



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings  
Bill: Informal Deliberations

10 September 2020

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

### Domestic Abuse and Family Proceedings Bill: Informal Deliberations

10 September 2020

**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

Ms Emma Rogan

Miss Rachel Woods

**The Chairperson (Mr Givan):** The relevant papers are in the meeting pack. In particular, I draw Committee members' attention to the Committee Clerk's memo.

Departmental and PSNI officials attended the meeting last week to discuss the issues that were raised in the evidence received on the Bill and to answer members' questions. During the evidence session, officials agreed to provide further information on a number of issues. That information was requested for today's meeting. A Hansard report of the oral evidence session was received yesterday and is in the tabled pack.

Responses came from the Department this morning. A hard copy that follows up on the information that we requested at last week's meeting has been provided for members. The responses were received just this morning so were not emailed to members, but a hard copy has been provided.

In the informal deliberations, we will go through the Bill's clauses and the Department's proposed amendments. The informal deliberations, as we have discussed, provide an opportunity for members to discuss the issues that have been raised; to indicate whether they are content with the clauses and the proposed amendments; to indicate whether they require any further information or clarification, albeit there is a very narrow window in which to get that; and to indicate where they wish to amend particular clauses that have been prepared in the Bill or, indeed, are minded to reject particular clauses. If members need more time to consider a particular clause or particular clauses, the Committee can continue the deliberations next week.

When accepting a clause or amendment, members can express views and make comments. The Committee can also make recommendations. For example, it can make recommendations about the implementation of, or outworking of, a clause, and that can be reflected in the Committee report on the Bill. If the Committee is minded to make amendments to any of the clauses, the purpose and desired outcome of the amendment needs to be clarified. The Committee may then wish to write to the Minister to ask whether she accepts the proposed change and will table an amendment. Alternatively,

or, indeed, at the same time, the Committee can ask for a draft amendment to be prepared by the Bill Clerk for its consideration.

A Bill Clerk Stephanie is in attendance to listen to the Committee's deliberations. If the Committee wishes to draft any amendments to be prepared, she can participate in the meeting, provide advice and seek clarification on the purpose of the proposed amendment, if that is necessary. Advice from a Bill Clerk to a Committee takes place in closed session. That will happen at the end of the deliberations rather than during them, in case there is more than one proposed amendment to discuss. Members are hopefully clear on that. Next week, we will look at the broader amendments that some people want that are not currently in the Bill. Today's meeting is on the clauses that are in the current Bill, as provided by the Department.

Please feel free to comment, because that will help inform the Committee report, which will be relied on when we take the legislation back to the Assembly. It is important that members' views on it are referenced at this stage.

Sinéad, you are welcome to the meeting. We are just going to start the informal clause-by-clause consideration, so you have not missed anything of import just yet.

We will start with clauses 1 to 4. Clause 1 sets out the domestic abuse offence. Clause 2 sets out what constitutes the abusive behaviour, for the purposes of the offence. Clause 3 provides that, for the offence to be committed, it is not necessary to prove that the behaviour actually causes the partner or connected persons to suffer physical or psychological harm or that the effects of the behaviour actually caused harm but rather that it is sufficient that a reasonable person would consider that the behaviour would be likely to result in harm. Clause 4 sets out what is meant by behaviour, for the purpose of the legislation, and how it can be carried out.

The key issues that have been raised, from the evidence received and from what we discussed with officials last week, cover whether the definition of domestic abuse is needed in the legislation; whether the scope of the offence is so broad that it dilutes the key aspects of domestic abuse and the seriousness of the offence; whether key terms, such as "psychological harm", "harm" and "reckless" are clear enough or require further definition, either in the legislation or the guidance to be provided by the Department; whether the description of abusive behaviour is adequate or whether the term "coercive control" should be included; whether the new offence, as currently drafted, captures parental alienation, deliberate abuse of child contact orders and spiritual abuse, and reference to those in the guidance being helpful; whether there is the need to provide for prosecutions where no actual harm has been caused, and whether there are likely to be obstacles to such prosecutions; and whether the definitional lines in the Bill are correct or the bar of criminality has been set too low, potentially leading to the unintentional criminalisation of behaviour and wrong cases being prosecuted, given the wide personal connection.

Members, that covers, as far as I am aware, the broad issues that we have considered; and we have the Department's responses. At this stage, I will invite member's views on clauses 1, 2, 3 and 4 and on those issues. Are there any comments that members wish to make?

**Ms Dillon:** One of the issues raised by Women's Aid was about having specific gender definition in the Bill. I have not really heard an argument for how that would strengthen the Bill, although I am not opposed to it. We have heard from other groups and organisations about that. Given the fact that we have quite broad scope for who will be included in the legislation, to have a gender definition might hinder that side of it. I have a wee bit of concern about that.

There is no doubt that most of the victims of domestic abuse are female and that most of the perpetrators are male, even where the victim is male. On that basis, you could say that there should be a gender definition, but I have not really heard anything that supports the argument that having one would strengthen the Bill in any way. I have concerns because some groups and organisations have outlined the fact that there are male victims as well. That is the first thing.

We had a fairly good conversation last week about why clause 3 is required. There are many victims out there who do not realise that they are a victim, either because they have been a victim for such a length of time that the behaviour has become normalised or because they are vulnerable and do not recognise what has happened to them as being abuse. Clause 3 is vital to the Bill, particularly because a wide scope of persons are covered by it.

**The Chairperson (Mr Givan):** Clause 3 is referenced in the tabled information. That is an issue that we have talked about at length.

There is interference from mobile phones. Hansard is not picking up everything, and it is important that they do for the purposes of this report. Anyone who has a mobile, please put it away. Before I start rebuking other people, I must say that I do not think that it is me.

We have considered the definition and gender issues. When I look at all four clauses, given my party's view on this, I am content with the explanations that the Department has given and the justification for how it views the operation of the Bill, albeit, I note the concerns that others have raised.

**Miss Woods:** I will pick up on Linda's point on clause 3 about the reflection of victims' experiences from the Committee consultation, but, in general, there is a reason for it being in there. The reason became very clear in the Scottish legislation because it reflects the reality of life for victims and survivors of domestic abuse. Certainly, I would be really concerned if clause 3 was removed: it must remain in the Bill.

I brought up the definition in clause 1 last week. We are holding up Scottish legislation as the gold standard, and everything else is being drawn from it. However, our Bill has notable differences in its scope. I discussed that with the Department, and it said that it was reflecting the definition outlined in the 2016 strategy. However, is basing the definition in our legislation on the definition in a strategy the best way of doing it? Is the strategy working as well as it could, based on that definition?

I have a wee bit of concern that a definition in legislation is based on a strategy that is not legally defined and which might not be based on a specific need to remedy a specific problem. I was trying to tease out the rationale last week for the differences between the Scottish and Northern Irish legislation as it stands. I do not feel that I have had enough information on why those differences exist.

**The Chairperson (Mr Givan):** Just to check, is the definition about personal connection?

**Miss Woods:** Yes. Clause 1 in the Scottish legislation says:

*"is abusive of... partner or ex-partner".*

What constitutes abusive behaviour is similar; it has the reasonable person, recklessness, the intent of coercive behaviour, psychological harm and references fear, alarm and distress. However, the Scottish legislation is confined to partners and ex-partners. Our legislation has a personal connection list and is a lot bigger. According to the Department last week, that seems to be because of the definition of abuse in the domestic and sexual abuse strategy. Where did the definition in the strategy come from? Is it from feedback from the task-and-finish groups? I did not get enough information about clause 1 last week.

**The Chairperson (Mr Givan):** Christine, can you provide an outline of the Department's responses about definitions in order to remind members? The issue of definitions has been raised before by other groups, so I would like to remind members of its response.

