Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill: Departmental Amendments

26 November 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
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Mr John Bradley	Department of Justice
Dr Veronica Holland	Department of Justice
Mr Stephen Martin	Department of Justice
Mr Paul Andrews	Legal Services Agency

The Chairperson (Mr Givan): I welcome Dr Veronica Holland, head of the violence against the person branch, and John Bradley, head of the civil legal aid reform branch from the Department of Justice to the meeting. I also welcome Stephen Martin, deputy director of enabling access to justice from DOJ, and Paul Andrews, chief executive of the Legal Services Agency, who are joining us by StarLeaf. The meeting will be recorded by Hansard, and a transcript of the meeting will be published in due course.

We are going to deal with the Department's proposed amendments, apart from the eligibility for civil legal aid amendment, first. Dr Holland, I will ask you to outline the purpose of each of the Department's proposed amendments, with the exception of the civil legal aid amendment, and what changes each makes to the provisions in the Bill and in what way each enhances the provision. We can proceed. Veronica, I hand over to you.

Dr Veronica Holland (Department of Justice): Thank you. I will go through each of the amendments in turn. The first couple are fairly straightforward in that they look at the long title of the Bill and the short title of the Bill. The changes being made there are really in relation to replacing references to "family" and inserting "civil", given some of the changes that have been made to the Bill more generally.

Proposed clause A26 is the information-sharing provision with schools. For that one, we are essentially substituting the provision that is already in the Bill in relation to the Operation Encompass-type provision and making more detailed provision in relation to that. The key elements of it are

enabling us to set out who "relevant persons" and "designated persons" are. It also makes provision for setting out in regulations who the education providers are. Broadly speaking, that will be schools, colleges and training facilities. It will also enable us to look at incidents, whether alleged or proved, and will cover children under the age of 18 who are, as we say, at a range of educational facilities. "Relevant person" will generally refer to a member of the police. Broadly speaking, a "designated person" will be a school, college or training programme provider. Those are in relation to functions of a public nature.

It then goes on to make provision for setting out in regulations what is an incident of domestic abuse, who are pupils and students and what are education providers in terms of schools, colleges and training provision. That will then enable us to set out provision in relation to the circumstances in which information can be shared and the purpose of that. The final substantive element is the provision around unauthorised disclosure, offences and penalties. There are provisions at the end to enable regulations to cover other such matters as the Department considers appropriate and to allow us to make amending provisions in relation to the legislation more generally.

The next amendment is tied in with the Operation Encompass provision that I have just gone through. Essentially, it states that we will remove the provision that is in the Bill at the moment to enable this more substantive clause to be brought forward.

The next amendment deals with protective measures for victims of abuse. Again, this is a —.

The Chairperson (Mr Givan): Veronica, I probably should have said that we will take them one by one. That will keep it current, if you do not mind. Linda, on the Operation Encompass information-sharing one with schools?

Ms Dillon: Yes, I have a couple of questions. Does the amendment materially change — I do not think that it does, but I would like clarity around it — the intent of what it is to do?

Dr Holland: No.

Ms Dillon: The other thing that I want to tease out a tiny wee bit is in relation to the person. This came out of the closed session and a question that Sinéad asked. I do not think that we should tie down too tightly who that person should be. The one thing that I do think is that this process should be very simple and easy. I accept that you need to have the regulations to set parameters — that is important — and that this potentially improves the Bill. For me, the intent is to make this a very simple process. In Committee, we talked about the need to ensure that, if a domestic abuse or domestic violence incident happens, the school is informed before 8.00 am the next morning. Yes, something certainly has to be put in place to ensure that the right person informs the correct person in the correct way to protect everybody involved, but I do not want so much process in place that the information never gets to the right person on time.

Dr Holland: To answer your question, the regulation-making powers do not change the intent. As we say, the amendment is intended to very much build on and strengthen the Committee's provision. Certainly, its outworkings will not change how that process works as such. What we want to ensure is that there are the necessary authorities in the regulations for information to be shared. As you say, there will be a need for that to be quite a streamlined process in practice so that, effectively, if there is an incident the day before, the police are aware of it, that information is shared with the school and the appropriate person in the school is aware of that fact. They can then provide the necessary support or take account of the fact that there has been an incident in terms of how the child is dealt with or the care that is provided to them. The simple answer is that the detail of the regulations should not impact on how it operates. It is just to ensure that we have the necessary authorities in order to do that. We will be very focused on that and will give clear consideration to it in the pilot that is being brought forward to ensure that the process works well and is streamlined, simple and easy to follow, and that the information gets to those individuals in the schools as soon as possible.

Ms Dillon: It comes back to the training of the person who will be sharing that information. Hopefully, it will cover that as well.

Miss Woods: Just a couple of quick points. Does this include nurseries, preschools and kindergartens?

Dr Holland: It will cover those that are associated with a school — a preschool in a school. It is not intended to cover individuals who are looking after children in their home. The scope of it is intended to cover, essentially, established institutions that are providing education to young people. Where there are preparatory departments in schools, or something of that nature, they will be covered.

Miss Woods: But not preschool or early years?

Dr Holland: If it is being done as part of a school, it will come within the ambit of that but, if it is a separate entity in its own right, it probably will not be covered. We can certainly look at that. It is not that it cannot be covered within the scope here, but the intention at the moment is that there is a link with a school or an established facility.

Miss Woods: I would appreciate that being looked at, because then you are making a distinction between the age of children and whether they are attending school. If you are attending a free school which, obviously, is educational but is also childcare — that is up for debate — they are at that level of schooling. I can appreciate it is a prep department as part of a wider school, but what if it is a separate one? Are we covering all instances?

Dr Holland: At the moment, the intention is not to cover those separate entities that are just covering the very early years. It is where it is part of a school and is being covered within that institution. We want to try to avoid multiple individual small entities having to be involved as part of this process.

Miss Woods: With regard to "further matters" in subsection 5:

> *"Regulations under this section may contain provision ... involving such further matters as the Department ... considers appropriate."*

Is there any example of what that would look like?

Dr Holland: There is nothing specific intended in relation to that at the moment. The purpose of having that in there —. The detail still has to be worked out but, if there is something further that needs to be covered in the regulations that we have not specifically specified, we do not want the powers to be restricted or limited in that sense. That is really the purpose of subsection 5. Nothing has been specifically identified to be covered there as yet, if that makes sense.

Miss Woods: Thank you. Finally, another Member, during the debate last Tuesday, brought up conversations with Education in a different section and a different group. Has there been any communication with schools, unions, the Education Committee or the Department of Education?

Dr Holland: There have been discussions with the Department of Education and the Education Authority. There is also ongoing work around the pilot in the south Down area around the schools that are covered there. The task-and-finish group that has been set up to look at this Operation Encompass pilot includes officials from the Department of Health, Department of Education, the Education Authority, the police and the voluntary and community sector. They have been involved in the discussion as we have gone along.

Miss Woods: With regard to this amendment?

Dr Holland: Apologies. The amendment itself has been shared with colleagues in the Department of Education, the Department for the Economy and some of the members of the task-and-finish group.

Miss Woods: Thank you.

Mr Frew: Going back to Rachel's point about the early years, you could have a scenario — we can all probably account for this — where a village has a preschool in a school and an independent preschool, and there is a competition every year around which child will get into which, and one is always lesser than the other with regard to what school the children get into. All of those scenarios come into play, and you could end up with a disadvantaged group of families if the independent preschool is not covered. Having said that, I am not sure that Operation Encompass is designed to give that —. The way I look at this is that you could have a child of school age who has the potential to get into trouble with a teacher, because the authority at school is much greater than at preschool. It is

all about making sure that the child does not spiral out of control or get into further trouble. I am not sure that the potential is there at preschool for that damage to occur, but I can see that there could be a complete differential in a village setting, whereby you have two establishments covering early years, and this will need some more thought. What I do not want is every childminder in the country having access to information. You also have to look at the varying degrees of qualifications in regards to childminding, teaching and everything else that goes with it, but I am still teasing that out in my head.

The one question that I have is this. Should we have — I am not saying that we should — a responsibility on the person who obtains the information? An example is the child protection disclosure scheme, which you know that I know all about; I keep talking about it. If a parent obtains information, there is a responsibility on them to not go up to the local pub or restaurant and tell "Jimmy Hardknuckles", somebody else or a family member.

Dr Holland: That would probably come under unauthorised disclosure. Are you thinking of somebody who obtains this information and uses it for a purpose or discloses other than —?

Mr Frew: Yes, other than protecting the child.

Dr Holland: No, that would be covered by the unauthorised disclosure provisions at paragraph 24B(4)(e).

Mr Frew: Within the amendment?

Dr Holland: Yes, where it states:

> *"regulating or limiting the use or disclosure of information by a relevant person or a designated person ... specifying offences and penalties for unauthorised use or disclosure".*

That is essentially in there to say that you can only use this for the purposes of the child's welfare in school. It cannot be used for any other purpose. If it were to be used for something else, there are potential offences and penalties associated with that.

Mr Frew: You have hit the nail on the head, Veronica. Thank you very much for your work on all of these.

Mr Dunne: "Relevant person" is mentioned. Could that be someone other than the PSNI? My understanding is that, after such an incident happens at night, the police will report that information onto a database and through an email system that includes social services, for example, in the morning, and that that information is being fed into the system. Maybe it is not directly to the school, but perhaps, in some cases, it would go to the school, where it is picked up by the —.

Dr Holland: Where it is a child protection or safeguarding issue, that information would be coming in and would be shared with police and social services who would be involved in that instance. If it was relating to child protection — almost a higher level of concern or issues — social services would be involved.

Mr Dunne: Yes, but in this case, is it the intention that "relevant person" will solely lie with the PSNI?

Dr Holland: The intention is that, when we are talking about "relevant person", it is the police. When we are talking about "designated person", that will be authorised individuals within the school, college or training facility. By and large, that is what we are thinking of when we are making reference to "relevant person" and "designated person".

Mr Dunne: So it is likely to be the child protection officer or teacher within the school or organisation.

Dr Holland: Yes. And obviously the sharing of that information will go to a very limited number of individuals, given the nature of it.

Mr Dunne: Because it is sensitive, obviously.

Dr Holland: Yes.

Mr Dunne: The point has been made, as well, that it could be used in the wrong sense in the rumour mill and so on.

Dr Holland: We want to make it clear in the regulations that it is for specified purposes that this information is going from the police to a school, and that it is only to be used for that purpose. If something happens and an individual becomes aware that that information has been told to somebody else or disclosed in some other manner that is unrelated to that, there is a provision within the legislation to take something forward relating to that breach.

Mr Dunne: Considering the scale of the issue, the local police would say it is a huge issue and one of the biggest problems that they have to deal with, at many different levels. Will they be able to use their discretion as to whether they should report the information or not?

Dr Holland: I imagine that the police, at a practical level, will look at it in the context of the incident that they have been out at and what the impact is on the child. The purpose of the scheme is to ensure that, if something has happened that will impact on the child or give cause for concern the next day, it is brought to the attention of the school.

Mr Dunne: And obviously that will be part of the training for the PSNI.

Dr Holland: Yes, there will have to be work undertaken in relation to that.

Mr Dunne: We have made the point before that we do not want to see a police car driving up to the school and a police officer jumping out and entering the building. Obviously, police visit schools in most communities regularly, and we encourage that more and more with neighbourhood policing, but sometimes it is about the perception of what is happening.

Dr Holland: In practice, this is almost an add-on or supplementary to the work that the police are doing already, having been called out to a house or property. There should not be anything over and above what is happening already in the police response to incidents. I am not involved in the smaller group that is looking at the operationalisation of the pilot on information-sharing with schools, but I imagine that a lot of that will be done by email communication or by telephone with the schools. There should not be additional police activity by way of an obvious presence as a result of this, if that is what you are concerned about.

