the current provisions of the Bill. There will be the opportunity to explore all of the other issues that are not currently in the Bill at our meeting on 17 September that will be separate to this.

Is there anything in addition to what has already been provided that the officials wish to draw to members' attention? I am asking that rather than asking the officials to give us an overview of their submission, because it is a pretty lengthy document for members to go through. If there is anything in addition, please feel free to mention it.

Dr Veronica Holland (Department of Justice): Nothing from me, Chair.

The Chairperson (Mr Givan): You are content. OK.

Members, let us move on to clause 1 and the areas that we want to consider at this stage. Are there questions, members, that you want to raise on this aspect? If departmental officials want to give a brief outline of clause 1, I will let members take a look at it.

Dr Holland: The provisions in clause 1 essentially set out the crux of the offence and what it constitutes. It is abusive behaviour on two or more occasions, and conditions have to be met in relation to that. That is essentially the core of the offence and the criteria around it.

The Chairperson (Mr Givan): OK. Do you want to comment on the differing approaches being taken by the Department here and Westminster?

Dr Holland: In relation to this? The Republic of Ireland and England and Wales have adopted a different approach from the one that we have. We have reflected the approach that was adopted in Scotland. Our offence obviously covers physical violence as well as non-physical abuse of individuals. We feel that it is a more comprehensive approach and more robust than the England and Wales provisions. It does not explicitly cover violent behaviour; it would simply be, for example, controlling and coercive behaviour or non-physical abuse of an individual. We felt that it was important to be able to encapsulate both of those elements within a single domestic abuse offence, rather than having to take forward a number of charges. Obviously, that is also reflected in the maximum penalty that can be given for the offence. We also have a provision in the offence that harm does not necessarily have to be caused to the individual.

As we have alluded to in the table, one of the most high-profile or public examples is that of Luke and Ryan Hart, whose father killed their mother and sister. After the incident happened, they said that it was only when they were in the police station and saw some posters about controlling and coercive behaviour that they became aware that they were suffering from domestic abuse. In that type of scenario, the individuals are not aware that that is what they have been subjected to and that there has been abusive behaviour. We wanted to try to ensure that the type of scenario either where an individual is not aware that the behaviour is abusive or, equally, where the behaviour has become so normalised that the individual does not view it as abusive or harmful, could also be encapsulated in the offence. That is essentially why, as I say, we followed the approach that has been adopted in Scotland, rather than the England and Wales model.

The Chairperson (Mr Givan): That takes me on to another question about the definition issue. The Policing Board has highlighted this, and the Attorney General and others have talked about it being so broad in scope that there is a danger that it then does not have the effect that we all want it to have. Do you want to comment on the definition aspect and on any of the conversations about that with the relevant stakeholders and the PSNI?

Dr Holland: We have obviously heard the comments and concerns that were raised during the evidence sessions in respect of this. From our perspective, we are of the view that, ultimately, the crux of the offence is whether there is abusive behaviour. Everything has to come back to and boil down to that. The purpose of the provisions in setting out what is deemed to be abusive behaviour and what the effects of that behaviour are is intended to provide clarification and further information to give certainty so that people can be clear about what types of abusive behaviour we are looking at. Obviously, we do not want to lose that information or detail. We think that it is important to provide that certainty and clarity for those who are affected by abusive behaviour and those who may be subject to this offence. As we say, ultimately, in the absence of that or if it were not there, everything has to come back to whether there is abusive behaviour. That additional information, as you say, is intended to provide further clarity and certainty and a structure for what that abusive behaviour may look like.

Ms Dillon: Following on from what you said, will the judiciary have specific training on what the Bill means, what it is about, what the intention is, what it is supposed to tackle and what their role is?

Dr Holland: That will be a key thing for the judiciary, as well as a range of other organisations. The Department, in conjunction with our statutory and voluntary sector partners, will be looking at providing guidance under the Bill. We are having discussions with the Judicial Studies Board about awareness-raising for the judiciary. As you say, that will be a key element going forward in order to ensure that the offence is effectively implemented and that the judiciary has the necessary understanding of what this looks like. Yes, there are discussions about that. We want to ensure that a range of partners have that awareness about what the abusive behaviour will look like and the operation of the new offence when it comes forward.

Ms Dillon: Obviously, this is not for you to answer, but the PSNI will need similar training on what this is about, what it is intended to tackle and what the abuse actually is, because it is not just about somebody being physically attacked.

Dr Holland: Anthony may want to touch on that from the police side.

Acting Detective Chief Superintendent Anthony McNally (PSNI): Yes, certainly. We have already commenced work on that. I entirely agree that it will be appropriate to train our officers, because it is a new offence. We have started work on that and are starting to scenario-plan in respect of what type of examples we will be looking at. We have spoken at length with the Department and made clear our position in respect of guidance that will accompany the legislation, and the Department has committed to ensuring that we work together to do that. At this stage, I am content that we are on track with our interpretation and understanding of it and how we will implement it.

Ms Dillon: That is extremely important because very often, in cases where people are murdered, they have never actually been physically attacked but have been victims of ongoing abuse for a long number of years.

Miss Woods: Following on from Linda's point, in Scotland there was training for all levels of the judiciary after the Bill was passed, but substantial work was done in Scotland with prosecutors, the judiciary and police officers before the Bill came in. Rather than awareness-raising, training would definitely need to be given to all the judiciary at every level, like there was in Scotland, and the same for all police officers at every level, before there is any ability. Is the Department looking at a wee bit more than awareness-raising — actual training for all levels?

Dr Holland: It will ultimately be for the judiciary to take that forward and determine what that looks like, but yes, certainly we will liaise with colleagues in the Office of the Lord Chief Justice as well as the Judicial Studies Board on what that may look like and how we can learn from what has been taken forward in the other jurisdictions. As you say, it will be vital that, in the wide range of organisations that will be involved in taking these cases forward, there is understanding and appreciation of what this new offence entails, what it looks like and what they need to look out for.

Miss Woods: There has been much talk about the term "coercive control", and that has spurred this on. The definition in clause 1 does not actually say "coercive control", and neither does it say that in the explanatory notes. Is there a reason for that, and is there room for that to be put into the legislation or the explanatory notes? I am aware that it is a new term, but what that means is quite well understood. The legislation will need to reflect various times — an actual time frame — but it is set in the current time, and we need to reflect the language that people are using. People generally understand that term. I will put the same question to Anthony: would that help in any way in terms of police guidance and definition? I am aware that it has been put into the summary of evidence that there is no definition, but would putting the term "coercive control" in either legislation or explanatory notes assist in any way?

Dr Holland: There is no issue with including that in the explanatory notes. We want that type of terminology, such as coercive control, financial abuse, emotional abuse and parental alienation, to be reflected in the guidance, and we want it to give examples of that type of abusive behaviour. We were keen to not use specific phrases or buzzwords in the legislation. Rather, we wanted to try to ensure — apologies, this is touching on clause 2 — that, through clause 2 and the relevant effects, we set out the behaviours and effects that would be associated with that, as opposed to having specific terminology or phrases which, with development in future years —. I suppose the most recent one like that is the likes of digital or online abuse. Five or 10 years ago, those might not have been phrases that you would have necessarily had in legislation or that people would have been familiar with. I suppose we wanted to ensure that we were covering the range of behaviours that would be experienced without explicitly stating specific phrases or words in the legislation, but certainly we intend to expand on that in the guidance documentation, and we will work with our statutory and voluntary sector partners on the content of that guidance and ensuring that what they consider to be the key issues are covered.