**The Committee Clerk:** A general issue was raised about the fact that the Bill did not provide a specific definition of domestic abuse. In its written response, the Department indicated that it had:

*"considered, in conjunction with core statutory and voluntary sector partners, whether to include a statutory definition of domestic abuse in the Bill ahead of it being finalised. Following this it was agreed that, given the detail set out in the Bill in relation to what constitutes abusive behaviour (and therefore domestic abuse), a standalone definition was unnecessary. Furthermore, to provide for a definition in the Bill would not materially change the provisions or serve a legislative purpose, given that any such provision would be likely to simply state domestic abuse means abusive behaviour as set out in Clause 2."*

When Rachel raised the issue of the wider definition covering personal connection, officials said last week:

*"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."*

Under clause 5, the Department said, in its written submission to the Committee:

*"In considering the scope of family members the Department was keen to ensure that the range was comprehensive but not so broad, covering all possible family members, that it would negatively and adversely impact upon what society and the courts consider to be domestic abuse, in the context of committing an offence and the seriousness associated with this."*

The Department continued:

*"It is however more comprehensive than other regions in that family members and partners/former partners do not have to live together for the offence to occur, ensuring that for example the abuse of parents or grandparents who do not live with the person can be covered as well as abuse where individuals have separated, given that this is the point at which abuse can often escalate further. This also reflects the current police position whereby family members are deemed to include mother, father, brother, sister, son, daughter, grandparents, in-laws or stepfamily. Both police and PPS have indicated that they are content with the current scope of family member in the Bill."*

I know that they developed the strategy in conjunction with all the key stakeholders, so the assumption is that the definition that was in the strategy was what was eventually agreed.

**The Chairperson (Mr Givan):** I had also considered that aspect: is it so broad that it does not tackle the core of the issue? When I weighed it up, I thought about whether that would mean excluding those other people who would then be covered by what is in the provisions. I suppose that it is about striking a balance.

**Ms Dillon:** Chair, I looked at the same issue and thought about what Rachel raised last week, and we discussed it during the week. I felt that this potentially future-proofs the legislation, because you could be looking at having to create another piece of legislation for those other people if you excluded them from this Bill. Balanced against that is the question of whether the legislation's initial intent concerning partners and ex-partners is weakened, and I could not establish that it did weaken it. The police and judiciary have all the powers in relation to those relationships through this legislation, so that is how I came to the judgement that I do not take that view. I am not hard and fast on this; I remain to be convinced. However, I am of the view, at this time, that including all those relationships does future-proof it by not having to come up with another piece of legislation for those individuals.

**The Chairperson (Mr Givan):** Rachel, you expressed concern about whether the legislation might be too broad to be effective and about the definition in the 2016 strategy, and I am happy that we ask for that information. It is a question of whether we wait for information to hold back on taking an informal view on whether the Committee supports clauses 1 to 4. I am content that we proceed with clauses 1 to 4, if members are content.

**Miss Woods:** Maybe it should be a different way round so that it is not basing the definition in legislation on a strategy. Really, a strategy should come from legislation, but maybe that is just my trying to figure this out. I appreciate your comments, Chair, and Linda's.

There is a need for other legislation. The Commissioner for Older People raised the need for adult safeguarding. We have the child protection legislation and the Children Order, and I note that an amendment is proposed by the Department, so there is still a need for additional legislation to cover other family relationships and abuse in family situations. Abuse in any way is wrong, and we need to reflect that in every piece of legislation. I have concerns that this may water down its effectiveness slightly, especially if we are basing our legislation on Scotland. Scotland is so vastly different, and Scottish legislation has been effective in the last year.

I note that a report came out on Tuesday on how much the Scottish legislation has been used, but this is much more focused on addressing the specific concern of domestic abuse between partners. That is where this has come from. I am not going to hold back on a Committee position on clauses 1 to 4 based on that, but I have concerns about its effectiveness and how it can be enforced by the judiciary,

the police and the PPS in getting prosecutions. We are basing a definition on a strategy that is up for review every year and which will need to be changed after this legislation comes in.

**The Chairperson (Mr Givan):** Your views are on the record now, and we will take a formal vote on it later. However, I am content, members, that we proceed. The informal view of the Committee at large is that we proceed with clauses 1 to 4.

We will ask for the information about where this came from in the 2016 strategy for the meeting on the formal consideration of the clause. That would be helpful.

**The Committee Clerk:** We will try to get it for next week's meeting. We are not doing formal clause-by-clause consideration then anyway, so hopefully we will have it before that.

**Miss Woods:** Thank you.

**The Chairperson (Mr Givan):** Let us deal with clauses 5 and 18, because clause 18 deals with the meaning of "personal connection", and we have touched on it in the personal connections between family members. The key issues that were raised in relation to these clauses, and the evidence that we discussed with officials last week, relate to whether "personal connection", as defined in the Bill, is wide enough or whether it needs to be expanded or narrowed. Do members wish to express any views on clauses 5 and 18? I take it that your previous comments, Rachel, apply to this aspect of personal connection.

Are members content with clauses 5 and 18?

**Miss Woods:** Voice of Young People in Care (VOYPIC) raised with me the need for clarity on kinship and caring relationships. Obviously, that comes under parental responsibilities, but we should have it written into the legislation. The Department said that, in its view, and in that of the Departmental Solicitor's Office (DSO), this type of relationship would be covered, but I would be interested to see that opinion, if possible.

**Ms Dillon:** On the same point, the Department said that it would be covered, but it specified stepfamilies. Why not specify foster families, adoptive families and even kinship care? Including those terms in the legislation would ensure that those families were not excluded.

**The Chairperson (Mr Givan):** Is that covered in the Department's response?

**The Committee Clerk:** Last week, it confirmed that, in its view, what was in the Bill would cover those relationships, but it used the term "affinity". It does not specify those particular terms.

**Ms Dillon:** The Department has specified "stepfamilies", so why not specify the others? We are not asking for a big change; it should be fairly easy to make. It was something that I had noted as well.

**The Chairperson (Mr Givan):** OK. That is at clause 18(5)(a):

*"a relationship of the half blood or by affinity is to be treated as a relationship".*

So, it is in that area that members are asking whether we can have kinship specified in the legislation.

**The Committee Clerk:** It was raised in the evidence whether affinity would cover relationships such as adoptive parent/child, foster parent/child, kinship carer or child relationships in those cases. The Department said that, in its view, such relationships fell within the term "affinity". It is just about whether the Committee would like all those specified now or just —.

**The Chairperson (Mr Givan):** I wonder whether it is about removing the word "affinity" and replacing it with a detailed list of what "affinity" is understood to cover, or is there a danger that, in removing "affinity", we do not capture something. That is what I would like to know.

**Ms Dillon:** It is about establishing where the Department's understanding of what "affinity" means comes from. Is there something written down about what "affinity" is exactly, around those kinds of

relationships? I understand your concerns, Chair: by taking out "affinity", do you potentially leave somebody out if you start listing everybody? I have no issue if we can establish that.

**The Committee Clerk:** If members are content, we can ask the Department where its understanding of "affinity" comes from and whether there is any reason why it cannot specify in the Bill those relationships that I listed.

**The Chairperson (Mr Givan):** So, we are content with the other aspects of clauses 5 and 18, but we will seek clarity on whether "affinity" covers the expansive areas that it should cover, whether there is a need to specify those relationships, or whether there is any objection to specifying them in the legislation. Then we can come back to that aspect of clause 18.

Clauses 6 and 19 provide that, in relation to the matter of two individuals being personally connected, the prosecutor may serve notice proposing that this is taken as established, unless the personal connection is challenged. One minor suggestion was made in the evidence relating to the drafting of the clause, and the Department responded, indicating that, legislatively, it was considered unnecessary. Do members have any comments on clauses 6 and 19? You are content?