Mr Dunne: Thanks very much.

Ms S Bradley: I take the Department's point about the regulations. As Linda pointed out, I was concerned. The pure objective of Operation Encompass is to let the person who is in front of, or in charge of, the child on that day know that there could be an issue and to give some latitude as to how it might manifest itself behaviourally,. I understand that that goes in regulations and that there are good processes already in schools regarding safeguarding officers and child protection. I am therefore satisfied that it could land in the right place, but it is important to have the conversation that it does.

I move on to the conversation about it not including preschool. In rural areas, where the primary school might be smaller, there tends to be a requirement for the preschool to be a stand-alone unit or place. My interpretation on reading this, Veronica, before you expanded on it, was that it refers to:

> *"any other body or facility which provides education or training programmes".*

To my mind, that does take in that preschool group, and I was satisfied with that. However, I am a little bit disappointed now, to say the least. You are talking about a child who is four years of age. That is an age where, if there has been an incident, the child may present in a way that could be disruptive, or perceived to be disruptive. There really would be a duty of good practice to include those preschool settings. I appreciate that when you go to a younger set and are talking more about childcare, it will, perhaps, be even harder to monitor the behaviour of those younger children — whether the child would act out, in that sense — but preschool is certainly critical to this. I will not be satisfied if it is not caught in this amendment. I do not know if you want to elaborate on how you broke away from that, Veronica. It is at clause 24B(2)(c)(ii).

Dr Holland: The intention around that provision is really to capture further education colleges and training programmes that will involve individuals who are aged 16 or 17, albeit it is broad and could

capture more than that. We can certainly have further discussions on preschools and the scope with colleagues in the Department of Education, if that would be helpful.

Ms S Bradley: Thank you, Veronica. Chair, I think that that is essential.

The Chairperson (Mr Givan): OK. The amendment that was passed by the Assembly is explicit: "informing the school", so, Veronica, good work has been done by the Department on that one. There may be an issue here just on the margins, but the members said "school". This is now trying to flesh that out. To be fair to the Department, there has been good work to do that. There may be something here in the margins that we just need to tie down.

Ms Dillon: I agree with what you are saying, Chair. The Department has done excellent work in relation to this. I am delighted that this got in. We were a bit concerned about the scope, but it got in there and, in my view, the Department has improved it. Rachel and Sinéad are right; if it is possible to get preschools in, going to the childcare settings and going down that road could be much more complex. I have concerns about that, to be honest. We could be taking this outside of its intent. Bearing in mind some of what Gordon said, that is why I indicated that I wanted to come in. I was a wee bit concerned that we were going further than the intent of Operation Encompass. Operation Encompass had a very simple, straightforward intent.

Ms S Bradley: School setting.

Ms Dillon: Safeguarding and child protection is in place for those children who need that. That is absolutely within Health, and that is where it should sit and we need to have that. However, this is where there would potentially be seen to be no child protection or safeguarding issue. It is about giving another level to protect children where we talk about the adverse childhood experiences (ACEs). It has a big impact, even on children who do not come from a background where there has been domestic abuse. It is about how a teacher speaks to a child or deals with a situation in the classroom. That has a massive impact on a child for the rest of their life. These are particularly vulnerable children, so we want to do what we can to protect them. That is what Operation Encompass is about; that is its intent. The Department has captured that very well and has actually improved on the Committee's amendment. If may be possible to do it in the preschool setting, but the childcare setting would be a step too far and might take this away from its actual intent. If there are child protection or safeguarding issues, they will be dealt with in a childcare setting, as they should be. For me, this is a good piece of work but, if we can include the preschool, setting that would be good.

Dr Holland: We will discuss that further with colleagues in the Department of Education.

The Chairperson (Mr Givan): OK. We are not far away from consensus on this in the Committee. We will formalise that, Veronica, on this amendment afterwards and communicate that to the Department so that you know precisely what it is that we are asking. Do you want to take us on to the next amendment?

Dr Holland: The next one is to clause 26, so it is to do with protective measures for victims of abuse. Again, this is a substitute amendment in relation to the interim protections measure that is in the Bill at the moment and is intended, like the Operation Encompass one, to flesh out in more detail what it will authorise us to do in regulations. The Minister has already indicated that our preference will be to take this through the miscellaneous provisions Bill, but we need to ensure that, if this power were to be utilised, its scope would be as robust as possible.

I will just run through the subsections of clause 26. It basically enables the Department, by regulations, to make provision for steps or measures that can be taken to protect an individual from abusive behaviour and any other such steps or measures that may be needed in relation to that. It then goes on to cover both abusive behaviour or risk of abusive behaviour. Abusive behaviour does not necessarily need to have happened, but the amendment will cover both.

The next provision looks at it in the context of abusive behaviour and personal connection. The individuals that will be captured by this will be the same as is set out in the Bill more generally. Subsection (4) makes provision that the scope of the provisions will be able to cover alleged as well as proven behaviour, so there will not necessarily have to be convictions. It is about trying to make that as wide as possible. It sets out that the applicants will be aged 16 or over and that the perpetrators or

alleged perpetrators that it would apply to will be 18 or over. We also want to ensure that associated children can be covered as well.

Subsection (5) looks at the notices that would be issued by police, setting out provision to enable us to cover how those notices are given, the grounds for giving them, prohibitions and requirements. The prohibitions will be things like an individual not contacting the person, staying away from them, not going into the property or, potentially, having to leave a property. A draft consultation paper will issue to the Committee, hopefully tomorrow, for your meeting next week, on the positive requirements that may also be associated with this. In the longer term, the intention will be that this could cover behavioural change programmes, substance abuse programmes or potential electronic monitoring. There are two strands to it: protections for individuals and, potentially, being able to incorporate elements that would address abusive behaviour of individuals.

Subsection (6), similar to subsection (5), covers provisions in relation to the orders that would be made by the courts as opposed to the notices that would be issued by police. Again, it looks at the grounds, prohibitions and requirements that may be associated with them. There is also provision that will enable us to look at who can apply, whether or not applications are needed and at the ability of the court to bring forward orders of its own volition. There are a number of provisions on the procedural aspects as well as elements in relation to court rules.

Subsection (7) deals with instances where you may have an individual who is, for argument's sake, in England, Wales and Scotland and is abusing an individual locally. It is to try to ensure that the abusive behaviour is not limited to individuals who are in Northern Ireland. The provision will ensure that the offence has to be in the remit of the Northern Ireland jurisdiction, obviously.

Subsection (8) deals with notification requirements. Essentially, the intention is that, where you have orders being made, individuals will have to give their name, address and so on to the police. There is provision that there could be a requirement for other information to be made available as necessary. It then goes on to deal with issues around breaches of the notices and orders, powers of arrest, bringing individuals before the court and, potentially, sentences that may be associated with that.

Subsection (10) deals with processes or procedures that may be needed to identify an individual's identity where these notices and orders are being used. It makes provision in relation to statutory guidance, and, similar to the Operation Encompass-type provision, there is provision there that such other matters as may be necessary can be covered, and there is also the ability to look at changes that may be needed to other legislation as a result of this.

Those, broadly speaking, are some of the enabling powers that we have. Again, similar to the Operation Encompass-type approach, we are trying to build upon and strengthen the amendment that had been put forward by the Committee by setting out in more detail what we will be able to deal with in any regulations that will be brought forward.

The Chairperson (Mr Givan): I have a couple of questions on that. Will the list of different forms of regulations that will come be all of the regulations that the Department envisages being required under the broad umbrella of a domestic abuse protection order (DAPO) or a protection notice?

Dr Holland: Essentially, with the reference in each of the subsections to regulations, the intention is that, if you were doing this by a regulation-making power, you would probably be bringing this forward as one large regulation. It would not be separate regulations as such, and it would, basically, be giving the authority for the notices and the orders to be made. Sorry, Chair, I am perhaps not quite grasping what your question is.

The Chairperson (Mr Givan): No, you have done. I suppose that leads me onto my next question. As the Bill now currently sits, with the Committee amendment, I am trying to establish the difference. How does this amendment improve or add to it? The Committee amendment asks for regulations to be laid by way of a resolution of the Assembly. Currently, there is a broad piece of legislation in place that, whatever regulations come to give effect to the creation of DAPOs, they will come through the Assembly. These amendments still give that power for regulations that will come through the Assembly. However, it is broken down into more specificity and more detail.

Why is that necessary? The same provision is in these further amendments for two years, just as the Committee amendment stated "for two years". I am just trying to get my head around why you needed

to put those in. That is a substantive amendment in its broad detail, and is being brought in at Further Consideration Stage, which limits the ability to give it the scrutiny that the amount of detail requires.

The Minister said that these issues, even at Consideration Stage, would require a lot more scrutiny and debate, with the preference being for primary legislation. It seems to jar with the logic that was being explained.

Dr Holland: The detail and content are probably akin to issues that we raised in relation to the Operation Encompass one, namely that there is a real risk that, without the detail being set out, you will not necessarily have the vires or authority to take forward in regulations all that we need to.

Common to both provisions, and probably one of the easiest to reference, is the likes of offences and penalties. When we are doing things that will, potentially, impact individuals' human rights, if we do not set out the detail of what we want to cover in the regulations, we may end up in a situation that, while there is a provision on the statute book that allows us to make regulations, we cannot do everything that we need to do without having given an indication, as we have done in this amendment, of what exactly it is we will be covering.

The example that the Departmental Solicitor's Office (DSO) always refers to is that when you are doing things around penalties and offences, there is a need to indicate in the primary legislation what you will want to do in secondary legislation. That is the main reasoning for that added detail. As you said, the Minister has already indicated that her preference is to do this through the miscellaneous provisions Bill. We did not want a situation where we did not have the necessary authority to do that level of detail in the regulations, if this power had to be used.

The Chairperson (Mr Givan): How does the current Bill not give you the vires? New clause 24A states:

> *"The Department of Justice may by regulations, within 24 months of commencement, make provision for measures which may be made for the purposes of protecting and supporting the victim or alleged victim."*

That is very broad, so I am struggling to understand the advice that the DSO gave.

Dr Holland: Again, it is in terms of some of the things that we would want to be undertaking. As I said, they indicated that, without a further stipulation in the legislation as to what we may want to do, you could end up in a situation where, when you bring those regulations forward, it is deemed that there is not the authority to do some of the detail that we have set out in this.

The key thing that they indicated was that, when you are doing things like offences and penalties, you have an indication or marker in the legislation as to what you were looking to do. The purpose is to ensure that we do not run into difficulties should we need to bring forward regulations under this.

Ms Dillon: I think that you said in your introduction that subsection (4) would be protection for persons over 18 years, old but the amendment states that it is "over 16 years". Could you clarify that?

Dr Holland: The victim aspect is in terms of a victim applying who is aged 16 or over and where the alleged perpetrator is aged 18 or over. We want to ensure that we are able to make provision in relation to associated children. For example, if there were children living in that house, we would want the protection to be extended to them.
This is about those who are applying for the notices or orders being aged 16 or over, and, as I said, the offender has to be 18 or over.

Ms Dillon: That is in line, then, with the other clauses. I will just check that it is. I need to go back over them; sorry about that.

Mr Frew: Veronica, is it still the Minister's intention to bring this in through the miscellaneous provisions Bill?

Dr Holland: Yes. That is her preference.

Mr Frew: Yes.

Dr Holland: But, as I said, should anything happen, and she has already talked about unforeseen circumstances, we do not want a situation where we cannot use the power effectively, should it have to be utilised. Her intention is to do it through the miscellaneous provisions Bill.