The Chairperson (Mr Givan): OK. Paul Frew.

Mr Frew: Are you finished, Rachel?

Miss Woods: No, go on ahead.

The Chairperson (Mr Givan): Sorry, Rachel.

Miss Woods: It is all right. Go on ahead. I can come in after.

Mr Frew: Rachel raises a valid question about the terminology. Concerns have been expressed by the Attorney General, no less, and the PSNI about the psychological harm, the phrasing and how that is encapsulated in law. What is wrong with the term "coercive control"? Ultimately, psychological harm can happen without a law being broken, even in this context. Something could happen to me that would cause me psychological harm but would not actually be unlawful. Coercive control speaks more to the point at which an individual has been coerced or bullied into an action or inaction and been controlled because of it. Something is lost by not adding "coercive control" alongside "psychological harm" because it hits more buttons with regard to what is unlawful, which the Bill is designed to do.

Dr Holland: I appreciate where you are coming from, Paul, but we consider that that will come within the ambit of a number of the "relevant effects" in clause 2, and there are references to controlling behaviour there. We were keen to try to ensure that the types of behaviour were covered, but we did not want to end up with a specific list, because new offences will materialise over time. In the future, we do not want people to say that coercive control, online abuse, digital abuse, or whatever else might come about in the future that we are not experiencing now, are not listed in the legislation. We did not want there to be a potential gap if we were to use specific terminology in the legislation. We wanted to try to ensure that coercive control, parental alienation, economic abuse, financial abuse and emotional abuse were covered by the effects and behaviours that are in the legislation.

Mr Frew: Do you not think that "coercive control" is an umbrella term, not a specific term?

Dr Holland: It covers a wide range of behaviours that could be covered, and we will want the terminology to be included in the guidance that will be associated with the Bill. We will also want to make reference to parental alienation and emotional abuse — all of those types of phrases — but we will want to bring it back to the broader range of behaviours that is set out in the Bill. We are of the view that it sufficiently covers coercive control, parental alienation and the other behaviours that may make reference to specific abusive behaviour. I appreciate where you are coming from on the terminology. It will be particularly important in the guidance and, I suppose, common parlance that is used in relation to the offence.

The Chairperson (Mr Givan): Sorry, Rachel.

Miss Woods: It is OK. Paul touched on the differences from the Westminster Bill. Why is there no condition of age included? Why is it not 16 or over as it is in Westminster? It seems to leave children open to prosecution as well as being treated as victims. They can be victims and perpetrators, according to the Bill. Why 16, and why is it open-ended?

Dr Holland: In England and Wales, the offence applies to under-16s, so it is the same as us. It is the age of criminal responsibility, and over. However, their domestic abuse definition, which they brought forward through their most recent legislation, has an age threshold of 16. It could be argued that there is an anomaly there, but their equivalent offence, which is dealt with in the 2015 legislation, applies to those under 16. You could, therefore, have an offender who is aged 10 and over, in England and Wales, and you could have a victim who is under the age of 16. We would liaise with colleagues in the Home Office on that.

Miss Woods: Are you saying that no condition of age was put into our legislation because it would match up?

Dr Holland: It was not necessarily to match up with England and Wales, albeit we do match in that respect. We were keen to try to ensure that we could cover abuse of elderly parents, grandparents, etc, by younger family members. We also wanted to ensure that we could capture and take account of the fact that relatively young people can have been in abusive relationships for a number of years. You could have somebody of 15 or 16 who has been in abusive relationships with individuals for a number of years prior to that.

I suppose what is important and what we would caveat that with is that, obviously, any decision will depend on the particular individual circumstances of the case. Our understanding is that, in England and Wales and the other jurisdictions, there have been relatively few prosecutions taken forward in relation to those who are under the age of 18. That will be dependent on the circumstances. Consideration will be given to whether or not it is in the public interest to take that forward, and

consideration will be given to whether there are alternative disposals that should looked at instead of the domestic abuse offence. We were keen to ensure that we could deal with those scenarios, but our sense is that, similar to the other jurisdictions, it is likely that the number of cases taken forward for those who are of that younger age will probably be relatively small and, as I said, dependent on the particular circumstances of the case.

Miss Woods: Thank you. Finally, the Scottish legislation has been highlighted as the gold standard, and our Bill is largely modelled on the legislation that Scotland implemented. However, a very stark difference at the very start is that the Scottish legislation is on abuse by a partner or ex-partner, whereas ours is vastly different from that. That opens us up to a number of different issues stemming from that, including what domestic abuse is not, in different clauses of the Bill, and we can get on to that. We have not specified the offence. It is, of course, behaviour that is abusive solely in a personal relationship or an intimate personal relationship. Why is that? Where did that come from? Was it through the task-and-finish groups?

Dr Holland: Are you referring to the coverage of family members, essentially?

Miss Woods: It widens it out past domestic abuse that is in a personal or intimate personal relationship, basically a couple or ex-couple. Everything else in our Bill will stem from that, reasonable defence and all of those other circumstances where domestic abuse is not in parental responsibility and what it is not and so on. Yes, we have largely modelled our legislation on Scotland, but its definition is so different. I would to like to delve into why that is and where that came from. Obviously, I was not party to this legislation a number of years ago. Did that come from the sector organisations, or did it come from the Department?

Dr Holland: Essentially, at its core, it reflects what is in the seven-year domestic and sexual abuse strategy. Within its scope, domestic abuse is deemed to cover both intimate relationships and family members. It also covers the approach that may be taken by police currently. That was the genesis of that coverage and why we are different from Scotland in that regard. As I said, underpinning that is the seven-year strategy and its scope. Again, we were keen to ensure that the domestic abuse offence reflected what was in that strategy. To have done otherwise would have left the two vastly different.

The Chairperson (Mr Givan): We will pick up on that in clause 5, members. Is there anything more on clause 1 that members want to pick up on? As there is not, I will take you to clause 2, which deals with what amounts to abusive behaviour.

Mr Frew: Obviously, this is the Domestic Abuse and Family Proceedings Bill. I have been struggling over the past number of months to try to put down in words how we can protect people who are involved in family court contact orders, such as parents who are seeking access to children and children who are seeking access to parents, and how that can be used as an arm of abuse. We have seen that very clearly, and it is very hard to get that down. I am struggling with that, and I am not a Bill officer, of course, or a legislator in that regard. How can you assure the Committee that, where someone, such as a parent, intentionally breaches family contact orders, causing havoc to the other parent and to the children — by not turning up, going to the wrong place, putting the blame on the other parent for not being there when they were not meant to be there in the first place and so on — that will be dealt with? All of that gets really messy and horrific. How can we get that down onto paper in the Bill to help parents who suffer in this way?