**Ms Dillon:** Yes.

**The Chairperson (Mr Givan):** Clauses 7 and 20 are about how notice is to be served. They provide for the service of notices in relation to clause 6 for the purpose of challenging that a relationship is to be taken as established and clarify the meaning of certain terms. A number of minor suggestions was made in the evidence, and the Department responded, indicating that those could be dealt with operationally. The Department advised that it understands that the concerns raised by Women's Aid about the service of notices relate to protection orders and the notification of those to victims rather than the service of the new notices relating to the personal relationship being challenged. Do members have any views on clauses 7 and 20 on how notices are to be served? Are members content?

**Ms Dillon:** Yes.

**The Chairperson (Mr Givan):** Clause 8 provides for aggravation of the domestic abuse offence where a person in the relationship is under the age of 18. The aggravation applies where it is shown that, at any time in committing the offence, it has been committed against someone who was under the age of 18. The key issues raised included the NSPCC's view that the offence should apply only where A and B are over 16 and the need for a full review of the family courts, including a review of the duty to protect. Other vulnerabilities should be considered as aggravating factors. There is a need to ensure that young people are not punished unduly harshly: for example, in a case where both the perpetrator and the victim are 17 years old and in a relationship and there is no evidence of the abuser taking advantage of the victim's young age.

Members, are there any views on clause 8?

**Ms Dillon:** While taking on board some of the concerns that have been raised, I certainly cannot think how you could amend the clause to take in those concerns, and I have not heard any suggestions on how you might do so. You would like to think that the protections in place at the minute ensure that the Public Prosecution Service (PPS), the PSNI and the judiciary are not unduly harsh in their approach to young people. As I say, I understand the concerns, and I share some of them, but there could be concerns on both sides of the argument, and I just do not see how you could amend the clause to address that. As I say, I have not heard any suggestions as to how it could be amended to take in or address the concerns.

**The Chairperson (Mr Givan):** Christine, do you want to reference how the Department responded in dealing with those concerns so that we have that noted?

**The Committee Clerk:** Sure. In its written response, it said:

*"While appreciating the concerns expressed it is important to ensure that the offence is available in cases of domestic abuse".*

On aggravation, it says:

*"As with all other offences, in deciding whether to charge a young person, consideration will be given to the circumstances of the case, whether the test for public prosecution (including a public interest test) is met and what alternative disposals may be available.*

*Youth Justice Agency staff are trained to recognise and respond to issues of domestic abuse in all its forms, whether a child is a victim or perpetrator. They are required to negotiate the procedural and process requirements of both the justice and safeguarding systems as they impact on children and adults, whilst supporting service users ... Specialised interventions are delivered as part of community or court-ordered disposals, often in collaboration with other statutory and voluntary organisations.*

*The experience in other jurisdictions are [sic] that the number of young people charged with an offence has been relatively low. We understand that in Scotland, for example, around 1.5% of those reported and prosecuted were under the age of 18 ... while in England and Wales we understand that only two individuals under the age of 18 have been convicted."*

Children and young people are covered by the offence in two ways: where they are in a relationship or a family member, except where parental responsibility applies.

**The Chairperson (Mr Givan):** I am content to go with how that is being addressed by the Department, notwithstanding the issue that has been raised by the NSPCC.

**The Committee Clerk:** I think that we will come on to this in one of the later clauses, but DOJ has highlighted the fact that it is discussing with colleagues in the Department of Health a possible amendment to child protection provisions to ensure that there is adequate protection for a child who is ill-treated. I think that we cover that slightly later in clause 9 or clause 11. It is looking at an amendment to make sure that the child protection legislation is satisfactory.

**The Chairperson (Mr Givan):** OK. Members?

**Miss Woods:** On the potential amendment, do we have any further information from the Department of Health about what that is?

**The Chairperson (Mr Givan):** No. The one that you have is for clause 12A, but that does not relate to this area. We do not have it yet. In your tabled letters, you will see it on page 3, under —.

**The Committee Clerk:** Officials are continuing discussions with colleagues in the Department of Health around the format of the amendment.

**The Chairperson (Mr Givan):** It outlines what it plans to cover.

**The Committee Clerk:** Yes.

**Miss Woods:** So we do not have any details of what it is yet?

**The Chairperson (Mr Givan):** No, we do not have the actual text, just a commitment. We will get it as soon as possible.

**The Committee Clerk:** Yes, we have asked for it, and we have advised that the Committee is unlikely to make a decision until it sees the text of the amendment.

**The Chairperson (Mr Givan):** Are members content with clause 8 as drafted?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 9 provides for aggravation of the domestic abuse offence where a child is involved who is not the accused or the victim of the domestic abuse offence. The key issues that were discussed with officials last week related to whether the clause, as currently worded, can apply in situations in which the child does not directly witness the abuse and whether, assuming it should apply in those circumstances, the wording should more clearly reflect that children are

adversely affected beyond occasions on which they only see, hear or are present. Do members have any views on clause 9?

**Ms Dillon:** There was suggestion made by Women's Aid and a few other contributors that children be considered as victims in their own right. That is potentially something that we should consider.

**The Committee Clerk:** Women's Aid raised that point in its written response and called for:

*"children to be treated as victims in their own right and not as associated persons."*

**Ms Dillon:** A few other organisations raised the point under other clauses as well.

**Ms Dolan:** Action for Children raised it as well.

**The Committee Clerk:** The Department said in its written response that it:

*"gave careful consideration to the scope of the domestic abuse offence".*

**The Chairperson (Mr Givan):** In response to the Action for Children point, the Department has said, in its written response, that it had carefully considered:

*"the scope of the domestic abuse offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member (except where parental responsibility applies, in order to prevent criminalisation of this as a domestic abuse matter) and that aggravation related to a child could be reflected while preventing criminalisation of parental responsibility."*

**The Committee Clerk:** The Department continues by saying that it is looking at an amendment to Health legislation to provide protection. It goes on to state in its written response:

*"No other jurisdiction locally provides for criminalisation in relation to parental responsibility ... while our provisions in relation to the offence and children go further than other jurisdictions already provide for. In England and Wales the coercive control offence is available for victims under the age of 16, except where parental responsibility applies, while in Scotland and the Republic of Ireland the offence does not apply to family members."*

**Mr Dunne:** We are all aware of how huge an issue domestic abuse is and how the PSNI is heavily involved in policing it. It concerns me how the aggravation will be measured. The requirement is simply that the child must see, hear or be present. How will that be measured? If a child is present at a family dispute, which sadly is a very regular occurrence, how will that be measured? Is it not indirect abuse to the child rather than direct abuse?

**The Chairperson (Mr Givan):** The Department has said that, even when the child is not aware of it, it will be an offence. That was one of the concerns. If a child therefore sees or hears the incident, it does not necessarily need to be aware that the behaviour is abuse, by which I mean that it does not need to understand what is taking place.

**Mr Frew:** May I come in? Have you finished on that point, Gordon?

**Mr Dunne:** Yes.

**The Chairperson (Mr Givan):** Rachel had been trying to get in.

**Miss Woods:** Go on ahead.

**Mr Frew:** The point that Gordon has raised is a valid one, and it is one that we tussled with Veronica on last week. The presence of a child is a big issue, because there could be an implied threat imposed on the domestic violence victim that the child would become involved that would make the victim do all sorts of things to comply. The presence of a child downstairs or upstairs could therefore add so much

more pressure, weight and malice to a threat. That is why it is so important that such circumstances be covered.

**Mr Dunne:** I appreciate that it is there and is necessary, but how it will be applied is the big challenge. If it is a family dispute that, sadly, happens often, how deep does the damage have to be before it becomes an offence?