Mr Frew: So, it is still the Minister's intention to do that, so this is probably the second-best option for her. What you are saying is that you are basically tidying it all up, adding all the specified actions through regulation, so that if something happens that leads to the miscellaneous provisions Bill not being moved or amended or omitted in some shape or form, you still have this as back up.

Dr Holland: Yes.

Mr Frew: It is very comprehensive. Is there anything in the new amendment that does not do what we ask of clause 26?

Dr Holland: No, I do not think so, Paul. I will double-check, but, as the Chair indicated, that provision was quite broad. The Committee's intent, and our understanding of that provision, was that it was to enable protection notices and orders to be brought forward. It is doing what the Committee wants it to do.

Mr Frew: Does it still allow you the flexibility to bring in measures other than court orders?

Dr Holland: The provisions drafted will cover notices and orders. They enable or require steps to be taken or measures to be imposed for protecting an individual. So, it will tie back to protection measures for victims of abusive behaviour.

Mr Frew: All of us on the Committee were mindful that DAPOs might not always be the way forward. That is why clause 26(2)(b) being on the face of the Bill was important to us. We are affording the Minister so much flexibility and wide parameters so that we do not tie her down to court orders or DAPOs and, instead, could open it up to a wider tool being used. You are giving us the assurance that there is nothing in clause 26, as it stands on the face of the Bill, that will not be able to be done with the new, more comprehensive amendment.

Dr Holland: As drafted, the focus in that provision is on the notices and orders. That is very much the intent of that provision.

Mr Frew: I remember the Minister chastising me on the Floor of the House for creating a duplication for you guys. I responded by saying that an amendment could be made up in a day, and you have proved me right, so thank you for that.

Miss Woods: I am trying to get my head around this. Is the amendment that we are looking at, the new clause, modelled on the domestic abuse protection orders and notices that are in England and Wales?

Dr Holland: We looked at that one and at the provisions in Scotland that are being brought forward, which are a variation on the approach in England and Wales. By in large, it reflects the notices and orders in England and Wales.

Miss Woods: We have heard loud and clear that there have been some issues with those and that, perhaps, the emergency barring order system that Scotland is going with is much better. Again, it is a new system, but the feedback from England and Wales is that it has not been 100%. Obviously nothing is 100%, but there have been significant issues with them. I am concerned that we are putting something in a Bill that has been shown to be not as effective.

Dr Holland: We have had discussions with voluntary and community sector partners as well as our statutory partners on the proposals, if that provides reassurance to the Committee. The concerns with the provisions in England and Wales — we wrote to the Committee previously in relation to this — are around the domestic violence protection notices and orders, the fact that they are limited in what they can apply to, the extent to which they are being used and the extent to which there is training on them. So, the concern is really around the current violence notices and orders. In England and Wales, the abuse notices and orders are being brought forward to ensure that there is a much broader scope. That is so that it is not just limited to physical violence against an individual; it will also cover abusive

behaviour. What we will want to ensure in introducing these measures is that the concerns that there have been with regard to provisions more generally are picked up on and addressed.

With regard to the Scottish approach, I think that they published the legislation a month or two ago. Their provisions probably are not as expansive, in that they are simply looking at the protection elements, which is basically barring contact for an individual from a property etc. They did not go down the route of looking at the positive requirements element, such as potentially trying to address the behaviour of an individual. Therefore, as I have said, they have a slightly different model, but it is still looking at it in the context of notices and orders, albeit with a slightly different slant to the England and Wales one.

However, as I have said, we have had discussions with voluntary, community and statutory partners with regard to this. My understanding is — as Rachel alluded to — that the concerns are very much about those current orders, the limitations of them and how they are working in practice. The abuse notices and orders that are being brought forward in England and Wales are to address those issues, and that is why we did not opt for bringing forward those violence notices and orders in the interim. Obviously, I cannot speak for voluntary sector partners but they were generally supportive of what we were proposing.

Miss Woods: OK. Is the consultation that is being proposed on the introduction of protection orders and notices based on this clause?

Dr Holland: It will reflect what the intent is, as is set out in that clause, and we will go through the details of it with regard to protections that may be afforded and the positive requirements that there may be etc.

Miss Woods: If the consultation comes back and says that there are fundamental gaps or problems, or that we need something else, is there room to do that in a miscellaneous provisions Bill?

Dr Holland: Yes, you could look at putting that in the miscellaneous provisions Bill, if it was considered that something further or supplementary was needed.

Miss Woods: OK. On the age thing, again, they:

> *"apply in relation to perpetrators or alleged perpetrators of abusive behaviour who are at least 18 years of age."*

yet you can apply for one if you are 16 and over? Why is there the age distinction between 18 and 16?

Dr Holland: With regard to the victim, we did not want to stray into child protection measures, so that is why we went for an age-16 threshold on that. As far as I can recall — I will double check and come back on this if I am incorrect — my understanding is that age 18 is the threshold in the other jurisdictions with regard to the perpetrators. However, I will look at that again and clarify that.

Miss Woods: OK. I appreciate that, but our Bill does not make any distinction on the age of the perpetrator, whereas the legislation in England and Wales does.

Dr Holland: England and Wales is 10 and over, as well as ours, for perpetrators and their coercive control offence.

Miss Woods: On clauses 1 to 4, on what amounts to "abusive behaviour", the meaning of "behaviour" and, in clause 5, the meaning of "personal connection" in the domestic abuse offence, there is no age threshold on it. Therefore, if you met all of that criteria, committed the offence and were an alleged perpetrator, the victim would have to be 17. The victim could not apply for an order if they were 16; I am thinking about couples who live together and who are 16 and 17, or who are both 17-year-olds. An order or notice could not be sought because the perpetrator is not 18. Do you get my drift?

Dr Holland: Yes.

Miss Woods: It is just that distinction. I understand about child protection, and we have that; we changed that at Consideration Stage with regard to the age range exception regarding aggravation to cover the Children and Young Persons Act. However, it makes an arbitrary distinction with regard to

perpetrators who are 16 or 17 years old. Correct me if I am wrong, but my reading of it is that, because of the age threshold, a younger couple does not qualify. Can that be teased out to make sure that they do? Currently, under that clause, could a 17-year-old who is a relationship with a 17-year-old apply for a DAPO or domestic abuse protection notice (DAPN) and get one?

Dr Holland: The provisions, as they are, would apply to a perpetrator who is aged 18 years or over. As I say, I am nearly sure that there is a similar age threshold in the other jurisdictions, but we will check that and come back.

Miss Woods: There is a different threshold in Scotland, obviously, because it relates to partners and ex-partners. That is the personal connection. It is different in England and Wales. Obviously, their legislation is still going through. The different jurisdictions have arbitrary age distinctions in their different legislation, whereas ours does not, provided that clauses 1 to 4 and the criteria under "Meaning of personal connection" are met.

Dr Holland: No: with regard to the offender and victim, England and Wales have the same approach as ours. Therefore, for the coercive control offence in England and Wales, the offender is aged 10 years or over. Their offence can apply the same way.

Miss Woods: Yes, but does that make it right with regard to a young victim in a couple or any other type of relationship under "Meaning of personal connection"? Does the age range of the perpetrator need to be 18 years and above? Can it not be 16 years and above, given that everything else covers those who are aged 16 and above?

Dr Holland: We can certainly look at that again.

Miss Woods: Unless it does cover it; then that is OK. It is just to try to ensure that those situations are covered, because we have that arbitrary distinction between 16 years and 18 years. If you are a 17-year-old victim, and your perpetrator is 17, you cannot get a DAPO, DAPN or an emergency barring order (EBO) — whatever you want to call it. What can you do if it is just the age range? I would certainly appreciate any further information that you can provide on that issue, just to square that off. That is all, Chair.

Dr Holland: That is fine.

Ms S Bradley: I will not go over the age issue. I had similar concerns about that. I would appreciate some clarity on it, Veronica, because there was a lot to try to fit in to see how it tallied up against other provisions in the Bill, as Linda said. I welcome the fact that it is on the face of the Bill. I note what you said about it being good practice that it should be in the Bill, particularly if there were regulations to be built around offences and penalties. Accepting that, I wonder whether it goes further than that. Are you actually being a little bit too prescriptive here for the Department in the longer term? For example, I looked at the Committee amendment. Can you show me where 26(2)(b) is in the new amendment? I know that Paul has touched on it. I am not sure where it mirrors the intent that was expressed at Consideration Stage. I do not know where that provision sits in the proposed amendment. *[Inaudible]* I will maybe come back to that.

I am just trying to step back and see what is happening here. Would it be fair to say that, if the Minister still intends to capture all that through the miscellaneous provisions Bill, the timing of the consultation means that — I know that you said that you would feed back to us — when that consultation feedback comes to us, surely, it will be too late for us to, in any way, satisfy ourselves that it is reflected in any amendments before next Wednesday? Is this a holding or bridging position, in which case perhaps we can recognise what it is trying to do? Therefore, we could be less prescriptive and try to lean into that offences and penalties part that you spoke of but maybe not as heavily as you have done. Or is it likely that this will be the go-to place for DAPOs etc?

Dr Holland: Certainly, in the discussions that we have had with voluntary and community sector partners and with statutory partners, that is viewed very much as the direction of travel. There is a desire to see these abuse notices and orders brought forward. That is what we were trying to reflect in the amendment and to ensure that we had the necessary authority for that. That is the focus of the amendment.

Ms S Bradley: What about subsection (2)(b) in our original amendment?

Dr Holland: In terms of subsection (2)(b), if it were something other than court orders, it would probably be limited in its ability to do something other than the notices and orders in the current amendment. As I said, that has been directed by the discussions and conversations that we have had with partners on this.

Ms S Bradley: OK. I welcome it, and I see the body of work that is there and recognise it. However, I wonder whether we are being so prescriptive that we are losing the intention as expressed. I am also not fully clear about the Minister's intention for the miscellaneous provisions Bill. Is that just intended to override this?

Dr Holland: The Minister's intention is to bring these measures forward through the miscellaneous provisions Bill. The expanded amendment is to ensure that should, for whatever reason or due to unforeseen circumstances, the miscellaneous provisions Bill not pass, we would be able to use this, and this would give us the necessary authority. However, the Minister's intent is to do this through the miscellaneous provisions Bill, as opposed to having to utilise this regulation-making power.

Ms S Bradley: Is it fair to say, Veronica, that the Committee's amendment, as it appears in the Bill, with a further amendment that speaks to that piece around offences and penalties, may be a more desirable landing place for the Bill at this stage, given that we know that the miscellaneous provisions Bill will carry up the detail at a later time? That way, we do not lose the subsection (2)(b); we could factor that in.

Dr Holland: The difficulty of going back to something that is more akin to the Committee amendment and incorporating something in relation to offences and penalties is that there is still a serious risk that you would not have the necessary authority to do all that you needed or wanted to do in bringing regulations forward. We can go back and have discussions with counsel about whether there is a way in which we can try to incorporate the detail that is in the provision at the moment. Is there a way in which we can try to encapsulate that bit around subsection (2)(b)? Can that be brought into the provision as well? I do not have a sense of what their response to that may be, but I am more than happy to have conversations with them about it, if it is a concern for the Committee.

Ms S Bradley: Thanks, Veronica.

The Chairperson (Mr Givan): If I follow that line of thinking clearly, Veronica, subsection 12 is relevant. It states:

> *"Regulations under this section may include provision involving such further matters as the Department of Justice considers appropriate."*

You have tried to put out, in as much detail as you can, areas of regulations that would cover this. Does subsection 12 give me comfort in its saying that, if something else arises, you are still able to provide for that?