Dr Holland: Ultimately, as the Bill stands, in such circumstances we would look at it in the context of, "Is that deemed to be abusive behaviour? Does it fall within the scope of the offence? Can it be taken forward, and is there the necessary evidence?" I am not sure whether there is anything that you want to add, Jane, on the contact side of things.

Ms Jane Maguire (Department of Justice): Mr Frew, you talked about a parent potentially bringing proceedings and that, in itself, being abusive. There is a power in the Children Order, whereby a court can order that further proceedings cannot be brought without leave of the court. Therefore, there are some remedies already in family legislation.

You also referred to intentional breaches of contact orders and so on. Obviously, the court has powers to deal with enforcement and breaches of contact orders. I know that there are some concerns around that.

Mr Frew: It adds a process. So, yes, there is a court-proceeding arm of abuse, whereby, "I will take you to court and we will go through the process again." However, we might get to a point where we have finished with court and now have a settlement in place, with contact arrangements, and then those contact arrangements are breached. This is hard, and that is why I struggle with it. The only remedy is to go to court again to get something enforced. That, in itself, is just a rigmarole for a parent who, maybe, has to pay. It might be a better remedy if the aggrieved parent were able to use this legislation to say, "You are abusing me" and can go to the police and get this enforced. It becomes a different part of the law.

Ms Maguire: Yes, it does. It is an alternative.

Mr Frew: Yes. That can be used by the aggrieved parent to try to resolve the issue. Even the threat of being able to use this legislation, as opposed to going through the family court process, would be much more powerful. How can we nail it?

Dr Holland: Ultimately, that will come back to the point of, "Is this deemed to be abusive behaviour? Would a reasonable person would consider it to be such, given all the information at hand?" Certainly, if it is deemed to meet the necessary criteria within the legislation, there is the potential that the domestic abuse offence could be used for that purpose.

Mr Frew: Yes. OK, thank you.

Ms Dillon: I just want to pick up on Paul's point quickly. No matter what we put down on paper, people are going to abuse it. Where contact is not being carried out as has been ordered, sometimes it is because the parent who has the child is very fearful and thinks that the judge has made a wrong call. You say, "Even the threat of having this", is enough, but that will not work because bad people will use it as a threat, and continue to abuse. Unfortunately, I do not think that we can make perfect legislation, because we are dealing with human beings who will always try to manipulate it to serve their own purposes. I have concerns on both sides in relation to that particular point.

The Chairperson (Mr Givan): Have you looked at the number of prosecutions that could be taken forward, if this legislation were to come into being with this clause?

Dr Holland: In terms of the abuse offence more generally, our sense is that there probably will not be a significant increase in new prosecutions. Our view is that you will have a number of cases currently taken forward, for example, as criminal damage, assault, etc, which will move from being taken forward as that and will come in under the auspices of the domestic abuse offence, and it will potentially encapsulate what would have been previously a number of separate charges. The indication that we have given in the explanatory and financial memorandum is that we envisage that there could be an increase of around 3%, over and above the cases that are currently going through the system. We need to see what happens in practice. Our sense is that a lot of current cases will move from those separate individual charges and, instead, be brought forward under the new offence, so a lot of them will already be in the system, as opposed to there being a significant increase in new offences as such.

The Chairperson (Mr Givan): OK. It just touches on the points that members have made about the clause on parental alienation. That is covered, as to what will be defined as this type of behaviour. Will parental alienation be included as an offence?

Dr Holland: In any case, it will be dependent on the individual circumstances, but we certainly are of the view that parental alienation could come within the auspices of the domestic abuse offence, in terms of the relevant effects set out in the Bill.

The Chairperson (Mr Givan): Will that be in your guidance?

Dr Holland: We can certainly reference that in the guidance and give examples of the types of behaviour and what we have envisaged coming within that.

The Chairperson (Mr Givan): OK, because that would tie in with the intentional breaking of family contact orders and so on, that we heard from a lot of individuals.

Spiritual abuse has been raised in some of the evidence sessions. Is that covered in this clause?

Dr Holland: For spiritual abuse or parental alienation and all of those types of newer terminologies — for want of a better phrase — it will ultimately depend on the individual circumstances of the case. If it is deemed to be isolating individuals, controlling them, regulating their behaviour, putting checks on them, restricting what they can do, etc, and if it meets the effects in the Bill, and is on two or more occasions etc, it will, potentially, be covered by the domestic abuse offence.

As I said, in any of those cases and in any case more generally, it will very much depend on the particular circumstances of the case. We would be of the view that there is the potential for that type of behaviour to come within the scope of the offence.

The Chairperson (Mr Givan): What does that behaviour look like whenever we talk about spiritual abuse? What does that cover?

Dr Holland: You are going to be coming back to the effects that are in the Bill. What is deemed to be abusive behaviour? Is that individual being restricted, limited, controlled or coerced? If those types of things were present, that then, potentially, would come within the auspices of the domestic abuse offence.

The Chairperson (Mr Givan): So, if a child wants to engage in some kind of spiritual activity, let us not define what it is, but mum, dad, or guardian says: "No, absolutely not, I am not letting you do that", and that is repeated on more than one occasion, can the child take the guardian or parent and potentially put in a case to say: "I am suffering abuse, because I am not being allowed to express my spiritual beliefs"?

Dr Holland: In a child/parent scenario, and I do not mean this to appear unhelpful, that obviously would not come within the scope of the offence as currently drafted, because there is that exclusion, but if you had two individuals —.

The Chairperson (Mr Givan): Such as a partner, someone in a normal relationship, where something happens to someone and they convert, for example, and that is something very much frowned upon in that relationship and partner X says to partner Y that they are not allowed to engage in that spiritual belief.

Dr Holland: Again, it will come to whether it is deemed to be abusive behaviour, whether it happened on two or more occasions, and whether it covers the types of effects that are in the legislation. It will very much depend on the nature of how that plays out in practice, but depending on how that is and how extreme or impactful it is on the individual, it could potentially come within it.

The Chairperson (Mr Givan): OK, members, anything else on clause 2? OK.

Clause 3 takes us to the issue raised by Jim Allister of instances where no harm has taken place. Do you want to comment on that? He highlights the data from Scotland. The Minister and others have held up the Scottish legislation as a model, and Jim Allister got information to indicate that there have been no prosecutions in Scotland in cases where no actual harm was caused. Do you want to just touch on that for us?

Dr Holland: Yes certainly. The information has come from Scottish colleagues and we have discussed that with them, as the data has indicated that there have not been any prosecutions taken forward on that basis.

In terms of the clause itself and the provision and what we wanted the Bill to do — again going back to the Luke and Ryan Hart scenario — we wanted to try to ensure that, potentially, there is the ability for cases to be taken forward where there is harm but where an individual may not necessarily be of the view that harm has been caused to them, but where a reasonable person looking at the particular information to hand in those specific circumstances would be of the view that harm could be caused to an individual and it would be deemed to be abusive behaviour. That is the thinking behind that provision.

The Chairperson (Mr Givan): I am trying to picture a scenario where someone clearly wants to cause harm, has that thought process, may even go about planning it but does not actually carry it through, albeit there is evidence that they were in preparation for it. It is about the thought. The example that he gave in the Chamber was that I might look at someone whom I really dislike and have thoughts of ill

intent, is that being captured by the Bill? Will someone then put in a complaint to say, "Mr X thinks this about me"?