**The Committee Clerk:** Last week, officials indicated that you could have a situation in which the child is used to abuse another individual. Clause 9(2)(b) states:

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

They indicated that the child could be in another room in the house — they could be in a bedroom while the abuse was taking place in the living room — and, potentially, there is scope for that to be covered. I think that, Rachel, you asked them to clarify whether it is covered in the Scottish approach. The response that we received this morning states:

*"The Scotland approach provides that the domestic abuse offence is so aggravated if a child sees, hears or is present during an incident of behaviour that A directs at B as part of the course of behaviour. It is considered that the offence that we are putting through in relation to child aggravation is wider than the Scottish offence in that there is no requirement for a reasonable person to consider that the behaviour would adversely impact on a child or that the child has to live with the victim or offender. The requirement in the Bill is simply that the child sees, hears or is present. The Department is also of the view that the Scottish provisions do not extend to abuse that occurs outside the home; that is, where a child lives in another household from that in which the violence occurs, rather it is about the extent to which evidence of the impact on the child is needed".*

I think that the Department is saying that it mirrors the Scottish legislation, but is slightly wider.

**Miss Woods:** Just picking up on that, in the Scottish legislation, 5(5) states:

*"For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—*

*(a) has ever had any—*

*(i) awareness of A's behaviour, or*

*(ii) understanding of the nature of A's behaviour, or*

*(b) has ever been adversely affected by A's behaviour."*

Therefore, it is different. I appreciate that the Department has said that it may cover that. However, it is not specifically worded in our legislation. I can, therefore, see where Gordon is coming from with regard to the enforcement of that and how evidence is gathered on it. In the Scottish legislation, there is an assumption that harm has been done. It does not state the level. The Scottish legislation refers specifically to:

*"Evidence from a single source".*

That reflects the way in which they gather evidence for prosecutions, which needs to come from two or more sources. It is, therefore, to change that. In order to have effective enforcement, evidence gathering by, say, the police, or a successful application to the Public Prosecution Service, does there not need to be an assumption in our legislation that harm has been caused, rather than it saying that the child sees, hears or is present during the abuse? I see that as quite restrictive. Even though that is in the Scottish legislation, it also has 5(5) that states that there does not need to be an awareness of the behaviour.

I see that there could be issues down the line. Someone could say, "Well, the child was asleep". That gets you into very messy ethical and moral considerations about what you can and cannot do when someone is unconscious. It gets into very big philosophical arguments about the nature of consciousness and what you can and cannot experience. It also gets into very messy details about the

trauma and adverse childhood experiences (ACE), about which we all need to be aware. Therefore, there needs to be a little bit more in clause 9 to reflect the Scottish legislation with regard to awareness and assumption.

**Ms Dillon:** I agree with Rachel. She is right. The Department used the case — I apologise that I cannot remember the name of the family, but I remember listening to them on the radio at the time — of the two young men whose mother and sister were killed.

**The Chairperson (Mr Givan):** Hart.

**Ms Dillon:** For many years, they were not aware of what was going on. Their father had never physically attacked their mother, but he had done things. For example, one of the children had a nut allergy, and he would have brought nuts into the house. He might not even have said anything but would have intimated that he would make sure that the child was given nuts. It was very much below the radar. It would be very difficult to explain how that was abuse, but it was. Those two guys only realised it as they got older, became men and realised that what had gone on in the home was not right. They removed their mother and sister from the home, and the father then murdered both of them once he had lost control. However, he had never been physically abusive before that. He might have raised his voice, for example, but it was more a subtle constant abuse for their whole lives. What Rachel talked about could possibly be captured in what she is saying. We may need to look at that.

**The Chairperson (Mr Givan):** So it is how we can include that in the legislation. The Committee needs to consider the issue of awareness of abuse, how the Scottish legislation captures that while ours does not. We should ask whether there is there a potential amendment to strengthen our legislation in respect of that.

Points were made earlier, Linda, about the child being specified. Can you elaborate on that? What was the issue? What was it you wanted? You cited what Women's Aid said they wanted in clause 9.

**Ms Dillon:** They said that the child should be recognised as a victim in their own right.

**The Chairperson (Mr Givan):** As opposed to?

**Ms Dillon:** As opposed to just being somebody who —.

**The Chairperson (Mr Givan):** If they were an aggravating factor of someone else suffering domestic abuse.

**The Committee Clerk:** That is where the Department suggests that there should be an amendment to the Health legislation.

**Ms Dillon:** If we could see the wording of that, it might address it, but we have not seen that yet.

**The Chairperson (Mr Givan):** That is where, in clause 11, they say that they will look at this to make it explicit where a child is ill-treated. Let us pick up on that in clause 11.

**Mr Beattie:** Does that mean that, if there are multiple children in a home and each one is classed as a victim, we are talking about each one being an individual, separate offence? If you have six children and a wife, are we saying that — I fully agree with you, Linda on this — that those are seven offences and that each has to be treated as an individual offence and taken through in that manner? Is that where we are going? It would be right to do that. If you treat each one as an individual victim, that is the route that we are going down. Is that correct?

**The Committee Clerk:** I understand that they look at the abusive incidents. If it is an abusive incident, that is one abusive incident. If there were three children in the house, the aggravating factor is that there are three children affected, which might be considered more aggravating.

**Mr Beattie:** That is if you go down the route of an aggravating factor. The six kids are an aggravating factor to the one overall case, but if you are treating every child as an individual victim, which they would be, each child could have, and should have, legal representation. I have seen a family in which

the three children have each had their own individual legal representation in a particular case. It might be worth clarifying.

**The Committee Clerk:** That is where the Department suggests an amendment to the Health legislation to provide protection for children, making it very clear that that protection is available. I assume that each child could —.

**Mr Beattie:** I am not saying that it is wrong. I would just like clarification of it so that I understand how it would work in practice.

**The Chairperson (Mr Givan):** We are going to pick up on that aspect of the child in clause 11.

Are members content that, in clause 9, we are going to look at the awareness of the abusive behaviour for a child and whether the legislation needs to be strengthened to cover that issue? We will incorporate the Scottish examples highlighted as a potential form of wording for that.

With the exception of that area, we are content with clause 9. Let us look at whether it needs to be added to cover that issue.

Clause 10 provides that the domestic abuse offence can be constituted by a course of behaviour engaged in by an accused occurring wholly or partly outside the United Kingdom when the accused is habitually resident in Northern Ireland or is a United Kingdom national.

The main issue raised in relation to this clause was by the former Attorney General John Larkin QC, who questioned whether the clause was outside the Assembly's legislative competence. Legal advice, and the Minister's position, was provided to the Committee last week.

Are members content with the clause based on the responses that we have received?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clauses 11 and 17 provide that the domestic abuse offence would not apply where an individual has parental responsibility for an individual under the age of 18, as it is considered that, in those instances, wider child protection provisions apply.

Clause 17 provides that an offence cannot be aggravated if the partner or connected person is under 18 years of age and the accused has parental responsibility for them, as, again, it is considered that there are other provisions that deal with, and should be more appropriately used for, direct abuse of a child or young person by their parent or carer.

The key issues raised in relation to those clauses in the evidence, and discussed with officials last week, relate to whether the existing suite of children's legislation provides a direct equivalent to the provisions in the Bill. The Department, in its response, indicated that it:

*"is having discussions with colleagues in the Department of Health around a possible amendment to child protection provisions (contained in health legislation but amendment of which could be brought forward through the Domestic Abuse Bill subject to agreement) to make it explicit that where a child is ill treated, that this would also include non-physical abuse. Such provision would make clear that it would be an offence whether the suffering or injury caused to a child was physical or psychological in nature, for example isolation, humiliation or bullying."*

Officials have agreed to provide further information as soon as they have it.

That covers the issues that we have been talking about around the need to strengthen provisions for the child. I would like to see the amendment brought forward, and I am content with what the Department has indicated as the best way to do that, namely by amending the Health legislation. I want to see this as the vehicle to do that, but we do not have proposed wording for members to consider at this stage.

Are members content to park clause 11 until we get the precise wording, so that it covers what we are trying to do?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 12 provides that it is a defence to the domestic abuse offence for the accused to show that the course of behaviour was, in the particular circumstance, reasonable.