Dr Holland: My sense is that subsection 12 is really giving you additional scope and provision in relation to the detail of what is scoped out or set out in the main clause. I do not think that it would provide the necessary comfort, in relation to subsection (2)(b), to allow us to do something radically different. I hope that that makes sense. It may be better that we have a conversation with counsel about whether it is possible to have something that will set out the detail in relation to the DAPNs and DAPOs but which may also enable us, more broadly, to have a provision in terms of something other than this. I do not know how well that can sit in legislation; essentially, it is having a clause that says, "On the one hand, we want to be able to do this; on the other hand, we want to do something completely different".

The Chairperson (Mr Givan): That would, though, incorporate what is currently in play, because that is the way that it has been left. You are going to give more detail, but you still leave a degree of openness there for other things.

Dr Holland: We can have a conversation with counsel about whether it is possible to give that added flexibility and to try to better reflect what is in clause 26(2)(b).

The Chairperson (Mr Givan): I will bring Paul in before he bursts a blood vessel. He looks like the Minister putting the hand up and down trying to intervene.

Mr Frew: It is a big room, Chair.

The Chairperson (Mr Givan): For clarity: it is not this amendment that would be brought to the miscellaneous provisions Bill; it would be an amendment that lays out, in primary legislation, the substantive regulations.

Dr Holland: It would set out the substantive detail that this provision would be saying we could cover in regulations. The detail of that would then be set out in the Bill. Subject to the outcome of the consultation as to what exactly that would look like, the intent would be that the primary legislation would encapsulate what is covered in that regulation-making power at the moment, albeit there would be a lot more detail in it.

Mr Frew: I do not mind the comprehensive detail on this new amendment. I agree with Sinéad in every other case that she raises. In new clause 26, as amended by the Committee, you have incorporated subsection 1. You are now using that as subsection 14 in your new amendment. Subsection 3 is now subsection 15 in your new amendment. You have left out "measures other than court orders". That weakens the intent of our amendment.

Dr Holland: Apologies if that is how that is viewed, but, from our perspective, we felt that we were reflecting what was the intent underpinning the Committee amendment. We are more than happy to have further discussions with counsel in relation to how it may be possible to incorporate subsection (2)(b).

Mr Frew: I agree with your sentiments around subsection 12. That adds to everything that —

Dr Holland: That has gone before.

Mr Frew: — has gone before. I think that that is right. We need something in there that gives you the option to go for something other than court orders.

Dr Holland: We are happy to have that conversation. Our thinking was that the Committee had wanted the abuse notices and orders provided for, but we will look at whether it is possible to incorporate that subsection (2)(b) into the provision.

Mr Frew: I really appreciate all the detail. That is not the issue. If the Department feels that it cannot or will not add in "measures other than court orders", I give you notice now that I will probably seek to amend the amendment.

Dr Holland: I do not think that we will have a difficulty in making provision for that. It is more about the conversation with the legislative draughtsperson around how that all sits. There is not an issue from our perspective about reflecting that in the provision.

What I will say, and this applies more generally, is that we will be very keen to avoid a situation where we have Committee amendments and departmental amendments. I think that the preference is that we have a measure that the Department and the Committee are content with.

Mr Frew: Thank you, Veronica.

Ms Dillon: Some of what I wanted to ask has been covered and, specifically, that last point. If we can get that included in some way, it will give the Department flexibility.

Rachel asked about the issue that I asked about at the start. I was confused and wondering if I was wrong. We were both thinking along the same lines that we were getting it wrong, because 16 and 18 are in so many different places, and I wanted to be sure that I was right. I probably have the same concerns as Rachel. For me, the protection notices and orders were vital because of all the previous concerns that I raised around non-mols and the challenges in accessing them. However, you are talking about where you want to go with the legislation, and that is addressing the cause of the abusive behaviour. All day, every day, I am in favour of working with the person, as it is an essential part of breaking the cycle and helping young people, such as those whom Rachel talked about. For example, it might be a 17-year-old who is in a relationship with another 17-year-old, and abusive behaviour is all that they have ever seen and that is the point that they are coming from. For that reason, access to help for their abusive behaviour is as important as the punitive measures, and we

always need to try to get a balance. If those two issues can be addressed, we will be heading in the right direction.

Dr Holland: I am more than happy that we lead on that.

Ms Dillon: From listening to you, Veronica, I think that it is where you want to be. We are not far apart on both issues: an alternative to court orders and addressing age. The age of criminal responsibility is another conversation that we will not start today.

Dr Holland: Basically, we will look at incorporating subsection (2)(b) in some fashion and at the alleged perpetrator being 16-plus.

The Chairperson (Mr Givan): Yes.

Dr Holland: OK.

Miss Woods: If it all works out and subsection (4)(b) states:

> *"(a) are for protecting persons who are at least 16 years of age, and*
> *(b) are to apply in relation to perpetrators or alleged perpetrators of abusive behaviour who are at least 16 years of age."*

and does what it says, that would be fine.

Dr Holland: Certainly, we will look at that again.

Ms Dillon: May I say one other thing about the age issue? Can the Department call the Commissioner for Children and Young People and ask for her opinion?

Dr Holland: Get her view on it.

Ms Dillon: There might be something that the Committee is not seeing in this. I would hate it if we are doing something that will be harmful.

Dr Holland: We can have discussions with the commissioner as well.

Ms Dillon: It would be good to do that.

Dr Holland: Is the Committee content that we are guided by the commissioner on that?

Ms Dillon: I am.

The Chairperson (Mr Givan): We will give you an official Committee line on all these amendments once it has been agreed, Veronica.

Dr Holland: OK; that is very helpful.

Next is the guidance on data collection, and that is just the removal of the provision relating to Operation Encompass.

The next substantive amendment is on training provision. Essentially, that is to deal with the onus being on the Department to provide training versus an onus being on organisations. It sets out that the police, PPS and courts must provide training on the effect of Part 1 of the Bill, which is about the domestic abuse offence and the aggravators, as considered appropriate. The training must be at least annual, mandatory and undertaken by staff and personnel who have responsibility for dealing with cases involving domestic abuse, and the purpose of the training must be to ensure that there is an effective discharge of their responsibilities for those cases. As I said, essentially, it puts the onus on those operational organisations to provide training in order that they can effectively carry out their duties in relation to domestic abuse cases.

The Chairperson (Mr Givan): I have a couple of points. I note that this amendment has dropped from the Bill, "including but not limited to". This is now exclusively for the Police Service, the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service, whereas the Bill, as currently drafted, highlights those organisations but does not make it exclusive.

Subsection (4) has been removed. It states that:

> *"Having identified the relevant staff ... at the beginning of an annual reporting period, the Department of Justice must publish the uptake of training by each relevant organisation at the end of each year."*

I am sympathetic to the other aspects of what the Department is doing, but can you give us a reason for the amendments in those two areas?

Dr Holland: I will take the last point first, Chair. Apologies, I should have flagged the reporting bit. That has now been moved into general reporting requirement provision, so it will be done as part of the report to be published over a three-year period. There is reference in that provision that would essentially mean that the reporting on the training would be encapsulated within the broader report that would be taken forward.

On the organisations that are referenced, the view was taken that it is important to focus on those that will be dealing with the progression or handling of domestic abuse offence cases under the new legislation. That is why we limited it to the core organisations that are involved in dealing with domestic abuse offence cases generally. When we looked at it in the context of other criminal justice organisations, we saw that that could encapsulate organisations such as Forensic Science Northern Ireland (FSNI) and others that are not actually involved in dealing with domestic abuse offences and cases being progressed through the courts and other offences that are aggravated by domestic abuse. That was the intent behind that change.

The Chairperson (Mr Givan): Is it not unnecessarily tight now though? I do not see how the Bill, as currently drafted, places a duty on FSNI, for example. You said that, if the Bill went through as it currently is, that could capture Forensic Science.

Dr Holland: At the moment, it would cover policing and criminal justice agencies. It would encapsulate broader than those that are listed.

The Chairperson (Mr Givan): Yes, but it has to be relevant to the offence. It states:

> *"Training is mandatory for all those involved in the disposal of domestic abuse cases".*

That is the clarifying part.

Dr Holland: The intention of that was really to try to focus it in on those that deal with these cases going through and not to have that —.

The Chairperson (Mr Givan): Our intention was to have it widely; that is the point that I am making. To me, this is running counter to the intended purpose of our amendment. We wanted to highlight these primary ones but that was not to be exclusive if it transpired that other organisations across the criminal justice and policing sphere are involved in the disposal of domestic abuse cases and need to be included. Obviously, we want that; that was the intention behind it.

Dr Holland: In some respects, we struggled to see how other criminal justice organisations would be involved in the disposal of cases, if you are looking at it in the context of reporting through to those being dealt with at court.

The Chairperson (Mr Givan): It should not be a problem then.

Ms S Bradley: I will elaborate a bit on that point. Veronica, our inclusion of the words, "including but not limited to", allowed scope. It is very hard to pre-empt with any certainty the outworkings of the Bill. One of the issues that we raised earlier was the oversight of the independent person who looks at that in their recommendations. They may have identified organisations or bodies or parts of bodies that may require training on good practice. My concern is that the Department's amendment does not allow

for that. It would not allow for such a recommendation to easily be made or enacted. I say that to give some clarification on why we felt that it was important to have, "including but not limited to". I am not sure that that is reflected, but there is good reason to consider having it there.

Dr Holland: Am I right in thinking that the Committee intent is not that there is an issue with it being limited to police, PPS and courts at the outset, but in the context of this potentially needing to be expanded to other criminal justice agencies or bodies in the future if, for example, somebody such as that independent oversight person flagged up other organisations that need to take something forward?

Ms S Bradley: It is fair to say that that was one of the considerations. I will let the Chair elaborate on it, but the expansion piece for the oversight certainly had to be in there. I can see what the Department has done by being more detailed on exactly who, but that could raise problems further down the line.

The Chairperson (Mr Givan): What I would not want to do, though, is to create a condition that means that it would need to be subject to the independent oversight's recommending it. I do not think that that was the Committee's intent either.

Ms S Bradley: No, I do not think that it was, but it is a positive outcome of the position adopted by the Committee.

The Chairperson (Mr Givan): Yes.

Dr Holland: Is the Committee content that what are deemed to be the main bodies are covered as stipulated, but it wants a power that would enable other organisations to be covered at a future point, if that were deemed necessary, as opposed to there being other organisations that it thinks need to be explicitly covered at this point?

Ms S Bradley: Veronica, when we were doing our investigation and spoke to anybody about the Scottish Bill, they always put its success down to the level of training that was created afterwards. At the outset, before it becomes embedded or starts to be used, there is a need to be quite wide in who we want to be trained. People were asking, "Well, at what level in the organisation?". Quite frankly, it should be at almost every level. The receptionist in an organisation, who a victim may present to, needs to know the signs of coercive control. That is critical for this to have any success. We leant very heavily into the training for very good reason. I would like to see that have broader scope at the outset.

The Chairperson (Mr Givan): Veronica, it is necessary to ensure that subsection (3) is incorporated, so that it says "including but not limited to" the organisations that you have specified in the Department's amendment for Further Consideration Stage.

Dr Holland: Essentially, it is something that will allow us to expand that list if needed.

The Chairperson (Mr Givan): Yes.

Dr Holland: OK.

The Chairperson (Mr Givan): Perhaps we can find a way to incorporate subsection (3) into that one. I have some points to make around the reporting change from three years to one year, but we can deal with that in the reporting amendment.

Dr Holland: OK.

Ms S Bradley: Chair, it is those words "including but not limited to". Thank you, Veronica.

The Chairperson (Mr Givan): Is everyone else content on that one? OK.

Members indicated assent.