Dr Holland: In that scenario, ultimately, it will come back to clause 1 in this sense: is it deemed to be abusive behaviour and have there been two or more occasions, if it does not fall into that criteria in the first instance. Some of the examples that were given about evidence are where you have individuals who have fallen out. They may not be treating someone the way that they should be treating them, and that will not be captured within the offence, in the sense that it has to be deemed to be abusive behaviour and a reasonable person has to consider that, etc. The offence has been crafted in a way which intentionally tries to ensure that there are a number of checks and balances for this so that you do not get those types of incidents captured within the new domestic abuse offence. Also, the Public Prosecution Service (PPS) will consider charges being brought forward or potential prosecution in the public interest, given the information that is at hand to take the case forward. The view in that type of scenario would be that it is not in the public interest and the conditions for the abuse offence would not have been met.

The Chairperson (Mr Givan): By the time you get to PPS's consideration of whether it is in the public interest, someone has already been charged and investigated and a file has been prepared. It has appeared on a number of occasions that, ultimately, the police need to consider these things, and PPS need to identify if criteria have been met. I can raise it in the context of some of the other clauses, we must be careful that we are not putting something in legislation that is symbolic —.

Dr Holland: As you say, PPS is coming in at a much later stage. The police will consider if the conditions of the offence have been met, if it is deemed to be abusive behaviour and if there have been two or more occasions. All of this will kick-in at the police stage, before it will get to the stage where PPS is taking the decision with a public interest test.

Miss Woods: The reasonable person is so crucial to this, though, obviously, it is in a different clause. However, there are examples of victimless prosecutions in England, Wales and Scotland, especially in the case of victims who no longer wanted to press charges or pursue cases within the court system. Have any lessons been learned from the cases in those jurisdictions? Have there been any discussions with Scotland on its legislation, and is there any learning to be had? Maybe there are no victimless crimes? I doubt that, but is there a problem with the evidence gathering? Is there a problem with the prosecution? Where are the sticking points in getting prosecutions under clause 3? It is very important that it is in there, alongside the reasonable person test. Has there been any communication with Scotland?

Dr Holland: We have had general discussions with Scotland about how their legislation has worked generally. The offence has been in place there for a much shorter period than in England and Wales. However, the indication from Scotland is that the legislation is working well. There do not appear to be any major substantial hurdles in the cases being brought forward. The indication from the data and figures available for the first year, albeit they were not formalised statistics, was that the number of cases being brought forward was much higher than that experienced in England and Wales at the same point in their process. Certainly, the figures and indications from Scotland bode well and are not giving us any significant cause for concern about the construct of the offence and how it is working in practice.

The Chairperson (Mr Givan): Sinéad Bradley. Sorry, we will just bring you into the speaker system.

Ms S Bradley: Can you hear me now, Chair?

The Chairperson (Mr Givan): Thank you, Sinéad.

Ms S Bradley: I am thinking about, for example, vulnerable persons who may not know that harm is being done to them. The clause would very much protect such persons. I see that there is a requirement for the public interest test to be met. With the obvious difficulties in collecting evidence in such a case, I am curious to know how the public interest test, where it concerned an individual, would operate.

Dr Holland: That is a common aspect of all offences and charges that are brought back. It is a standard piece of the way in which the PPS operates. It will look at whether or not it is in the public interest for charges to be brought forward, given the particular circumstances in the case. I do not

have information about how that operates more generally when it comes to the proportion of cases and charges that are brought forward by the PPS. It may not take cases forward in relation to the public interest, but that is certainly a standard part of its decision-making process, and it is well versed in how that operates.

The Chairperson (Mr Givan): Does the Westminster model include this clause?

Dr Holland: I cannot remember the wording of the phrase. It is, obviously, different from the wording in this Bill, but there is something akin to that in their provision. I can check that out, and we can come back to the Committee on that.

The Chairperson (Mr Givan): Sinéad's point is well made about someone who does not know or does not understand that what they are being subjected to is coercive and relates to domestic abuse. Rachel raised the issue about whether a reasonable person would regard those actions as ones that may lead to a person being frightened, humiliated, degraded, punished or intimidated. It is a difficult one. If no actual harm has been caused, or the person does not believe that they have been harmed, will it be for a reasonable person to decide —.

Dr Holland: Again, in relation to that, I would cite the example of the Hart brothers. It is about a person having access to the information in relation to that case. In a number of these cases, there will, obviously, be multiple incidents behind them, and it is about looking at all of that information in the round and almost, in some respects, setting aside the way in which the individual may view what has happened. Would somebody looking at that information, having access to the same information, deem what happened to be abusive behaviour and that that individual was being, for example, coercively controlled or financially abused? It is about what that behaviour might look like to that person.

Mr Frew: May I add to that, Chair? A victim will modify their behaviour so that they are not harmed, either by a threat or a threat against a child. They will do something, or act out, or modify their behaviour so that they do not fall into harm's way, thinking, "If I do this, he or she will not hit me or take something off me or take away allowances". The person's mode of behaviour has to be factored in. A reasonable person should look at that and say that it is not a reasonable mode of behaviour and that the victim is doing that because of the threat that is implied. That is a key factor in the whole coercive control piece, and we need to retain that power, if you like.

Dr Holland: Again, as you say, Paul, you will want to look at all of the information in the round as to how those two individuals interact, what the behaviour is between the two of them and how either of them may be adjusting their behaviour. Is what is happening reasonable, or could it be deemed to be abusive behaviour, given all of that?

Acting Detective Chief Superintendent McNally: May I add something in support of that, having thought about it from an operational perspective, particularly around the aspect of vulnerability? I was considering whether there might be some opportunities, for example, for third-party information. If a vulnerable person may not be able to give prima facie evidence themselves, might another family member or neighbour or witness be able to provide that information? I felt that the clause would be particularly supportive in those circumstances.

I go back to the point that you made a few minutes ago. For me, these are the types of issues that the task and finish group needs to get to the nuts and bolts of. That is not just from a policing perspective but across the PPS and potentially into the judiciary, so that we are lined up on this. None of us want a situation where we have started to try to take prosecutions forward but they fail because we have a difference of opinion. I am really keen that we try to have some clear examples of these very things, but I think there is a strong sense that this clause could be used to good effect.

Ms Dillon: The more conversation that we have around this clause, the more you realise that it goes to the very heart of what the Bill is about. It is about those for whom the behaviour has become so normalised, and because nobody has physically attacked them they think that they are not being abused. It has become normalised to them, and whilst we might look on and think, "I would not tolerate that or put up with being told what to do", society thinks that it is normal too — "Whilst I wouldn't put up with it, if they are happy enough, that is OK." It is not. We all need to get that.

Dr Holland: Linda, as you say, that really is at the crux of it. It is about those scenarios where that behaviour has gone on for years upon years. It is normal for those individuals, but we, as outsiders

who have access to the same information on how they are being treated — what their life is like, how they are being controlled etc — can very obviously see that there is domestic abuse happening, that the behaviour is abusive and that it is wrong. For those individuals in that situation, it has effectively become normalised, and if they were to be asked, "Are you suffering from domestic abuse?", there is every chance that they would say, "No, I am not."