The key issues raised in respect of this clause, supported by the PPS, the Bar Council and the Attorney General but opposed by many key stakeholders, include the following: could this defence provide a loophole for perpetrators to exploit by presenting evidence that the conduct was reasonable, resulting in vulnerable people being abused? If this defence was removed from the Bill, would the balance of the legislation be out of kilter, given the wide personal connection and scope of the new offence provided for in the other provisions? Is the wording appropriate or too broad? Would it be helpful to include, in either the explanatory and financial memorandum or the guidance, further detail on how this defence will operate and the situations envisaged in which it would be used?

**Ms Dillon:** I would like to see some detail in the guidance, but I accept the arguments, particularly from the legal profession, for having it in there and the fact that it is in other legislation. I totally understand the concerns raised, but they could happen anyway regardless of whether this is in the legislation. I think that perpetrators will use any and all defence at their disposal, and it is their right to do so. Where there is most definitely abuse, as in any case, you are going to have to be able to prove that. It does, on balance, probably need to be in there, and I accept that. I am certainly open to listening to other views. I am not hard and fast on that. From looking at everything and hearing everything that we have heard from the legal profession and the Department, even the concerns that have been raised, I am content that it should remain, but I am certainly open to listening to other views.

**Mr Frew:** I agree with Linda. We need to keep it in. If we are using a reasonableness test throughout the other clauses, we should have that common-sense balance. It is tested on a couple of issues: the vulnerability of a person and the actions conducted by the said perpetrator and whether they are reasonable or not. There may well be times when an action is deemed reasonable when it was excessive or inappropriate and something else could have been done. That would play out in the court.

As you, rightly, say, anybody is entitled to a defence and to ride that defence in court. To remove it would do an injustice to the Bill and put us in shaky territory. I just think that it is a balance that needs to be there. It is something that I think should not have to be said, as it would play out through the course of a court case, but it is good that it is in there. I understand the rationale of why people do not like it and do not want it. We want to see people convicted of this offence, there is no doubt about that, for treating others as victims and creating victims. We want to see this law punish the perpetrators, but we also need to make sure that it is a reasonable law, and this provision adds to that.

**Miss Woods:** I certainly have concerns about clause 12. I expressed them last week on how it could be used by the perpetrator against a victim in certain situations, especially when alcohol and addiction is involved or other issues caused by abuse. As regards the use of the reasonableness defence, in the research that was initially given to us, there were a number of examples of it in other legislation, the Serious Crime Act 2015, and also in Scotland, but in a different scope of the Bill.

To put my mind at ease, do we have any examples of where the reasonableness defence has been used inappropriately? It is not in the research, and I appreciate that it would involve a massive amount of qualitative research. Significant concerns have been raised by organisations and respondents to the consultation on clause 12, and we need to allay the fears that the reasonableness defence is not going to be used inappropriately.

**Ms Dillon:** Chair, I am not cutting across anybody, am I?

**The Chairperson (Mr Givan):** No.

**Ms Dillon:** On the point that Rachel is making, I fully understand those concerns. In my experience, particularly around tribunals relating to benefits, barristers and the legal profession chair those, and they would not accept that having an alcohol or an addiction problem would remove a person's ability to look after their own financial affairs. When I looked at that clause, I was concerned for all the same reasons, because we all know that, if victims are abused over a period of time, they will, in most cases, become mentally unwell at the very least, but, very often, they will suffer from addiction problems. I would like to think that if those tribunals do not accept it, a court would not accept it either. That has been my experience on almost all occasions when that has been an issue at a tribunal, and that is a much more informal setting than a courtroom. That gave me some reassurance. Obviously,

that is not research; it is anecdotal, but I have been doing tribunals for quite some time and have done hundreds or thousands of them. That has been my experience to date with many different mixes of chairpersons and very diverse panels of men and women and older and younger people. That gave me some confidence about having this in the legislation.

**The Chairperson (Mr Givan):** Likewise, that is my approach to it. The reassurance is that it has not been the practice, as you outlined, and that officials have made comments and the tests need to be applied as to whether or not an action is reasonable. Ultimately, it will be for a judge to determine whether that is reasonable. It is not enough for the perpetrator to say, "It was reasonable in my mind". It is not up to the perpetrator to determine whether it is reasonable or not. There are safeguards in the legislation that ensure that this is not the loophole or the "get out of jail free" card, so to speak, that people are concerned it may be.

That is not to dismiss their concerns, because the kind of abuse that we are talking about is a huge problem, and there is frustration about lack of prosecutions and lack of successful prosecutions. I understand all that, but I also understand the arguments that have been made as to why this is necessary, and I am concerned that its removal would have a significant impact on what should be covered in the actual Bill. The Department has indicated that not including this provision would significantly change the way in which we need to approach the Bill.

**Ms S Bradley:** Apologies, I had audio issues. My view is very much in line with a lot of what has been said, and I am glad to come in on clause 12, because it is one that gives me concern. I accept that it has to be there, for all the reasons that we talked about before, but the bit that still jars a little bit with me is that, if the test has been met and it is considered that domestic abuse or abusive behaviour has occurred, how can we move on, on the grounds of reasonableness, to say that a situation in which there has been domestic abuse, which has been tested, is OK? I really struggle with that. Is it the case that the determination is that, because of the situation and the reasonableness test, it is not domestic abuse? Is that the determination that would be reached? The order and sequencing of that testing is still not clear in my mind.

**The Chairperson (Mr Givan):** Thank you, Sinéad. Those are some of the issues that we have covered with the Department.

**The Committee Clerk:** The written response from the Department states:

*"To make use of the defence enough evidence must be provided by the defence to satisfy the judge that the issue of reasonableness should be left before the tribunal of fact (i.e. either the judge or the jury depending on the court)."*

In other words, the person will have been charged with the offence and then has to bring forward enough evidence, and the judge has to be satisfied that there is enough evidence for it be left. It continues:

*"It is not enough simply to claim the defence and that the behaviour was reasonable. If the defence is left to the judge or jury to consider, it will be for the prosecution to prove beyond reasonable doubt that the course of behaviour was not reasonable in the particular circumstances. It is an objective test that is applied, that is would a reasonable person in possession of the same information consider the behaviour reasonable in the particular circumstances of the case? The application of the defence will need to take into account the particular circumstances of the cases, including the position of the victim. There is an evidential burden of proof on the defence, that on the balance of probabilities the actions were reasonable in the particular circumstances of the case. If the defendant fails to discharge this evidential burden they will not be able to rely on that defence."*

They also pointed out:

*"In addition, evidence of the reasonableness will have to be provided on two or more occasions, it cannot be a one off incident. It will be for the judge to decide if there is sufficient evidence".*

Reading on:

*"If the judge is satisfied that there is sufficient evidence it is then for the Public Prosecution Service to disprove the defence ... A person who used the defence and stated that they were acting in the other person's best interests but where a reasonable person with access to the same information would not find that behaviour to have been reasonable is very likely to have their defence rebutted by the prosecution".*

**Ms S Bradley:** As Linda said, how that is used in practice will be the real proof of it. I get that. We have had conversations in the past about parenting, safeguarding and all those things that are in there. I do get it, but, to be fair, I have reservations.

**The Chairperson (Mr Givan):** Notwithstanding the reservations that members have expressed, and not having heard any alternative legislative text that we can consider, on that basis, I will take it forward that, at this stage, we are content with clause 12. The comments that have been made will be part of the report. We will put that forward at the formal Consideration Stage as it is currently drafted.

Clause 13 provides that, where a charge is brought for the domestic abuse offence but a court is not satisfied that that has been committed, it is possible to convict the accused of a specified alternative offence. Key issues that we discussed with officials last week were the need for this clause, with the Department outlining that it was envisaged that an alternative offence would only be provided where it is not possible to evidence a personal connection between two individuals, which is a requirement for the domestic abuse offence, but it is considered that the behaviour would amount to harassment or stalking in terms of the new offence in due course. Those are both "course of behaviour" offences, that is, two or more incidents being needed. Members, are there any views around clause 13?

Paul, had you raised issues before?