Dr Holland: The next one is the independent oversight function. This essentially sets out that that individual would report on or give an assessment of the effectiveness of the operation of Part 1, which is in relation to the domestic abuse offence and the aggravators associated with that; that they will be

consulted by the Department on the review or revision of guidance that is issued in relation to that element of Bill; and that the report is to make recommendations as they consider appropriate in relation to the operation of the Act. We are covering that the report will be completed annually and that the first report will be completed within two years of the new offence coming into operation. The thinking in relation to that aspect is to give sufficient time for the necessary numbers to come forward and to have an effective base to report against.

There is provision that the report is sent to the Department, laid at the Assembly and published. The person appointed is to be independent as provided for in subsection (5). The appointment under that is to be made within a year of the legislation getting Royal Assent so that that person is appointed ahead of the domestic abuse offence coming into operation. Subsection (7) makes provision that the section would cease to have effect "at such time", which cannot be any sooner than seven years before the day on which the offence comes into operation, and that that can be provided for in regulations. That provision is intended to reflect the provision that is currently in the Bill. The regulations will be subject to negative resolution. The thinking behind the resolution procedure was that the broad thrust or scope of that provision would be set out in primary legislation, and there had not been anything stipulated in the clause.

Clause 38 is tied in with that. Basically, the section that relates to independent oversight would come into operation on the day after Royal Assent. Again, that is really to enable provision to be made in relation to that appointment and for that to happen ahead of the more general provisions in Part 1 coming into effect.

The Chairperson (Mr Givan): Can I clarify a couple of points? In the current provision, the appointment must be made:

"not later than 1 year after the commencement of this Act",

to which we then inserted that the independent person would:

"contribute to the development of the guidance under section 28".

That has been passed. Obviously, guidance is already being developed and there is no independent person to contribute to it. When the offence comes into effect, an independent person may not have been appointed because you have up to one year to do that.

Dr Holland: The reason that we had not reflected that is that we were conscious of the fact that guidance is being considered and is due to be finalised early in the new year. Our thinking was that the initial iteration of the guidance would be used by the organisations in rolling out their training etc and would already have been developed and put in place as such. That is why we changed that provision to looking at it in the context of review and revision. What we were trying to do was still to incorporate a role for them in relation to the guidance and also to try to take into account the fact that, in all likelihood, they would not be appointed until the offence had come into operation and the fact that the guidance was being considered and would be finalised relatively shortly. There was no adverse intent behind that; rather, we were trying to reflect that sequencing.

The Chairperson (Mr Givan): It is a fair point, and one that I had not considered at the time. I have some sympathy in that you do not want to be responsible for delaying it if it is ready to go because you need to have an independent person appointed to contribute to it.

Dr Holland: Yes. Certainly, what we want them to do and expect to see is that their first piece of work would be to look at that guidance in the context of whether it is operating in the way in which we need it to, what changes are needed, and whether it can be made more effective. You would want them to look at all that sort of stuff as part of their initial piece of work and report.

The Chairperson (Mr Givan): I have some sympathy on that first point. Obviously, members will also look at that in due course. For me, the change in your amendment to clause 31(1)(b):

"to be consulted by the Department"

weakens the Bill, whereas we are making it clear to the independent oversight person that they must:

"review, report and make recommendations".

While I would still expect the Department to make, review and revise guidance, I would still expect — at least, my view is that the Committee's intention was that the independent person would do that independently of the Department —

Dr Holland: OK.

The Chairperson (Mr Givan): — and not be its consultee.

Dr Holland: It is probably a matter of strengthening the wording in clause 31(1)(b) and trying to reflect more effectively what was in —

The Chairperson (Mr Givan): The original provision, yes. My preference there is that clause 31 retains the original subsection (1)(b) with regard to independent oversight.

Dr Holland: Yes, I see what you mean about the way in which that could be interpreted. We are more than happy to look at that.

The Chairperson (Mr Givan): Members, does anyone else want some clarity on that one? OK. We will move on to clause 32.

Dr Holland: Clause 32 relates to the report on the operation of the Part, so it relates to the domestic abuse offence and aggravators. The provision is that the Department prepares a report covering the reporting period relating to the domestic abuse offence and any other offences where they are aggravated for the domestic abuse offence by the child aggravator or by the general domestic abuse provision, and then looking at it in the context of the information that would be set out or provided in relation to that. The domestic abuse offence as recorded with reference to police district information on files to the PPS, information on cases prosecuted by the PPS and convictions taken forward as a result of those prosecutions, and looking at that in the context of where the aggravator has been proved.

The next element looks at information on the average time from cases being recorded to being disposed of at court, whether as a result of a conviction or other disposal provisions not taking account of appeal processes in relation to that time frame.

The report is to include information on training under section 30, how court business is arranged in the disposal of cases and the experience at court of witnesses. The intention is that those provisions will apply to the categories of offences generally as opposed to distinct types in terms of the ability to obtain information on that.

Subsection (4) looks at the Department giving views on the operation of Part 1, which deals with the offence and the aggravator, and at guidance, awareness raising and activities that may be undertaken to support the operation of the Act, and other related matters that may be considered appropriate.

A report under this section must be laid before the Assembly by the Department and published by the Department. The first reporting period would be between two and three years after the offence coming into operation. That is to determine the most appropriate end date, whether the end of a financial year or a calendar year, just to give a bit of flexibility. The reporting periods after that would be two further three-year cycles. The thinking behind that is that, by the time you came to the third period, the offence would have been in place for over 10 years. I suppose it is the precedent that it would set for that to go on beyond that. That is being looked at in the context of the global report. It is the intention to publish statistics as is done at present, so the data would continue to be published. It is really the other bits and pieces — that broader report. The Department is certainly not saying that it would not be publishing information on offences more generally. That would almost become part and parcel of the broader reporting arrangements already in place for a range of other offences in terms of the police reporting on information and the Department reporting on that as well.

The Chairperson (Mr Givan): How could we get that included? I get the point of a report, in the broad sense, on the effectiveness of the Bill, and a broad report on training, but how could we get the data on the hard numbers published annually?

What we had in the clause on training was the identification of relevant staff in those organisations and then annual reporting on the uptake of training. That is quite specific. Maybe it does not need to be so specific. It is a type of Assembly question that I could see the Department getting asked regularly by Members, so that kind of information should be there. Can we incorporate in this amendment a reference that that kind of data will be published on an annual basis in terms of those crude statistics?

Dr Holland: It is, perhaps, a case of making reference to subsection (2) so that there would be a continuation of that but not for the broader aspects of the report. Subsection (2), at a broad level, relates to your numbers as such.

The Chairperson (Mr Givan): Could that aspect of training that we had originally be incorporated in subsection (2)?

Dr Holland: That is the notion of annual reporting on training.

The Chairperson (Mr Givan): Yes.

Dr Holland: It may be better that, if the preference is that that annual reporting continue, it is reflected in the training provision. We can look to see whether we can do something about annual reporting in that provision.

The Chairperson (Mr Givan): I will bring in members. Linda, and then Rachel.

Ms Dillon: The difficulty with the provision sitting there is that it will be every three years, and then we will be asking for it to be annual. In that circumstance, it would be better if it were put back in.

Dr Holland: That is fine. If that is the Committee's preference, we can look at that. It is, essentially, about trying to incorporate the bit that is currently in the Bill on annual reporting and the training element into that provision. That is not a problem.

The Chairperson (Mr Givan): The stand-out issue is that we were silent on when you would stop reporting, and the Department is not. Its final reporting period would be after the third of the three-year cycles. What is the basis for that?

Dr Holland: The thinking behind that was the fact that a lot of this is about how the offence is operating. In the earlier part of the clause, there is a provision around the numerics. The thinking behind three-year reporting is that, by the end of the third of the three-year cycles, the offence will have been in place for 10 years or slightly longer. It will be very well bedded in. The merits of continuing that broader apparatus are, as now, that the police and the Department will continue to publish information on offences and the time it takes for cases to go through. That was the thinking around the three three-year periods.

The Chairperson (Mr Givan): I have another couple of points, but I will bring in Rachel.

Miss Woods: I want to talk about reporting for nine or 10 years. The Committee amendment was silent on the reporting period because it was silent on the reporting period ending. It was to be continuous and ongoing. An offence bedding in after nine or 10 years does not give a database or baseline from which data can be worked off to see whether an offence is working or if we need to change anything. Surely, in the Bill, the annual statistics can be incorporated into police and Department statistics if they meet the criteria.

Dr Holland: Is one option, perhaps, to have subsection (2), relating to the numbers, for want of a better phrase, continue? Is that the concern?

Miss Woods: No. I would rather it had the whole thing: court business; disposal of cases; public awareness activities; and anything else that the Department considers appropriate. It is a new offence. This is criminalising coercive control. I do not think that nine years is an appropriate time in which an offence can be assumed to be bedded in, and then report only on the numbers. We need massively robust reporting. The numbers should be publicised anyway, but we are putting it in the Bill to make sure that they are. I do not think that subsection (2) covers everything, and it certainly should not be within nine or 10 years.

Dr Holland: Our thinking was that something is seriously wrong if, when you get to 10 years, that broader information is still needed. We do not envisage a situation in which it would be necessary to have all that additional information. That was the thinking around the three three-year periods.

Miss Woods: Chair, I see it the other way. Having all that information will better inform long-term strategies on addressing domestic abuse, sexual violence or anything like that. The more data that we have in the long term, the better informed we will be on the outcomes and how we should put policies and resources in place. If different information is coming through about how court business is arranged in eight years' time in certain police districts or areas, we can adapt strategies to suit that, based on the information. That might happen now, in five years or in 15 or 20 years when we have different people in place. Data and statistics are key. We know this. Resourcing is also key, and we had that out on the Floor. I do not think that nine years is enough.

Dr Holland: We are not suggesting in any shape or form that the information on the numbers would not be available. It is really around things such as the awareness-raising experience of victims and witnesses and other activities. That was what informed our thinking on that. Obviously, information is still available on number of offences, number of convictions, aggravations, length of time for cases to go through court and so on. That is fundamental for the operation of any offence generally, and, as I said, it was in the context of thinking that, at that 10-year point, the system would be in a place where that would no longer be needed to that extent.

The Chairperson (Mr Givan): I am wondering what would be the harm. If a case were to be made nine years from now, as has been the case in the human trafficking legislation, where the Department asked for that to be repealed, and we have agreed, there is not the annual aspect of what was included in that, and a cogent argument was brought forward. I am asking myself whether this is really a fundamental issue that we need to be worried about at this stage, because a strong case could be made at a future point.

Dr Holland: If that were the Committee preference, in clause 31(6), you would have reference to the first reporting period. You would probably then remove paragraphs (b) and (c). I do not know what way it would be worded, but you would have it saying, essentially, that each subsequent reporting period is three years from the previous period. We can certainly look at that being revised if that is the Committee position.

Ms Dillon: If we can leave it a bit open-ended, that covers an issue that I was going to raise. I agree with the Chair that very strong arguments could be made on both sides. I also agree with Rachel that everything that we do should be fed by information, but, in an awful lot of cases, it is done in the absence of information because we have not done the right work to collect it. We know that now, so we should learn from that and try to do things better in the future instead of deciding to do something and hoping that we have enough data to know that it will work. It could lead to fewer pilot projects, which are never rolled out. Let us put it that way. In the long term, there could be savings. On the face of it, this looks like it could be very labour-intensive, but that is not what the Committee wants to do. We want to do what will get the best out of it and be of most benefit to society as a whole.

Dr Holland: As the Chair said, it could be revisited.

Ms Dillon: I think that you can find that halfway point.

Dr Holland: Essentially, paragraphs (b) and (c) would be removed, and that would leave the subsequent reporting periods to be ongoing reporting periods. That is not a problem.