I do not want to harp back to the same example, but that was exactly what occurred in the case of the Hart brothers. It had been going on for years upon years; they were isolated from family and friends, were removed to a remote location and did not have access to that support network. They knew that something was not right and that their father was strict etc, but they had no appreciation until after the deaths of the two family members that that was what they had been suffering from.

Ms Dillon: Look at social services cases. Where they deem a parent to be a vulnerable parent who is under the influence of another parent who is potentially a danger to them and the child, they will put in place measures to protect the child even if the vulnerable parent does not acknowledge that they, or even the child, is in any danger. It is already happening; it is just not in legislation.

Dr Holland: In some respects, if you do not have that provision, those are the types of cases that we will not be able to deal with because it will simply be stated that the individual does not consider that harm was caused and does not consider that they were subject to domestic abuse. It is not possible to take those cases forward, and they are many of the cases that we are unable to progress and get people convicted for at the moment.

The Chairperson (Mr Givan): Clause 4 is on the meaning of "behaviour". You have clarified in your written evidence that an issue had been raised by the Evangelical Alliance in respect of youth leaders, young people, faith context, mentoring and so on. You have identified where the offence relates to two people who are personally connected — partners, family members, intimate relationships. Generally speaking, that would not be the case in an organisational capacity, where other safeguarding provisions would apply. I know that how expansive it is in terms of that connection is an issue that has been raised by others.

Dr Holland: Obviously, that is not the type of thing that you want to be encapsulating in a domestic abuse offence. We clearly want to be staying out of that type of territory.

The Chairperson (Mr Givan): Yes. Members, are there any questions on clause 4?

OK, clause 5. Just a question as to whether the Department is satisfied that the legislation as currently drafted will not have the unintended consequence of potentially criminalising family disagreements, which are not within the scope of this offence.

Dr Holland: No, and again, coming back to the construct of the offence, the checks and balances within it and the crux of what the offence is about in terms of whether it is abusive behaviour, that it has to have happened on two or more occasions and whether a reasonable person with the same information would be of a similar view. It is certainly not intended to come within, and we do not think it would come within, the scope of the offence in terms of, as you say, those normal family disagreements, for want of a better phrase.

Miss Woods: Because the definition of "personal connection" is wide, a number of personal connections are outlined. Family relationships by way of marriage and stepchildren are covered, but there is no specific reference to fostering or kinship arrangements. Is there any particular reason for that?

Dr Holland: We had discussions with the Departmental Solicitor's Office in relation to that on the foot of issues raised during the sessions. We are of the view that what is deemed to be family would cover those scenarios. Parental exclusion would kick in in relation to that, but they are of the view that adoptions, caring scenarios etc would come within the scope of that parental responsibility. As I say, the parental exclusion provision would apply to that.

The Chairperson (Mr Givan): OK, no one else on clause 5. Clause 6 is straightforward, unless any member has a question.

Clause 7 concerns the serving of notices. Will there be any occasions where that could be individuals rather than legal representatives? If so, are the issues highlighted by Women's Aid in relation to sending the notice by post relevant in those circumstances?

Dr Holland: We tried to get some clarification on that. Our understanding is that the concerns are largely around the likes of non-molestation orders etc where there are difficulties in notices being received or an individual being aware of where they are in the process. These notices are very much part of the proceedings and whether or not there is a personal connection between individuals. The notices will be served on either the person who is charged in the proceedings or their solicitor. It is notices being provided between, by and large, legal parties. I appreciate the concerns raised by Women's Aid on wider protection orders and that type of thing, but we do not consider that it is an issue in relation to this clause, given that it is quite tightly restricted in the notices that it is applying to.

The Chairperson (Mr Givan): OK. Clause 8 concerns aggravation where the victim is under 18. Just a general point about the Gillen review of civil and family justice, completed in 2017, and progress on addressing contact orders and child arrangements. Those issues have been highlighted by a number of individuals and organisations that we heard from in the context of domestic abuse and legislation. Is there a timescale for progress in that area?

Ms Maguire: As members will be aware, there are a large number of recommendations in the Gillen review on family justice, and not all are for the Department. Many are for other Departments with responsibilities for family justice, the judiciary and the legal profession. The recommendations that are for the Department are being actively considered and progressed in a number of areas. For example, the prohibition on cross-examination in person was a specific recommendation of the Gillen review. Work is being taken forward in another division, together with the Department of Health, to help parents who are separating to develop a better relationship with each other and to understand the needs of their child as they are separating — to intervene early to prevent acrimony and negative behaviours arising in the first place. Some of the recommendations are substantial and require detailed consideration. Certainly, that work is ongoing.

The Chairperson (Mr Givan): It would be helpful to get a bit more detail around contact orders and child arrangements for our report.

Ms Maguire: Do you mean the judicial practice directions specifically?

The Chairperson (Mr Givan): The area that we are looking at in clause 8 is touched on in the Gillen review, and there are recommendations around it, so it is in that general sense that it would be helpful, because it will be raised by members. I am not looking to change clause 8, but some of the points raised touch on the Gillen review. In completing our report, it would be helpful if we could cite, "Here's the Department's implementation of this aspect of the Gillen review", because that will tie into some of the evidence that we have heard about this.

On clause 9, I am seeking clarity as to whether it would apply in a situation where a child does not directly witness the abuse.

Dr Holland: You could have a situation where the child is used to abuse another individual. Clause 9(2)(b) states:

> *"the child saw or heard, or was present".*

They could be in another room in the house; they could be in a bedroom while the abuse is taking place in the living room. Potentially, there is scope for that to be covered.

Miss Woods: Just to clarify, then, is it covered if —. It says that the child must have heard, seen, or been present during an incident of abuse, but the Scottish approach is different, in that the child does not have to be present, see or hear the incident. I am just wondering why there is a difference between the approach in Scotland and here, if it is for the same end.

Dr Holland: From recollection — I do not have the Scottish provision with me — our provision on that aspect is the same as theirs. I can certainly check that out and come back to the Committee about it. I know that there are some slight variations in the approach that we have taken to aggravation in that regard. For example, the child does not necessarily have to be the child of the individuals involved

where it is, say, a mother and father. I will certainly look at that and come back to the Committee about it.

Miss Woods: Anthony, on an operational matter, how would you gather evidence of that?

Acting Detective Chief Superintendent McNally: In respect of —?

Miss Woods: If you have an aggravation through a child seeing, hearing or being present, whose evidence would you rely on for that child to be present, hear or see? Would it be the child's evidence, or would you —?

Acting Detective Chief Superintendent McNally: My interpretation of that is: not necessarily. It could be that an adult says that a child was present. The child, for example, may be asleep. In that circumstance, it would be appropriate to record that information from the victim or another person present, and that would therefore lead to that being used as evidence. Of course, it could be appropriate to speak to the child. We are aware that, quite often, there is a reflection that we do not listen enough to the voice of children in a domestic incident, and I certainly believe that that would allow us to both focus the mind on doing so, when it is appropriate to do so, and give us sufficient scope that, if the child were asleep, for example, we could still proceed.