**Mr Frew:** I will let someone else come in because I have lost my train of thought. A senior moment.

**The Chairperson (Mr Givan):** That is OK. This was picked up when you raised it at the meeting. Officials came back with a response on it. Christine, do you want to cover the Department's position?

**Mr Frew:** Oh, yes. I will come in now, while the Clerk is looking for that. It was with regard to the concern that the judge would plump for a lesser charge for a safe conviction, rather than try to push for a domestic violence charge. I remember raising that with Veronica last week. I think that, at the time, her answer assuaged my concerns.

**The Committee Clerk:** The Department highlighted:

*"it is envisaged that an alternative offence would only be provided where it is not possible to evidence a personal connection between two individuals (which is required for the offence)".*

Therefore, the domestic abuse offence could not be proved:

*"but it is considered that the behaviour would amount to harassment (or stalking in terms of the new stalking offence in due course). These are both coercive behaviour offences (that is two or more incidents). It would be for the court to determine, on conviction",*

but they seem to indicate that it would only be used where they could not prove the personal connection.

**Mr Frew:** Yes, that is right.

**The Chairperson (Mr Givan):** OK. So, members — sorry, Rachel.

**Miss Woods:** I am also losing my train of thought on this one. You can be charged with the domestic abuse offence only if you meet certain criteria, one of which is that you are personally connected, as outlined in the legislation. That being so, why does clause 13 exist? Surely:

*"where is it not possible to evidence a personal connection between two individuals",*

they will never be charged with the domestic abuse offence because they have not met the full criteria.

**The Committee Clerk:** I assume that it is because, although they can be charged, they can challenge the personal connection; a challenge can be put in. I assume that it is on that basis, but we can check with the Department whether, if a challenge is put in but the Public Prosecution Service felt that it could prove the personal connection, it would carry on with that. However, there would be the chance that, when it got to court, the personal connection is not found and, therefore, they revert to the other offence, but we can clarify that. I assume that that is why it is there.

**The Chairperson (Mr Givan):** It is a kind of safety net.

**The Committee Clerk:** You can put in a challenge to the personal connection.

**Ms S Bradley:** That was going through my mind last week when that was discussed. It really highlighted the importance of how much of this hinges on that definition of "connection". I was running through it in my mind; somebody could claim to have been in a relationship with somebody else, and the other person could deny that that relationship ever existed. An awful lot hinges on that earlier conversation piece about the definition of "connection".

**Ms Dillon:** On the back of Rachel's point and what Paul said about the Department's response addressing his concerns, there is nothing there that clearly says that, even though it said that that is its understanding. If it was in the guidance, that would give you some more reassurance around that danger of the lesser charge being used. Victims very often feel that, when it comes to perpetrators of lots of different types of crime, it is easier to get them on a lesser charge, and so the court plumps for the lesser charge and thinks, "Well, let's just get them and get this over and done with". Victims are not always satisfied with that. I would like some more reassurance around that one as well. I also see it from the other side; it is a safety net not to let somebody walk away free. Again, I have concerns, but I also have concerns about removing it.

**The Chairperson (Mr Givan):** I wonder what, if you removed it, the implications would be for the likes of the PPS taking forward a case.

**Miss Woods:** That is probably where we need some information on that. If it is not feasible to progress the charge of domestic abuse without proving the personal connection, why would there be a need for clause 13? There obviously is a need for it in some way, but, for me, there is not enough detail on why that is and how it would be implemented. I would love to have a scenario or example of why it is needed being played out. Our harassment orders and laws have been widely criticised for not being good enough. If there is a safety net, is it strong enough? What is the fallback position, and is it good enough?

**Mr Frew:** Thank you, Chair, for your indulgence. To me, it is all nailed on the definition in the first clause with regards to how people are connected. I know that I am going over old ground that was covered when I was not here, but:

*"A and B are personally connected to each other at the time".*

What does that actually mean? It strikes me also that this is where the stalking piece really needs to come in. There will be an occasion when somebody thinks that they are connected and the other one does not. That strikes me as being right at the heart of this with regard to the stalking piece. We will be talking about what is not in the Bill next week, but I am going to push it here: a clause on stalking might well help to strengthen that and iron it out. It might also help the definition in clause 1.

**The Chairperson (Mr Givan):** Christine —.

**Ms S Bradley:** Chair —.

**The Chairperson (Mr Givan):** Sorry. Christine has a bit more information that could be helpful, and then I will bring you in, Sinéad.

**The Committee Clerk:** Members, in the written correspondence on 18 May, the Department covered the issue of why the alternative available for conviction is needed and why a person would not meet the threshold for the domestic abuse offence. It said that, in some domestic offence cases, the court may not be satisfied that the accused committed the offence. This might be because the personal connection could not be proved, so the Bill provides that the person can be convicted of a specified

alternative offence if there is enough evidence to prove that offence, and it is intended to make the provisions as robust as possible. The alternative offences are the offence of harassment and putting people in fear of violence, and the stalking offences would also be included in due course. Individuals could potentially be charged with both the domestic abuse offence and an alternative offence, or offences, from the outset if it was considered appropriate, and dependent on the particular circumstances of the case.

It was also asked whether the alternative available for conviction provision could be used by barristers to try and get the accused a lesser charge of harassment. It is considered that, if the court is satisfied that the accused committed the domestic abuse offence, then they will be charged and convicted of that.

**The Chairperson (Mr Givan):** Let me bring in Sinéad and then I will come to you, Linda.

**Ms S Bradley:** Thank you, Chair. From the feedback that we had, my understanding was that that meant that, if that personal connection was not established, it was not thrown out and there was still a charge that could be brought forward. I was satisfied in hearing the explanation that was given, but I am not sure, on reflection, that the actual wording of the clause reflects the explanation. I am not sure if it is as well defined as the supplementary evidence or information that came following it.

**The Chairperson (Mr Givan):** OK.

**Ms Dillon:** My point is exactly the same as Sinéad's point. It is what I have already said: I am concerned about the wording of the clause and not the actual fact that it is there, because of the point that Sinéad made about someone potentially denying a relationship. At least we will have, particularly when we have the stalking legislation, that safety net. I think that it is important to have it there, but the wording of it is a bit concerning.

**Mr Frew:** I think that it is needed for the catch-all, but I just do not want a race to the bottom with regard to charging, so there is that two-edged sword. I think that we do need more querying on it.

**The Chairperson (Mr Givan):** Yes, OK.

**Mr Frew:** Of course, there is nothing to stop someone being charged with another offence as soon as they walk out of the court. You can be charged at any time for any offence if the police deem it to be so. You could walk out of a court having won against the charge of domestic violence, but, as soon as you walk out of the court, you could be arrested for harassment. There is nothing to stop that from happening.

**The Chairperson (Mr Givan):** Let us ask the Department to give us much more detail as to why this is necessary, because I can see the arguments both ways around all of this. I think that the point is made that the stalking aspect of legislation and the harassment, where you do not have a personal connection, would have been covered if that legislation was being taken forward.

**Ms Dillon:** Chair, can we also ask them if they have any ideas on how the wording could be changed to reflect what we are saying and what they said themselves around what the purpose of it is?

**The Chairperson (Mr Givan):** Yes. I think that we not only need to bottom out just what the Department is trying to do, but we then need to know what it is that we want it to do. I am not even clear exactly what we would want to do if we did not go with clause 13 as it is currently drafted. Could people not get prosecuted if we did not have this? The test could be too high, and the PPS could feel that it is not sure that it can prove the personal connection, and therefore it is not going to proceed with a case, and that may be an implication if you remove clause 13. However, against that is a fear that you take forward the prosecution and, during the court case, they decide, "You know what? It is proving challenging to get a conviction on these other thresholds. Let's go for clause 13, because that is a win for us". So I can see the arguments around that and what the problem is. We can get the Department to give us more justification as to why that is needed, in order to reassure members that those issues can be teased out properly.