Ms S Bradley: Following on from what other members have said, and looking at the elements on the reporting period, I think that we are trying to project and anticipate the demand that might be there at that time. For very good reason, we have introduced the notion of this independent person, who should be around to make a better judgement on that determination. I wonder whether there should be scope in this Part to allow for that person to make a recommendation at a later stage so that there should be sufficient scope or space in the Bill for them to look at the value of what is happening and how it might need to be changed, amended or extended. Is that a notion worth toying with when we are trying to find that halfway house, so to speak?

This may be just a technical issue, but I notice that "raising public awareness" has been used to replicate the Committee amendment that spoke of "strategies". Is there anything in that nuance? Am I missing anything? Will you elaborate on that?

Dr Holland: The independent person could certainly look at that and comment in the longer term. I do not know whether it necessarily needs to be stipulated in the legislation, but it is a very helpful suggestion of something that they may want to consider in due course and advise the Department on in terms of any decision being taken in that regard.

We felt that it was more appropriate for clause 32(4)(b)(ii) to reference public awareness raising and the steps that will be taken to ensure that people are aware of and have information on the new offence. We have used the term "public awareness" rather than "strategies".

Ms S Bradley: Will you explain why, Veronica? What is the difference between "strategies" and "public awareness"?

Dr Holland: As a Department, when we refer to "strategies", we mean issues such as the domestic and sexual violence and abuse strategy. In this context, we thought that the Committee was trying to ensure that people knew about the offence and had information on it. We did not see that as a strategy piece of work; rather, it was about ensuring that people knew about the offence and were aware of it. Something akin to the See the Signs awareness-raising campaign was the type of thing that we were thinking of in the scope of that element of the clause.

Ms S Bradley: I appreciate that explanation. I will mull it over. Thank you, Veronica.

Mr Frew: Apart from putting in the stipulation of two years, three years, three years, end — again, I am teasing this out; I am not saying that this is a Committee position by any means — would there be any comfort in putting in some sort of positive resolution limb so that you could come to the Assembly and seek the ending of reporting? That said, if you tease this out and consider everything that Rachel, Linda and Sinéad said, imagine that, in 10 years' time, there is some sort of infectious disease that creeps around the world and creates a scenario in which everybody has to stay indoors, which changes police priorities and standard operating procedures and skews the figures of domestic violence right through the roof. Surely a Government would need to know that quite quickly in order to change practices, protect people, change training and everything else. This is a safeguard to see how things play out in the initial period of the offence but also so that vital data is caught, which could end up saving people's lives. Even though I am raising the hair of a positive resolution in the Assembly, the Assembly, at some point, could do that, and then, in three months' time, a shock could hit the world that changes the dynamics completely, in which case, having that reporting mechanism and universal continuum would be quite useful. I hope that I am not being too far-fetched with my infectious disease scenario.

The Chairperson (Mr Givan): I think that you are generous in saying that it could be 18 years away. I like the idea of it being silent, and, ultimately, whoever is Minister nine years from now could make a case and repeal it in legislation. My view is that we could probably address the issue through that. Are there any other points on that amendment?

Dr Holland: Would there be merit in allowing the provision for three-year reporting to be altered by affirmative resolution? It would not remove it, as such, but there would be provision in the legislation enabling it to be changed by regulations as opposed to having to take it forward through primary legislation.

The Chairperson (Mr Givan): Yes, if you ever needed to repeal it, it would do no harm to future-proof it for that.

Dr Holland: Essentially, we will revert to "the reporting is ongoing" but with provision that will enable us — it would be discussed with the Committee in any event — if there were to be a change, to take that change forward by way of affirmative resolution rather than through primary legislation.

The Chairperson (Mr Givan): Yes, that makes sense.

OK, so, on that one, there is that aspect. We also need to try to incorporate the annual capturing of data on training.

Dr Holland: The thinking there is probably about bringing that back to the training amendment as opposed to having it in the reporting one.

The Chairperson (Mr Givan): I am relaxed about where that falls.

OK, are there any other amendments, Veronica?

Dr Holland: No, that is it for the amendments on my side. Is there anything else more generally that the Committee wants to flag with us? We are keen to avoid a situation where we have departmental amendments and Committee amendments being put forward.

The Chairperson (Mr Givan): You would not want us to win again. *[Laughter.]*

Dr Holland: We are conscious that, given that we are approaching Further Consideration Stage, whatever goes in at this point, that is it, so we need to be aware of anything that might have adverse or unintended consequences.

The Chairperson (Mr Givan): We are all winners with a robust challenge function; it is not exclusive to anyone. Ultimately, we are trying to get the right legislation, so, yes.

OK. We need to have a quick recap on those broader amendments so that, as a Committee, we know what we will be asking. You have probably captured most of it in our conversations, Veronica, but we need to go through them and get our definitive advice to you.

The civil legal aid amendment is the next one, for which we will go to Stephen. Are you coming in on this one too, John?

Mr John Bradley (Department of Justice): Yes. With your leave, Mr Martin will make some opening remarks, I believe.

The Chairperson (Mr Givan): OK.

Mr Stephen Martin (Department of Justice): Can you hear me, Chair?

The Chairperson (Mr Givan): Yes, we can, thank you.

Mr Martin: I will make a few short opening remarks. Thank you for the opportunity to be here to talk about the legal aid aspects of the amended Bill. We all want to find arrangements for legal aid that are clear, workable and affordable and which achieve the Assembly's intention of helping to protect victims of domestic abuse from further traumatisation by their abuser in the family courts.

Legal aid is a difficult and very technical policy area. Translating policy intent into clear and workable legislation is challenging and takes time to get right. Any imprecision in how legislation or guidance is framed is often tested in the courts with a view to extending the scope or cost of legal aid. My team and colleagues in the Legal Services Agency (LSA) expend considerable time and energy defending the legal aid policy framework in legal proceedings. The outcome of those proceedings often hangs on the meaning of individual words or phrases. As a consequence, we spend a lot of time when drafting new legal aid legislation or guidance on being as clear and precise as we can.

We also extensively test out draft legislation in advance by trying to anticipate potential challenges or any unintended consequences. That essential preparatory work is designed to avoid, as far as possible, expensive judicial review (JR) challenges as well as those unintended consequences. Ideally, we would have time to develop detailed proposals and legislation to give effect to the Assembly's wishes in a clear, targeted and affordable way. That is why we proposed the amendment last week, and it remains, in our view, the best way to deliver an effective and workable solution for victims.

However, we acknowledge that the Committee is not convinced by the merits of that amendment. We understand your sense of urgency and your desire to act more immediately to provide legal aid for victims of domestic abuse in defending themselves against proceedings brought by their abusers in the family courts. We also understand that members of the Committee have recently expressed concern about the cost of legal aid and about how some legal-aided parties seem to draw out family

proceedings with the express wish of draining the resources of former partners. Given that, we believe that the Department and the Committee have a shared ambition to ensure that the desired expansion of legal aid to assist victims of domestic abuse in the family courts is properly targeted, affordable and avoids, as far as possible, unintended consequences. Unfortunately, as the Bill stands, that is not the case, and our briefing note sets out some of the key issues. We are happy to take questions on that note and explore with the Committee whether there are ways of delivering the Assembly's intention to support victims of domestic abuse by targeting the additional legal aid spend as effectively as possible while minimising potential unintended consequences or harm.

One potential mechanism might be to clarify and refine the existing clause through an amendment at Further Consideration Stage so that the waiver focuses on enabling victims of domestic abuse to be represented in the defence of proceedings brought against them by their abuser in the family proceedings court, where the great majority of such proceedings are initiated and heard. That would still leave the significant challenge, though, of how the Legal Services Agency would be able to identify victims of abuse accurately and speedily. Without that, there is a real risk of abusers being able to access legal aid to continue perpetuating abuse through the family courts.

The most clear-cut approach would be to rely on there being a conviction in place. However, we recognise that that would leave out people in similarly difficult circumstances where, for a variety of reasons, a criminal case has not yet been heard or conviction not secured. Reaching a workable mechanism by which the Legal Services Agency can identify a victim accurately and speedily will take more detailed work and consultation with stakeholders. That will take some time and could be addressed through regulations. The Department already has powers to bring forward such regulations.

The Chairperson (Mr Givan): Thank you, Stephen. I will bring Rachel in shortly. In a broad sense, I take the point that the Department's further amendment is still your preferred direction of travel over the Committee's amendment. However, the Assembly has now voted on an amendment, and my reading of the Department's amendment was that it was to produce a report with no clear objective. Obviously, scope is a matter for the Speaker. Personally, I would be surprised if the Department's amendment were allowed because it would undo what I regard as a clear decision taken by the Assembly to do something with immediate effect in tandem with this Bill, rather than waiting for two years to come up with something. That is a general observation. I want to be helpful and give effect to this in a clear and concise way that everyone understands, for all the reasons that you outlined and which relate to the broader piece of work that needs to be done on legal aid.

Rachel, I am happy to bring you in if you want to ask questions.

Miss Woods: I am happy for other members to come in.

Ms Dillon: My question has already been submitted to the Department. I need to understand clearly what the Department believes this amendment does that would be harmful. I accept that you are saying that it will not encapsulate everybody, and it is a concern that we raised. Even the proposer of the amendment felt that she would much prefer it to go further, but the reality is that we were inhibited from going any further because we had to stay within what we thought was the scope of the Bill. That is why it is as limited as it is.

I accepted that there were some concerns, but I did not have a clear understanding of what those concerns were. I really need to bottom those out. What are the big concerns for the Department about this amendment standing? The Chair has outlined that the Department's amendment negates the Committee amendment, and he is probably right in saying that the Speaker might have difficulty in finding it within the scope of the Bill. I would prefer to do what you said: to look at it in the round. I said that on the Floor of the House, and I think that we would all prefer that. There is nothing to stop the Department from doing what its amendment outlines about producing the report, in addition to what has been agreed in the Assembly. Tell me what your big concerns are rooted in. Where is the evidence to back them up?

Mr Martin: Our concerns are rooted in experience, and my colleagues will come in on this as well. As drafted, the provision is very broad. Legal aid legislation works well and is targeted where it is clear, specific and focused. Essentially, too many unintended consequences could occur through the provision as currently drafted. Narrowing and focusing it through an amendment at Further Consideration Stage is a viable option. We are keen to understand what the Committee is keen to achieve. At the moment, it is too much of a broad brush, and there are too many potential unintended consequences and risks. If we can understand what the Committee is trying to achieve, we can

develop something to do that. We think that you are trying to prevent the victim from being dragged through the family courts by the abuser and prevent that abuse continuing through the family courts. That is what we understand that you seem to want, but that is not what this provision does. It also leaves it very unclear as to who a victim is, which would then fall to the Legal Services Agency to try to determine, and it does not have the wherewithal to do that. That would be the subject of significant judicial challenge in the courts, and there is potential for the abuser to portray themselves as a victim to perpetuate the very thing that you do not want to happen, which is taking the victim through the family courts. We are not quite sure that the waiver is the right way to achieve what you want. Those are the three main things. Paul, do you want to add to that?

Mr Paul Andrews (Legal Services Agency): Good afternoon, Committee. I will make a couple of very simple observations. Fundamental to the effective outworking of the amendment is to identify who is a victim and therefore entitled to exercise the waiver. As Stephen said, we can all happily say that, if someone is convicted of an offence, that proves it. However, we know that, in practice, that is not an accessible way to do business for the vast majority of these types of cases. In many of the cases that we are dealing with, where there is genuine urgency in bringing the matter before the court, we deal with those applications on the same day or the next day, particularly in the lower courts. Fundamentally, we have to have a mechanism that gives clarity to enable us to give that direction to an applicant so that they are covered, and their legal representative is free to appear on their behalf without further expense. I am genuinely concerned: we do not want to get into a situation where we have two applications in respect of the same case and where both parties assert that they are victims. I do not think that the amendment envisages that but it is the potential that we face.