Miss Woods: Absolutely. Thank you.

Dr Holland: The only other thing to point out about where we differ from Scotland is that, from what I can recall, they have a provision that a reasonable person would consider that harm has been caused to a child. We deliberately did not include that because we were of the view that the fact that a child is in the property witnessing the abuse is, in and of itself, sufficient for the offence to be aggravated. That is one other element where, in the scope of that provision, we differ slightly from Scotland.

The Chairperson (Mr Givan): We have discussed at length clause 10 and the issue of behaviour occurring outside the UK. Members have heard the legal opinion and all that. I have no more questions about clause 10. If members are content, we will continue.

There is one question on clause 11. What further developments have there been in discussions with the Department of Health about a possible amendment to child protection provisions that would be included in the Bill, and when will you be in a position to confirm whether an amendment is being brought forward?

Dr Holland: As we have indicated, we have had discussions with Health about that. We have obviously taken account of the comments and concerns that were expressed at the Committee's evidence-gathering stage. That amendment is intended to address the issue. At the moment, there is explicit reference in the child protection provisions to the physical abuse of individuals. In England and Wales, it is considered that those provisions cover non-physical abuse, but we thought it would be helpful to change that and make it explicit in the child protection legislation. We will want to have discussions with Health about what that amendment may look like. Our sense at this stage is that it will likely be a relatively straightforward amendment that will make reference to non-physical abuse in those child protection measures and that it will, hopefully, allay some of the concerns that have been expressed by members and in responses to Committee evidence sessions.

The Chairperson (Mr Givan): It will be helpful for us to get that sooner rather than later, otherwise we will not be able to give a Committee position on it. If you can expedite that with your colleagues in Health, that would be appreciated, and we can then consider it.

Clause 12 is "Defence on grounds of reasonableness".

Dr Holland: This is one of the clauses that probably attracted the most interest.

We were discussing that this morning, and we have also had discussions about it with PPS. I appreciate where concerns are coming from on it, and I perhaps did not make it explicit in the table when coming back to the Committee. As well as the information that we set out in the response saying that evidence has to be provided, the defence provision would have to be considered as part of the provisions going forward. By way of some reassurance for the defence, the domestic abuse offence will be a course of behaviour, so, if you have, for example, 10 incidents that comprise that domestic

abuse offence, it will not be sufficient that an individual says for one or two of those occasions that they have a defence for the behaviour. Each of those incidents will have to be looked at. If you had 10 incidents comprising the domestic abuse offence, the individual would have to give evidence for nine of the 10 incidents to say that their behaviour has been reasonable and that evidence of that has been provided in order for the domestic abuse offence not to apply. If it is helpful for the Committee's deliberations and considerations, it would not be sufficient to say for one or two of those incidents, "Here is my defence, and here is the evidence of that." It would have to be provided for the majority of the incidents that were making up the domestic abuse offence in order for that to be knocked out, for want of a better phrase.

The Chairperson (Mr Givan): What effect would it have if clause 12 was not in the Bill?

Dr Holland: The purpose of clause 12 is to provide that balance in calibration. The focus in all this is driven by the need to ensure that victims are protected and that there is the necessary access through the criminal justice system.

The clause is very much intended to ensure that where an individual's behaviour may at the outset look or may be deemed to be abusive, once you look at the particular circumstances of a case, you see that the behaviour is not deemed to be abusive because there is good reason for it. Ultimately, it is to ensure that you do not get individuals charged with a domestic abuse offence where, given all the circumstances of the case, you know that there is a rationale and a reason for that particular behaviour.

The Chairperson (Mr Givan): Some of the examples cited that someone in the home may engage in self-harm and another individual may restrain them on multiple occasions. That would be a reasonable defence for most reasonable people. Another example is where someone has a gambling addiction and someone was trying to prevent them accessing funds.

Dr Holland: The clause is very much focused on trying to deal with those types of scenarios. More generally, we have tried to have an approach of having checks and balances in the offence as well as the defence. It is about ensuring that, ultimately, somebody is not convicted of domestic abuse where, as you say, given the particular circumstances of the case, there is a reason why that behaviour has been carried out. It is a course of behaviour, so they would have to essentially provide that defence for almost all those incidents; it would not be a case of citing it for one occasion.

Mr Frew: It strikes me that, by using a reasonable person for a lot of the clauses that we discussed but by then ignoring that reasonable person for clause 12 for a defence, you lose balance. We need to ensure, given some of the examples that have been cited, that we do not make the job of parenting or the guardianship of loved ones even harder or preventative. It is not yet a complete picture for me, but I am content with the defence on the grounds of reasonableness. If someone is accountable in court and a barrister is defending that person, that defence of course has to be reasonable; if it were not, it would not succeed. It is a fundamental issue about the process of law and somebody being able to present a defence. Parenting and looking after someone is not easy. We need to ensure that there is that reasonable clause so that we do not make life harder for people in a caring role. That is what I look at. I can see why organisations are distraught with it and want it removed.

Dr Holland: We fully appreciate those concerns and why people have them.

Mr Frew: People want to see results. For so long, they have been bereft of decent legislation around that crime. They want to see results, but I worry that removing that will remove balance.

Dr Holland: We have had discussions with colleagues in the Home Office and in Scotland about the issue to see what their experience is. In those jurisdictions, there is a clause that is fairly similar to clause 12. They are not aware of significant issues with the clause, so, from our perspective, that provided some reassurance that it appears to be working the way that it should in the other jurisdictions, but I fully appreciate why organisations have concerns and where they are coming from in that regard.

Miss Woods: Just to give another example, has it been looked at in terms of addiction? Say you have a partner who you are removing finance from because they have an addiction to drugs or alcohol, but their addiction is caused by your behaviour, as a perpetrator of domestic abuse in the home, can we open up with clause 12 to say, "That behaviour is OK"? Does that meet the reasonable person test?

Dr Holland: As with any of the provisions of the clause, it will be very much dependent on the particular circumstances of the case and the information at hand. The clause is intended to try to ensure that individuals are not criminalised for behaviour that may be carried out in order to protect or assist someone. In instances where abusive behaviour towards an individual is giving rise to some other symptoms or problems, that, obviously, would need to be looked at in the context of the abuse offence more generally to consider whether there is behaviour that is deemed to be abusive and would constitute an offence against that individual.

Miss Woods: I get why clause 12 is there, but there are parts of it that do not sit well with me. In effect, we are saying that it is reasonable for victims in certain circumstances to suffer harm. Unless it is tight, it will allow behaviour to be deemed reasonable even though it is causing the harmful behaviour. It needs to be a little bit tighter, but I do not know how to do that.

Dr Holland: We have had lengthy discussions with counsel and the Departmental Solicitor's Office about that because, obviously, we were aware of the concerns at a very early stage. Suggestions were made in some of the responses to include additional phrases and wording in the defence provision in clause 12. Our view was that, in some respects, the additional words and phrases could be deemed to be window dressing because they did not materially change or impact on the thrust of the provision. While, presentationally, it may provide greater reassurance, it did not materially change the legislative construct of the provision.