**Ms Dillon:** Paul is right when he points out that if somebody walks out of court having been found not guilty of the domestic abuse charge, they can be rearrested under a different charge. However, that means going back to the beginning again, and we all know the challenges that we face in getting

victims to court in the first place and having successful outcomes. For that reason, I am probably a wee bit nervous about removing it, because it does not, potentially, then, give you the option in the middle of the court proceedings to say, "Right, we are really going to have difficulties here making the connection, so let's go for the lesser charge". I can see why it would be there, but again I go back to Sinéad's point about whether the wording is right. I am solid in my own thinking that it should be there, but is the wording right?

**The Chairperson (Mr Givan):** Are you content, Christine, that you have enough that we need clarity on?

**The Committee Clerk:** Yes. We will ask for clarity and we will ask whether the wording could be enhanced to reflect the meaning.

**The Chairperson (Mr Givan):** OK, members, we will proceed on the basis that we will get some more detail on it. We have teased out the dilemma quite well, but a little bit more information will be helpful in coming to a conclusion.

Clause 14 provides the penalties for the offence: 12 months or a fine, or both, on summary conviction and 14 years or a fine, or both, for conviction on indictment. Again, the main issue that was raised in the evidence related to the lack of court-mandated programmes for perpetrators of domestic abuse, the need to implement child contact orders, the need for sentencing guidelines, the approach to young persons charged with the offence and the potential use of restorative justice. All those points were related to, but not directly associated with, the text of the legislation. Do members wish to express any views on clause 14?

**Mr Frew:** I am keen to know whether all that stuff about rehabilitation and all the concerns that you have raised are usually included in such a Bill or whether that is something that comes along with a sentence.

**The Chairperson (Mr Givan):** I know that in the discussions that we had with Veronica Holland, we talked about all the guidance that will be associated with the Bill, and we touched on this clause as part of that as well. Are members content, then, with clause 14 as drafted?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 15 provides for any offence, other than the domestic abuse offence, to be aggravated by reason of involving domestic abuse. Where the aggravation is proved, the court must state on conviction that the offence is aggravated and must take the aggravation into account when determining a sentence. The court must also:

*"state how the aggravation has affected the sentence and record the conviction in a manner which shows that the offence was aggravated by reason of involving domestic abuse."*

The main points that were made in the evidence related to how repeat offences involving several different women would be handled and the need to record that aggravator throughout the whole process, from the initial police report through to a resolution in court. The Bar of Northern Ireland was of the view:

*"the requirement ... to indicate precisely how the offence affected the sentence is not necessary".*

Do members have any views on clause 15? I believe that members are content with the clause. Sinéad, do you want to come in or did you have your hand up in relation to an earlier clause? That is OK. So we are content with clause 15 as drafted.

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 16 sets out the conditions for the aggravation to apply. These are similar to the conditions that apply to the domestic abuse offence. Again, the Bar of Northern Ireland argued that clause 16(3) gives a very broad scope to this clause. Other issues raised were the same as those for clauses 1 and 2. Again, are there any issues that members wish to raise about clause 16? If not, are we content with the Department's response and justification for it?

*Members indicated assent.*

**The Chairperson (Mr Givan):** We covered clauses 17, 18, 19 and 20 when we discussed clauses 11, 5, 6 and 7. We are coming back to clause 17 along with clause 11 because there is an amendment related to it.

Clause 21 prohibits those accused of a summary offence of domestic abuse before a Magistrates' Court from the right to elect for trial by jury at the Crown Court. The Northern Ireland Human Rights Commission commented that the provision:

*"should only be utilised in exceptional circumstances".*

Do members wish to comment on clause 21? Are members content, then, with clause 21?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 22 enables complainants of the domestic abuse offence and aggravated offences to automatically be eligible for consideration of special measures when giving evidence. The key issues that were raised related to the provision of special measures for victims and survivors of domestic abuse in family and civil courts.

The Department was seeking the views of the Lord Chief Justice on an amendment to require court rules to be made. The court rules would enable a court that is hearing family proceedings to make a special measures direction in relation to a party or witness who is a victim of domestic abuse and would require a court to assume their vulnerability so that the court will be required to consider whether it is necessary to make a direction. They would also enable a court that is hearing civil proceedings to make a special measures direction in relation to a witness who is a victim of certain offences where the court is satisfied that their vulnerability is likely to diminish the quality of their evidence or otherwise affect their participation in proceedings.

Officials agreed to provide further information on the views of the Lord Chief Justice and the wording of the proposed amendment. That was requested for today's meeting, and we have that in the tabled letter from this morning. That is, I think, the amendment that you had earlier, Rachel.

**Miss Woods:** Yes. It says that it is going to be, "Before clause 26 insert—", so I am not too sure whether it is the same.

**The Chairperson (Mr Givan):** I do not have that text, or maybe it is attached to this paper. Is it?

Clause 22 is about special measures, and I am content with the response that we got, but I appreciate that we have just been given an amendment, so I am happy to look at it next week just to give members time to consider that amendment.

**Ms Dillon:** This point is not about that clause, but Women's Aid recommended having automatic entitlement in the family courts where there is evidence of domestic abuse. That is in line with some of the other conversations that we have had about where there is a case of domestic abuse — there are cases going on in the family courts — and about the fact that we should be trying to align the two. That was also a recommendation in the Gillen review. Can we write to the Department to ask it whether it intends to do that?

**The Committee Clerk:** I am just wondering whether the letter that we received this morning indicated —.

**Ms Dillon:** Does it address that?

**The Committee Clerk:** The Department has advised of another proposed amendment in relation to family proceedings:

*"would amend Article 12A of the Children (Northern Ireland) Order 1995 in consequence of the new domestic abuse offence and the child aggravator."*

That has to be agreed with the Department of Finance because private law sits with it. I am just looking to see —.

**Ms Dillon:** Is that in our tabled pack, or is it in the email that we got this morning?

**The Chairperson (Mr Givan):** It is in the tabled pack.

**The Committee Clerk:** The Department intends to bring forward an amendment so that a court considering an application for a contact or residence order will be specifically required to have regard to the conviction of the party applying for the order for the new domestic abuse offence. Does that cover what you are asking?

**Ms Dillon:** I do not think that it does. It does not, because we are talking here about special measures that are specifically outlined in clause 22 also being put in place for the family courts.

**The Chairperson (Mr Givan):** OK. I think that the text of the amendment —.

**Ms Dillon:** I think that is good, but it is not addressing the issue.

**Miss Woods:** Chair, my brief reading this morning of that amendment is that it is an amendment to the Children (Northern Ireland) Order 1995, with regard to residence and contact orders, and it is a technical amendment. From a very brief reading of the tabled pack, it is that if, within the 1995 Order, someone has been brought in front of the court, and if there is a non-molestation order in place, an approach could be taken on the harm, or threat of harm, caused to a child, but not if somebody has been convicted of a domestic abuse offence, because it is a new offence. In my reading of it, and I could be completely wrong, that is a technical amendment to include the new domestic abuse offence when it is created, rather than changing any form of structure or process in the family courts with regard to the treatment of victims of domestic abuse and their perpetrators, which I think is what Linda is trying to bring up. I certainly agree with her on the need to streamline and dovetail with the processes that go on in the family courts and the criminal courts. You do not want to have a situation where you have got special measures in place for victims in criminal courts, but, in family courts, it is exactly the same situation.

**Ms Dillon:** In some senses, that is almost where it is more important, because that is where the perpetrator is potentially going to get access to your children. If somebody is found guilty and goes to jail, that is one thing. For me personally, the protection of my child would always be the priority over whether someone goes to jail for attacking me, so, in some cases, it is actually more important in the family courts.

**The Chairperson (Mr Givan):** OK, members. From memory — I am thinking of the times that we have discussed this — our ability to legislate for how the courts operate —.