The final point, at this juncture, is that the amendment is, understandably, drawn very widely. I am anxious about what that means. The reference to article 8 of the European Convention, which is part of the *[Inaudible]* trigger that the amendment entails, can be associated with many types of proceedings that can be defended or brought at all levels of court. That brings a range of cost implications and financial challenges. One of the issues, at a higher court level, is that there are a variety of ways that could allow an individual's means to be assessed slightly differently, because the amendment is drafted against the background of the domestic violence waiver, which, of course, applies only in the lower courts and addresses the financial eligibility threshold.

In summary, I suggest that the first issue is how we identify the victim and how we do so with clarity, certainty and speed. The second issue is how we identify the scope of cases that are envisaged, and a cost aspect would fall alongside that, both in bringing new applications, which legal aid would not previously have had to fund, and in dealing with applications that we may currently fund but with considerable contributions from assisted parties. There is a practical side, which is the victim; a timeliness side, which concerns the evidence; and a cost side relating to the impact of the range of the amendment as it stands.

(The Deputy Chairperson [Ms Dillon] in the Chair)

The Deputy Chairperson (Ms Dillon): I will clarify where I am. I am speaking only for myself, not on behalf of the whole Committee. Other Committee members will come in, so you may get an understanding of where there is a common thread.

The understanding of the intent of the amendment is a wee bit skewed. It is not about stopping an abuser from repeatedly taking their partner back to court over contact orders — an abuser may well do that. Rather, we are hopeful that, as a consequence of the victim getting legal aid, the abuser will not do so because they will not see it as being beneficial to them. The abuser's intention is to bleed their partner dry of any finances that they have. It is further abuse, financial and psychological. Really, this is about the working poor, the people who are not entitled to legal aid because they are not on benefits but who are probably slightly over the threshold, so it would not take much to bleed them dry. For me, it is about addressing that, first and foremost.

Committee members had a conversation about the issue of who the victim is and how that could be established. It could be done in a number of ways. Where a case has met the PPS evidential threshold to go to court, you could identify that individual as a victim, rather than waiting until the abuser is convicted, because, for numerous reasons, they might not be convicted.

Those are the two main issues that I can address for you. It is Rachel's amendment, and she will go into substantially more detail. I agree with you that this does not cover all the issues that we would love it to cover. I would prefer that we could do a lot more to address these issues for people who are

being further abused by being repeatedly brought back to court over contact orders. Unfortunately, we are limited to what we can do within the scope of the Bill.

Rachel is on record, at Committee and on the Floor of the Assembly, as saying that she is absolutely open to refinement and to putting some parameters in place around the amendment. For her, if was about getting the provision on the statute books and then allowing the Department to bring forward something that would improve it. I will let her speak for herself. She is more than capable of doing that. The concern is about negating her amendment. I take on board the concerns that you are raising, but I am trying to find out how we address those concerns and still have something in place.

Mr J Bradley: Do you want us to come back on that now?

The Deputy Chairperson (Ms Dillon): I am content that other members come in. In the absence of the Chair, I will go to the next member.

Ms S Bradley: You raise the issue of unintended consequences. I am interested to know whether you can give me some examples because I am trying to grasp the Department's concerns. I see the headlines, but I do not hear the detail of what they might look like.

Mr Martin: If I start, colleagues can come in afterwards. One unintended consequence is the type of proceedings for which legal aid is possible. For example, you could find an acrimonious situation where the victim, in a case unrelated to her abuser, could bring proceedings. That is not what I think the Committee wants. It is about protecting them from the person who has abused them. That would be one unintended consequence. The amendment is broader, I think, than you want.

The other unintended consequence is a key one, and it relates to this issue of the victim. It is about the types and breadth of proceedings. There is potential for an abuser to claim that they were a victim. Paul and John may wish to add to that.

(The Chairperson [Mr Givan] in the Chair)

Mr J Bradley: One of the things that struck me most when I saw the original form of the Committee's amendment — when it was proposed and as it is now in the Bill — was that there are two potential areas of vulnerability, and they interact in a dangerous way. One is how the LSA identifies who a real victim is. In the absence of a test, and with the LSA trying to get into findings of fact about that, the thought struck me immediately that there will be people who represent themselves as victims in order to get access to this waiver. It seems to me that, in those circumstances, the people most likely to do that are abusive partners who want access to the courts.

The other dangerous part of the provision is that it does not apply only where someone wants to defend themselves against an application made by someone else. The waiver applies where a person is making an application to the court. It can therefore create a low bar for access to legal aid, one that can be readily overcome by someone who wants to be disingenuous, and it enables them to bring applications. The red light that shone for me at that point was that this is an invitation to an abusive partner to make use of this to perpetuate abuse, rather than to stopping abuse. It is the major unintended consequence that arises in the current form of the amendment and could be genuinely counterproductive for victims.

There are two ways in which you would need to tidy it up to make sure that it focuses on the people whom you are actually trying to help, The first is to give the LSA some means of knowing that, when a person comes to it and says that they are a victim of domestic abuse, they are, in fact, a victim; not an abusive partner or someone seeking to game the system, frankly.

Secondly, if the scope of the waiver were limited to circumstances in which someone was defending themselves against an application, it could not be abused to bring an application against someone. It would at least be going to someone in circumstances where the application was being made against them. In these sorts of ways, you can focus on the people whom you are trying to help and try to keep outwith the net those who might be trying to perpetuate abuse by using the system. That was the thing that struck me most sharply, and I think that it was the biggest danger.

The Department has power through regulation to provide for a test that would enable us to identify victims. Conviction is one way of doing that. A PPS threshold might be another. We might be able to find other ways that would work quickly and clearly and get the thing right, but we would need to take

the time to explore what those might be. What other forms of evidence would be available to a victim of abuse that they could present, along with their application, and pass the test in a way that was safe, quick and effective? The intention is to prevent abuse of the system by bringing people to court with whatever motivation. If the waiver applied only in circumstances where you were defending an application, it could not then be used to bring an application against someone else, so it would avoid that additional unintended consequence.

Ms S Bradley: To be fair, it was one of the things that jumped out at a lot of members when it was there initially. However, getting it into the Bill was the important thing at that time.

Am I right in thinking that, at the beginning of the Bill, there is an evidential test that abuse must not be a one-off incident but has to have happened at least twice? There is an evidential basis there to establish whether there is a case to be brought through this Bill. That test is there. If a victim has gone through the process but the case did not reach a conviction, other supporting legislations come into play that may secure conviction at that point. The evidential test, either way, has been satisfied for the case to be brought. That would be one way of defining the victim.

I take the point that the provision is about the court being used as a weapon to perpetually bring a victim to court. In that sense, the defendant is the second person who has to be defined so that the breadth of that can be limited. Can the defendant bring to court the person who triggered the domestic abuse Bill? Could that defendant bring that victim or alleged victim — they will be a victim if they pass the evidential test — to court but on lots of other matters that do not relate to that case? You can define the defendant when you are talking about that domestic relationship, which is an element in the domestic abuse. Legal aid is triggered when the case is anything to do with those two parties. I do not know whether any scoping work has been done on that.

There could be parameters where a person has identified themselves as a victim through the domestic abuse Bill. The objective would be that they could not bring those other matters to court. For example, parameters would need to be put in place so that the victim does not use their access to legal aid in order to take on all sorts of different cases that do not even relate to the defendant. For example, they may have an issue with consumer law, and the right to legal aid to deal with that is well defined in its scope and intention.

I would like to see more from the Department to encapsulate that notion and to understand that it is about that perpetual effort to chip away and break down the victim through financial and psychological damage and weaponising the courts.

I was pleased that provision got to into the Bill. It needs to be refined, but there are easy-grab ways of doing that. It is not the answer to legal aid, but it offers an answer to legal aid in a domestic abuse setting. That is why there is a shared objective here, as you, rightly, pointed out, but I do not know that the solutions are so hard to reach that we should avoid it at all costs, which was suggested in the House. I would appreciate any thoughts that you have on those suggestions.

Mr Martin: Yes, the point is that we are not saying that any of those things are insurmountable, but they take time to work through. A piece of legal aid legislation is not something that can be done on the back of an envelope; it takes careful thinking-through. You also do not want a victim to use the family courts for a vendetta against their abuser. It is about narrowing the circumstances and being clear, but some of that needs quite a lot of work. That is why we proposed that amendment. The Minister does not have any objection to the intention behind that, but it is just about making sure that we have something that is workable, affordable and focused. That is where we are trying to get to, is it not, Paul?

Mr Andrews: I found your contribution very helpful. In many ways, it crystallised my concerns from an administrative point of view. I want to be very clear about how this will work in practice because I want to make it clear that I am facilitating only a victim who is defending a case that has been punitively and entirely inappropriately brought against them.

I am facilitating their doing that in a way that makes it clear that this is not a set of circumstances where someone who has been established as a victim can, because of that, take any proceedings as long as they refer to article 8 as part of the waiver. The current amendment allows that to happen in perpetuity as there is no victim relationship.

I agree with you that the refinement to the Committee's amendment should be focused on the circumstances that people want to address. That can be delivered, but we just need to take a focused scalpel to that in order to get the right hue on it. The worst-case scenario would be to end up in a situation where people get legal aid in circumstances and proceedings that we never intended. That is what we are trying to avoid by suggesting conversations to get to a resolution to the matter.

The Chairperson (Mr Givan): In a moment, I will bring in Rachel, who is next. I will not vote for the Department's amendment; you can table it, but I will vote against it. You made comments about more time and a comprehensive review, but the Assembly has voted, so the sooner the Department gets engaged in making sure that the parameters of the provision are clear, the better. I am not going for an amendment that says that you have two years to lay a report to make proposals, because that does not give effect to what the Assembly voted for.

The Department has come up with a way to refine all the other amendments, and we will agree them over the next couple of hours, but the Department is not coming to the Committee on a way forward on legal aid that is helpful. That was not my amendment; it was Rachel's, but I supported it. It will stay unamended in the Bill and become law, and the Department will then need to very quickly come up with another piece of primary legislation if it is so concerned about the risks.

I make that broad commentary on where we are in the process. I appreciate that that will require a very quick turnaround, but if there are clarifying amendments to be brought forward in order to make the provision within the parameters that were outlined in the debate, let the Department quickly bring them forward. I do not believe that pursuing the approach of kicking it down the road for two years will garner support in the Assembly. That is a broad assessment of where people are will be at. Rachel wants to ask specific questions about that.

Miss Woods: I have a number of questions.

Mr Martin: Sorry, Chair, can I give a brief response to that point? We considered bringing an amendment to you today, but we needed to have this discussion in order to understand your intention, because it was not clear from the Consideration Stage debate, and the amendment came fairly late in the process.

The Chairperson (Mr Givan): Not to repeat myself, Stephen, but it was not a Committee amendment.

Mr Martin: No, I know that.

The Chairperson (Mr Givan): I am trying to be helpful, but on that point, the Department did not come forward with its position until the debate. The Minister got up in the Chamber, and that was the first that I heard the Department's position being outlined because it was not outlined to the Committee in advance. I was not at all convinced by the Minister's arguments. If she had spent more time engaging with the Department rather than going around the Executive to try to get an outcome, there might have been a different result. I will bring in Rachel, and we will try to get to the specifics.

Miss Woods: I appreciate your time today. To clarify again, this is not a Committee amendment, and it is no longer my amendment; it is a clause in the Bill. I appreciate that I tabled it, but it was not done on the back of an envelope.