If we go back to the experience in the other jurisdictions where this is in place, we are not getting indications that the application of this is giving rise to significant issues in the cases being brought forward. However, I fully appreciate the concerns that there are about the provision more generally. One of the key things is that where this is used as a defence for a particular case, evidence would have to be provided on multiple occasions depending on the extent of the abusive behaviour, and I think that that makes it much more difficult. For example, if there are ten incidences as part of the domestic abuse offence, for the domestic abuse offence not to apply, you would have provide evidence or information about nine of those incidents to, essentially, bring it below the threshold of two or more incidences.

Miss Woods: OK. Finally, have the effects of clause 12 been considered on court proceedings? Does it take away the focus from the behaviour of the accused and put the emphasis back on safeguarding the victim? Could the reasonableness defence further traumatise victims through the use of psychological assessments?

Dr Holland: Our view is that it should not have a material impact on the proceedings. This type of provision is used in other legislation. It is not unique to the domestic abuse offence. Ultimately, at the crux of this, before you get to the point where the defence is being applied, there will have to be evidence and information which means that both police and PPS are satisfied that there has been abusive behaviour, that there are grounds for a case to be taken forward and that there are robust evidence and information. We do not consider that this should give rise to difficulties in that regard. Obviously, this is something that, given the concerns that have been expressed, we would be very keen to monitor and keep under review as the offence is operationalised.

Ms S Bradley: Chair, I have some reservations about this. I, absolutely, get it. It is an important piece that does have to be in there for all the reasons that Paul, and others, raised. However, if a person is being abused, and abusers can be quite manipulative and, over time, may have built up a profile of that person. Obviously, it is a medical opinion in the example given of someone with dementia. However, for example, a manipulative abuser may, over time, suggest that a person is an addict and recommend they go for treatment. The person may say, "I do not believe I am an addict ". The abuser could build a profile of that person. What type of evidence would be used to garner information on whether the problem is with the two people being together or it is the profile of the individual? It is a minefield, and I do not know how far you can go into the depths of giving evidence to determine whether reasonableness in some cases is justifiable.

Dr Holland: In that scenario and when taking cases forward, the focus at the outset is going to be on the evidence and information about abusive behaviour in the first instance. The defendant will then have to provide information or evidence to satisfy the court that the behaviour in those particular circumstances was reasonable. The focus should be on their behaviour and what they have done, as opposed to there being a focus or detriment to the individual who is being subjected to the abuse.

Ms S Bradley: I do get that, but that measure can only be taken if the perpetrator or abuser says, "I had to do this because". This shines a light on the person being abused if the abuser is trying to create a profile of that person to justify that they required that type of action. There could have been a very manipulative build-up of the profile of that person to show them in a different light. Some vulnerable people could be made more vulnerable by this. I can see the clear line on why it is required, because there are clear examples where reasonableness comes into play. I cannot find, in my head, where the balance is here.

Dr Holland: In terms of concerns about the impact on the individual, I emphasise the point that, in putting this forward as a defence, that individual will have to provide evidence and the court will have to be satisfied in terms of deeming that behaviour to have been reasonable given the circumstances of the case. They will have to apply that in terms of the various incidents that make up the domestic abuse offence. That makes it much more difficult to manipulate or subject this provision to abuse. As I say, we fully appreciate people's concerns about this.

The Chairperson (Mr Givan): We do not have any issues with clause 13.

Mr Frew: Can I ask about clause 13, Chair? It is not down as a listed question. The clause is entitled "alternative available for conviction". Why would we ever get to a position where we are in a court and it has not been proven until then that there is no personal connection?

Dr Holland: It is probably unlikely in practice. The police will want to look at the information and PPS will consider it, and they will have to be satisfied before a case is taken forward. We envisage that the provision — it was intended to do this — will largely be used in scenarios where, as part of the proceedings, it is deemed that there is not a personal connection between the two individuals, and, if the various conditions have been met, there is another offence that the individual can be charged with. The number of cases in which this will be used will probably be relatively small, but it is a safeguard provision, in a way, because we wanted to ensure that if, for whatever reason, it is deemed during the proceedings that there is no connection between the two individuals — ultimately, if you do not have that, your domestic abuse offence falls — that what would otherwise be abusive behaviour of a form could then be taken forward as another charge. As I say, it is likely to be in the harassment provisions, and, when the stalking provisions come forward, that will also be added in clause 13.

Mr Frew: Is it clear to the judiciary and to everyone else who is involved that it is all about — I do not want to use the term "relegated" because those are serious offences, too — the personal connection and nothing else? Will it not become a lower-tier offence for a safer conviction by a prosecutor, the police force or the PPS?

Dr Holland: No. We do not envisage it arising in other situations. We think that the crux will be inability to prove the personal connection. If that does not happen, it is then to ensure that that behaviour can be addressed. None of us wants to see a situation where alternative convictions are being used and are deemed — they are, as you say, and rightly so, very serious offences in and of themselves — to be lesser charges, for want of a better phrase.

The Chairperson (Mr Givan): OK. Clause 14 is on the penalties. Some people have raised issues around sentencing, but that will be taken forward through the operationalisation of the legislation. Does the Department position support sentencing guidelines for the new offence?

Dr Holland: We are keen that, for any parties that are subject to taking the new domestic abuse offence forward, there is guidance, guidelines and some form of documentation that will assist in relation to that. We are keen that there are sentencing guidelines associated with this, and the sense that we get from discussions with the Judicial Studies Board is that that is likely to be considered as part of the process going forward and is a fairly standard aspect in relation to new charges and new offences.

The Chairperson (Mr Givan): Clause 15 is on aggravation as to domestic abuse. There are no questions. Clause 16 is on what amounts to the aggravation. Again, I do not have any questions. Clause 17 is on exception regarding the aggravation. I am content with that. Clause 18 is the "Meaning of personal connection". Have members any questions on the scope of that area? OK. No issues were raised on clause 19, from witnesses. Clause 20 is "How notice is to be served". Have members any issues with that? Clause 21 is "No right to claim trial by jury". I know that that area was raised, but I have noted the Department's written response to it, so I am content.

Clause 22 is "Special measures directions". There are just a couple of questions on this. What is the Lord Chief Justice's position on the proposed amendment, to require court rules enabling a court hearing civil proceedings to make special measures directions? Has he been asked for review, and has he given it?

Ms Maguire: The Minister wrote to the Lord Chief Justice, and his response was received yesterday. From the judicial perspective, in general terms, the Lord Chief Justice is content, but the Minister obviously wants to consider the detail of the response and, once we have had an opportunity to do that, we can update the Committee further on the proposed amendment that we are considering.

The Chairperson (Mr Givan): OK. It would be helpful for us to get sight of the Lord Chief Justice's position, obviously. Are there any operational issues that would prevent special measures being put in place on the day of the court hearing? If someone asks for them, or they are directed to provide them, can that be done?

Dr Holland: We hope, more generally, that that issue will be considered as a much earlier part of the process. The provision is that there is automatic eligibility for consideration for special measures in relation to domestic abuse cases, whether it is a domestic abuse offence or an aggravated case. That should be considered ahead of time, both at the police stage, with video-recorded evidence, and on the PPS side of things. Those provisions and arrangements should be in place.