**Ms Dillon:** I am not asking for that, to be fair. I just want us to write to the Department to ask whether it is its intention to address that, because I would like something in writing from it to say that it is. I will be content if the Department comes back to say that it does intend to address it, because I agree with you that we cannot put it into this legislation, but I would like something in writing from the Department about its intentions. As I said, it was in the Gillen recommendations as well.

**The Chairperson (Mr Givan):** OK. I am happy to do that.

**Ms Dillon:** Thank you.

**The Chairperson (Mr Givan):** Rachel, I think that you are right, just from scanning over that letter, that it is a technical amendment that relates to clause 26.

**The Committee Clerk:** We still need the wording of the other —.

**Miss Woods:** Just to confirm, Chair, the amendment in the tabled pack today and that we are discussing: the intention is to take forward an amendment to the Bill to provide for a court hearing civil proceedings to have discretionary power. We still do not have the detail on that. Will we be getting that?

**The Committee Clerk:** We have asked the Department to provide us with the wording of any draft amendments as soon as possible.

**The Chairperson (Mr Givan):** OK. Just so that I can keep track of exactly where we are, we are going to come back to the special measures aspect of clause 22.

Clause 23 —.

**Ms Dillon:** I am content.

**The Chairperson (Mr Givan):** I am just checking the tabled information to see what is interfacing across the rest of these clauses, because I am not sure whether this new amendment No 1 has any bearing on clause 23.

**The Committee Clerk:** Clause 23 adds the domestic abuse offence to the list of offences that prohibits the accused from cross-examining a partner, or connected person, in person. The prohibition applies only to hearings where a partner or connected person is to give evidence.

**The Chairperson (Mr Givan):** OK. No issues were raised in the evidence on that clause. Are members content with clause 23?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 24 is a technical amendment relating to changes to the Criminal Evidence (Northern Ireland) Order 1999, providing that an offence involving domestic abuse means both the domestic abuse offence and offences aggravated by reason of involving domestic abuse. No issues were raised in evidence. Are members content with clause 24?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 25 stipulates that the Department of Justice may issue and may revise guidance in relation to the domestic abuse offence or any other matter as to criminal law and procedure relating to domestic abuse. The guidance must be published and a person exercising public functions, whom the guidance relates to, must have regard to it. The main issue that we discussed with officials was whether the wording should be changed from "may" to "will" or "must" and whether a requirement for a review of the guidance after a specified period of time should be included in the legislation. Have members any more views on that? Has the Department covered that point in the tabled pack?

**The Committee Clerk:** In oral evidence last week, the officials covered the point about the wording "may" issue guidance. They said:

*"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."*

**Ms Dillon:** In fairness, I believe that the Department will issue the guidance, but I do not understand why it says "may" and not "will". Yes, I know that it is standard terminology, but there is a reason why that terminology is used. There are Departments that do not intend creating any guidance. We had the same issue in recent times with other legislation: why, if you fully intend to do something, you put in "may" and not "will". I do not see any reason for it. I understand the reason for not putting "will" revise the guidance because, if the guidance is good, people will not raise the issue that it needs to be revised. Not having "will" for revising the guidance does not prevent people from, at a later stage, saying that they think the guidance needs to be revised. I do not understand why you would not have "will" provide guidance in the first instance, given that you fully intend to do so. In fairness, I think that they fully intend to do it because they have said that they will share that guidance with us as soon as they have it. It is a bit silly not just to change it to "will". The reason is, absolutely, because that is what Departments use so that they do not have to provide guidance.

**Miss Woods:** I completely agree with Linda. I get that it might be a wording issue and a standardisation of how Departments put guidance into legislation. They will provide guidance, and

they have to on this. Every single submission to the Committee consultation referred to the importance of guidance, resourcing and all the rest of it. There should not be an issue, and I would be surprised if a barrier was put up to say that it has to say "may" or "will". The stronger the case for having guidance in place at all times, the better, given its importance. Bickering over wording is not helpful, but I support changing it to either "must" or "will".

**Mr Frew:** I agree 100% with both commentators on that point. I do not understand why you would have "may" instead of "will". There is no reasonable excuse.

I take Linda's point about clause 25(3):

*"The Department of Justice may revise any guidance issued under this section."*

Yes, I am fine with that, but clause 25(1) should read, "The Department of Justice will issue guidance". This is new, groundbreaking legislation. We are entering coercive control into the courts for the first time. We need guidance on this. That is a must. If this were to go to court, the barrister would quote the word "may", and that would be it. That three-letter word is very important. It should be changed to a four-letter word.

**Ms S Bradley:** It is a "will" from me, Chair. *[Laughter.]*

**The Chairperson (Mr Givan):** I am happy that we try to get it changed. Notwithstanding this issue, if I were a Minister, I would rather it was "may", but I am not. If you applied this to other Bills, the Assembly could make huge amendments to a Minister's legislation, and, if they then said, "The Minister doesn't like it", but the Assembly passed it, the Minister would be left in a situation in which he "must" issue guidance in line with legislation that he did not like. I can see how that could be difficult, but I do not see why it would present any difficulty on this issue.

**Mr Frew:** On that point, we are not saying that the Minister must present guidance that we like. We are saying that she must issue guidance.

**The Chairperson (Mr Givan):** It is guidance that reflects the legislation. That is why Ministers prefer "may".

**Mr Frew:** I will run that argument on: if one of us, or the Committee, tables an amendment, and it is passed in the Assembly, will any Minister resist it? That would be a good test.

**The Chairperson (Mr Givan):** It would set a precedent for our Executive colleagues that they might not like.

We want a change in the draft legislative text. We want "may" removed and replaced with "will" or "must", whichever gives the legal copper-fastening to what we are trying to put into effect. Members are content with the rest of the wording, subject to seeking that change. Are members content?

*Members indicated assent.*

Clause 26 inserts new provisions into the Family Law (Northern Ireland) Order 1993 to protect victims of abuse from being cross-examined by perpetrators in person in family proceedings. The key issues raised include extending the prohibition to any family proceedings in which allegations of domestic abuse are being determined, and a number of issues highlighted by the Bar of Northern Ireland. The Department indicated that the clause provides for the automatic prohibition to apply where there is other evidence of domestic abuse, which is to be specified in regulations made by the Department. Before making any regulations, the Department intends to consult on the types of evidence of domestic abuse that should trigger the automatic prohibition.

**Ms Dillon:** Similar to the point on clause 22, I would like to ask the Department whether it is considering adopting the Women's Aid recommendation for an automatic prohibition of cross-examination in any family proceedings where there are allegations of domestic abuse, or where a perpetrator has admitted an offence.

**The Chairperson (Mr Givan):** I am looking at the Clerk because I know that clause 26 is referenced in the letter that came in just before the Committee meeting.

**The Committee Clerk:** Yes, we highlighted earlier the Department's proposal to make a minor amendment to clause 26, but that does not address that point.

**Ms Dillon:** It does not address my question. They are questions to the Department about how it intends to address those issues. Both are about the family courts.

**The Chairperson (Mr Givan):** Members, I have not had time to look at this amendment, so I cannot give my opinion on it, and it would not be fair to ask the Committee to give a view on it at this stage, even if it is, as presented, technical in nature. We will deal with clause 26 next week.

Clause 27 makes provision in relation to the commencement of the provisions, the majority of which will be by way of commencement order. No issues were raised during evidence in respect of clause 27. Are members content?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Clause 28 provides for the short title of the Bill, and no issues were raised during evidence in respect of that. Are members content with clause 28?

*Members indicated assent.*

**The Chairperson (Mr Givan):** Thank you for your patience in working through that. I am sorry that I was jumping about a little at the end on some of the information that came in just before the meeting.

In respect of proposed amendments to clause 9 and, potentially, clause 25, the Committee can ask the Department to bring something forward. We can ask the Bill Clerk to look at this for us or we can do both. Let us ask the Department as well, but it might be helpful if we have a brief chat with the Bill Clerk about it. We can do that in closed session.