We would like to think that that should reduce instances where special measures are raised only on the day that the case comes forward. Particular reasons may be given, depending on the circumstances of the case, as to why that may occur. The provision is intended to ensure that that is a much more integral part of the process. Obviously, it is for the judge to determine, in the particular case, whether special measures are granted. Hopefully, with automatic eligibility for consideration, the process will be improved.

The Chairperson (Mr Givan): Have there been cases where people wanted special measures in place and they were not granted?

Dr Holland: Ultimately, it is for the judge to determine. There will have been instances, I am sure, where individuals may have wanted special measures but the judge took the decision that they were not to be granted, for whatever reason. That is within the judge's remit, as opposed to something that can be forced on them.

The Chairperson (Mr Givan): OK. No issues were raised on clauses 23 and 24. What about clause 25, "Guidance about domestic abuse"?

Dr Holland: We have prepared a draft of that guidance. As we have indicated, a task and finish group will be set up to take a look at that. We want to include our statutory and voluntary sector partners in that. The guidance accompanying the offence, and the awareness-raising media campaign, will be critical in getting information out to people and making sure that practitioners are aware of what constitutes the offence and what is abusive behaviour. We will be working with the police and PPS, as well as our voluntary and community sector partners, on the content of that guidance, and we very much want that to be shaped by them. The Department will provide that first draft to them, but we want them to shape the content of it and ensure that they are content with the coverage and scope of that guidance.

The Chairperson (Mr Givan): It is just the wording of it: the Department of Justice "may issue guidance". When you see that in legislation, it means that the Department may not, but it may do.

Dr Holland: It is very much our intention that there will be guidance published and publicly available. Possibly, the phrasing is not of much comfort, but that is fairly standard terminology. From a departmental perspective, it would never be our intention not to have guidance available and published, but I appreciate that the term "may" is used.

The Chairperson (Mr Givan): Yes, I suspect that it is general drafting that is common in legislation. Will that guidance be published by the Department, given that the Department is able to publish it, or will it be brought in through a legislative vehicle?

Dr Holland: Essentially, it will be prepared, brought forward and laid in the Assembly. That is fairly standard practice for guidance that is provided for in statute. It will not need any further legislative provision.

The Chairperson (Mr Givan): OK. What is your time frame for the guidance to be in place?

Dr Holland: We will want that to have been finalised well in advance of the offence being introduced. As I said, the first meeting of the task and finish group will be held later this month. I imagine that the guidance should be more or less finalised by the time that the legislation has finished going through the Assembly.

The Chairperson (Mr Givan): Once the guidance has been worked up and agreed with all the relevant agencies, it is about making sure that those at the coalface dealing with this have been adequately trained. Has that been factored in to the planning for when it goes live?

Dr Holland: Again, Anthony may want to comment on that. The police will be very heavily involved in preparing the guidance, but that will need to be an integral part of any training that organisations take forward, both for training on the new offence more generally and on raising awareness of the guidance to let people know that it is very much intended as a tool to assist them in progressing cases.

Miss Woods: My points are similar to yours, Chair. It may be common for legislation to state "may", but it would be better for it to state that the Department "will" publish guidance.

Will you clarify whether, under the wording in clause 25, the power conferred to the Department of Justice to issue guidance is subject to any Assembly control or scrutiny?

Dr Holland: No, It is not. Sorry if that was not clear.

Miss Woods: OK. The guidance will be laid in the Assembly, but we will not have a chance to review any problems. What about reviews of the guidance?

Dr Holland: That will be an integral part of the process going forward. For want of a better phrase, the guidance will, to a certain extent, be a living document. We will have formal evaluations and reviews of the policy and the intent behind it etc. Once the offence is brought forward, we will want to have ongoing discussions with partner organisations about how it is operating and to look at whether anything further needs to be done with the guidance. That will allow us to provide further clarity, more examples and to see whether any difficulties are being encountered by operational organisations. We will want to keep that under periodic review. The fact that it is not subject to an Assembly legislative vehicle, as such, makes it easier to review the guidance as and when needed.

Miss Woods: Finally, a task and finish group is meeting to discuss this at the end of the month. Is there any indication who will be on that group?

Dr Holland: It will be the police, the PPS and the likes of Women's Aid and the Men's Advisory Project — our key partners in taking forward policy development more generally.

Mr Frew: Very quickly, on the same lines, I am perplexed as to why it is "may" and not "will" or "must". I also note the fact that the guidance does not have to come back to the Assembly for scrutiny. Are there guidelines on when to review something like this periodically, or do you assess court cases? How do you know that it is time to review? Should that not be in the legislation?

Dr Holland: I can see the merit and benefit of having something in the legislation about having periodic reviews, but the difficulty lies in where you are with the process. At the outset and in the first few years, you want to keep it under review fairly regularly, and you may do something 12, 18 or however many months in and 12 or 18 months after that. Once you get to the point when the offence is fairly well established, you might have a much longer gap, and, for argument's sake, it could be five years.

That would be the only difficulty in making provision to review the guidance and legislation. It could bind you and force reviews to be undertaken at times when it is not necessarily appropriate, but it could certainly be part of the more general engagement with statutory and voluntary and community sector partners. I would like to think that through those discussions, and through the review and

monitoring of the measure more generally, we would have a fairly good feel for when the guidance needs to be reviewed or adjusted. Of course, we will want to take into account the views of operational partners on the ground on how it is working or not working for them.

Ms Dillon: My question has been answered in a response to Paul. I really think that the guidelines and guidance on any such legislation are vital, particularly in the training of those who will be dealing with it operationally. We want to make sure that it is right. Although the Committee does not necessarily have a scrutiny role in the guidance, members are here to assist. We will only add to it; we will not want to take away from or demean it in any way, so it will be important for us have sight of it before the legislation goes through. That will be helpful to us. If we feel that changes need to be made, we need to know that that will be done, because we will be doing only what is positive and to the benefit of the guidance.

Dr Holland: Yes, for that wider good. I am more than happy to share the guidance with the Committee In due course.

Ms Dillon: Thank you.

The Chairperson (Mr Givan): When?

Dr Holland: At this stage, we do not have a sense of when it will be finalised, but I am more than happy that it comes back to the Committee.

The Chairperson (Mr Givan): Even without the legal requirement to issue guidance, all of the relevant authorities involved in this will need guidance for their practitioners. In one sense, it is stating the obvious because you are not going to pass legislation that the police and the PPS will not look at and ask, "How will we operate this?".

Dr Holland: As you say, you are never going to have a situation where we will not have guidance, and operational partners will also have their own take on that.

The Chairperson (Mr Givan): Turning to clause 26 — the prohibition of cross-examination in person — I have no issues on that. No issues were raised on clauses 27 and 28 either. So, I think that that is us. Thank you. It is much appreciated.

Dr Holland: It goes without saying that we are more than happy to come back to the Committee at any point or answer any further queries that you may have in relation to the Bill and its provisions.

Mr Frew: Thank you. There were a couple of areas on which you coming back to us as soon as possible would be appreciated. Thank you.

Dr Holland: Thank you.