To clarify, article 8 of the Children Order does not talk about consumer law. Article 8 orders are contact orders, prohibited steps orders, residence orders and specific issue orders. That has nothing to do with consumer law at all and does not widen the scope in any way into any other bits of law or any litigation. There is no medical litigation here. It is all to do with "parental responsibility":

> *"the person with whom a child lives, or is to live ... the arrangements to be made as to the person with whom a child is to live ... giving directions for the purpose of determining a specific question which has arisen ... in connection with any aspect of parental responsibility for a child".*

It is framed in contact orders, so it is not about widening the scope to every single part of law where a case of domestic abuse has been alleged or any allegation is made against A or B. I have loads of questions so that I can get information. I appreciate that the Committee does not have to get to an agreed position on this. I am more than happy to table my own amendments. It was I who did it; I

created the mess, so I will try to fix it. However, it is just to clarify that article 8 does not expand into all aspects of law.

I appreciate that Linda and Sinéad both asked about unintended consequences. At the start, you outlined three issues on unintended consequences: defining who is a victim; levels of court implications; and finances. Are those the unintended consequences, or are there more?

Mr Andrews: They are set out pretty clearly between our briefing note and opening statement. It is a very broad range of things. We have already set out what we think the main unintended consequences are.

Miss Woods: OK. So, there is not another list of unintended consequences that might arise. Just from memory, it is about definition of a victim and practicality for discretionary power; the different levels of court, such as the High Court and the lower courts; and the financial challenge.

Mr J Bradley: Rachel, I suggest that article 8 is probably more likely to be associated with matters to do with divorce, depending on the age of the children. There could be a relationship through ongoing access to and custody of the children, and that could arise a period of time after the abuse happened, although I am not saying that the abusive relationship and pressures may not still be at large. That is the only other point that I would make to you, if that is of assistance.

Miss Woods: Thank you. I appreciate that. That is that retrospective nature of it. I appreciate that that is trying to square off the unintended consequences bit.

I will come on to A26, "Proposals as to civil legal aid". In no way did I see this as a helpful amendment from the Department. I said very clearly — Linda said it as well — that we welcome refinement, clarity and detail. However, kicking the can down the line with a report having to be brought back after a couple of years is not something that we envisaged for the wording of the provision, and it is not what the Assembly intended. The Department's letter to the Committee on 24 November talked about unintended consequences in how to qualify a client or assess their eligibility. What kind of solutions do you see so that a scenario where the Legal Services Agency has to try to determine whether abuse has occurred can be avoided?

Mr Andrews: I will take that one in the first instance. We need to have a mechanism that takes what someone reports and that has a degree of verification. I noted in the opening statement that prosecution was raised, but it is recognised that that is not a definitive solution. The Deputy Chair made a helpful observation about the file being passed to the PPS. If there was an engagement, we could probably look at a range of scenarios that give focus to that so that there would be a verification mechanism that we would not have to look behind because we could have absolute confidence in it. A verification mechanism that delivers a very quick response is really what we need so that the application can be processed and, as necessary, someone can appear in court to defend the victim.

Miss Woods: I appreciate that you want a mechanism and that a range of scenarios might be needed. Do you have examples of what the possible solutions could look like?

Mr J Bradley: The key point is that the evidential test will set out a list of circumstances in which the LSA will be able to be satisfied that the person is a victim. On that list may be a conviction for a domestic abuse offence, confirmation that the PPS is satisfied that the standard of evidence has been met or confirmation that a court has made a finding of fact that domestic abuse has occurred. It might also include certification by an independent person with knowledge of the facts of the case that the abuse has taken place, for example. Whatever the test, it does not strike me as sensible to try to set it out in primary legislation. We will need to go away and try to compile a definitive list of those circumstances. We can say for sure that conviction for a domestic abuse offence will be on that list and that there will need to be further things on it, but we will need to talk to stakeholders in the area who understand what sort of evidence will be available to a person in those circumstances that will enable a speedy decision to be made. Those are the sorts of things that will need to appear.

Miss Woods: Thank you; I appreciate that. Is that granted if there is an eligibility requirement?

Mr J Bradley: Yes.

Miss Woods: The letter also states that:

"there has to be a clear test available to the Director of Legal Aid casework that has the force of the law, that can discriminate between real and false accusations of abuse, and that is capable of being applied in practice."

What would that test look like? Would the clarity that is required be provided by, say, another statutory body or criminal justice agency?

Mr J Bradley: Indeed. I would not like to close down the range of sources from which that certification might come. The troublesome matter is that the LSA is going to be in no position to make a finding of fact on its own, so it will be presented with an application from a person purporting to be a victim of abuse and will have no way of looking behind that application to determine whether it is true. What is important is the fact that it will come with a declaration from some statutory or other body saying that the allegations being made are well grounded and that the LSA can proceed with confidence to make a quick decision to apply the waiver. In those circumstances, the waiver would then apply. The difficulty that we have at the minute is that the test is not provided for.

Miss Woods: The letter also states:

"there may be other relevant protections which might more usefully focus on preventing access to the family courts by abusive partners where their aim is simply to perpetuate abuse."

It goes on to state:

"By limiting access to legal aid, or by limiting access to the courts themselves, in circumstances where there have been repeated applications, or where the applicant has been repeatedly defeated, or where abuse of the process has been demonstrated, much more good might be done to help victims of abuse."

Have you any problems with those suggestions?

Mr Martin: Courts have powers to do certain things. We were trying to understand where the Assembly was coming from. We were flagging up that there are other ways to achieve the same ends in tandem or instead of this. That was the point that we were trying to make.

Mr Andrews: It is fair to say that, although it can play a part in dealing with the issue, legal aid is not the only player that can deliver it. I am conscious that the amendment deals with legal aid, and that is the context in which we are trying to respond to you. However, we are just suggesting that, as well as looking at how it could be implemented in practice, we can look at other areas that might provide a more useful blocker to stop the application being made in the first place.

Miss Woods: I agree. I absolutely welcome the provision in A26 for the Department to come forward with a report, but that should not be done to the detriment of legal aid. I can foresee some of the problems that are outlined in the Department's letter forming part of that report without being prescriptive. That could also be looked at.

The letter also states:

"The creation of the opportunity for new, legally-funded applications in family law cases, is the problem that gives rise to most of the additional cost risk, and to the risk of the waiver being exploited by abusers."

Will you explain why that is the central problem as opposed to a solution that would see eligibility clarified while maintaining the opportunity for victims to bring new legally funded cases if they needed to do so?

Mr J Bradley: I would not say that that is the core problem. I would say that the problem is the interaction between not being able to identify victims accurately and being able to bring applications. The two of those interacting give rise to the greatest danger.

There is still an issue with applying a waiver to allow people to bring applications, because it increases traffic in the courts. It gives rise to more applications coming forward, and those application will all,

because the waiver is being applied, be complicated to an extent by having allegations of domestic abuse in them, which the courts will have to untangle.

In some of those circumstances, it would be actively helpful to a victim to be able to bring some of those applications. Allowing it, however, would bring into the scope of the waiver so many other circumstances that it would have the effect, first, of potentially having retraumatisation going on through the courts, and, secondly, of having additional large volumes of cases and costly cases. It is only by applying the waiver to allow people to bring applications as opposed to simply defending them that we risk increasing the number of cases that are before the courts. The risk is that you get a very large increase in cases, especially in those that are complicated in that way.

We see an argument that recognises that, in certain circumstances, it would be helpful to have the protection for a victim to be able to bring those. However, having it generally available without, to some extent, circumscribing the conditions in which it might occur is, as the letter says, the issue that gives rise to the potential large increases in costs to the legal aid fund, not all of which would be targeted at helping the victims in question.

Miss Woods: Is that with regard to only article 8 orders?

Mr J Bradley: With regard to only article 8 orders, yes.

Miss Woods: Those court applications would come anyway if contact with children is being brought. I appreciate that you could foresee an increase in applications.

Mr J Bradley: Yes.

Miss Woods: At the end of the day, those applications are going to be made.

Mr J Bradley: Yes, many of those applications might already have been made, but they will not be funded in part through the legal aid system. Our expectation is that the availability of support might drive additional applications that a person might, on balance, have decided not to bring or might not have been in a position to bring under the waiver. It is simple economics: if the thing gets cheaper for a person to do in the balance of whether they decide to do it and it then shifts, you get more applications as a consequence, and because those applications are brought forward under the waiver, you have issues of domestic abuse involved.

None of that is to say that those applications are necessarily without merit; it is only to say that that is where the risk of enhanced cost in the system comes from.

Miss Woods: Yes, I understand that from an economic perspective, but I am coming at this from a victim's perspective, which is what the entire legislation is supposed to be about.

Mr J Bradley: Absolutely.

Miss Woods: Whilst I appreciate that, the cases are coming anyway. They are to do with child contact or prohibited steps of residence. They are to deal with parents in a very specific circumstance. I understand that there is a financial risk where there may be lots more applications, but, again, those applications are coming in because there is a need. We cannot make a judgement on whether those cases have merit; that is for the courts to decide. If there is no merit, they will not bring them.

Mr J Bradley: Absolutely. The reason that we were keen to explore whether it is necessary to extend the waiver to circumstances where people wanted to bring an application is that if the desire is, for the most part, to prevent people from being dragged before the courts by a former abuser, that is not necessary in order to do it. If the intention is to give people the capacity to bring applications, what we are saying is that that carries with it a risk that, first, there will be considerable cost, and, secondly, that however good the test is about whether victims are genuine, to some extent it could enable the very form of abuse that you were trying to stop. There are concomitant consequences that come with it.

Miss Woods: Yes. Members who have spoken so far have clarified that it is not our intention to stop people being taken to court. We cannot do that.

Mr J Bradley: Oh, no; sorry. That is my poor phrasing.

Miss Woods: It is to level the playing field between two parties.

Mr J Bradley: Quite; sorry.

Miss Woods: I do not want to speak on behalf of the Committee, but that is where we are at. This is about levelling the playing field between two parties.

Mr J Bradley: Sorry.

Miss Woods: I want to ask about refocusing the waiver. You mentioned earlier about not having to bring cases but to defend an application that is brought. Does that include appeals?

Mr Andrews: May I come in on that? The normal principle is that if you are successful at the lower court, you get legal aid to support your application to the higher court. The point that you are driving at, Rachel, is that there is a different financial eligibility test between the lower court and the higher court.

That could be accommodated in one of two ways. One would be to allow the appeal to be financially linked to the original application and for it to proceed on that basis against the new test. That new test could have a limitation of contributions, as is currently suggested. Alternatively, we could look at powers that I already have in certain circumstances to have a waiver on the financial limits and the contributions that would be payable.

There are two ways of dealing with that. From a practical point of view, whatever mechanism is in place for the lower court has to replicated in a practical way for the upper court. Otherwise, it does not give effect to the defence that the victim is trying to pursue.

Miss Woods: OK, thank you for that. There is a lot there, but I will not unpack all of it. If there is an appeal in the Court Service, is that a defensive application or is it someone bringing —?

Mr J Bradley: As regards our (a) and (b) in the Domestic Abuse and Family Proceedings Bill, that works in one of two ways. If the abused party has brought an application for a contact order and has secured it, and their abuser then seeks to appeal that decision in the higher court, they will be defending the application defending the appeal — the abused party will be defending the appeal. Therefore, they would not be bringing an application to defend the appeal. In circumstances where the abuser has secured a contact order in the lower court, and the abused party wishes to bring an appeal against that decision, they would apply at the higher court to overturn that decision.

Miss Woods: So, it does not apply to that because I can see a gap there. If it was amended so that it applied only in defence, there would be a cohort of people to whom the financial waiver would not apply.

Mr J Bradley: This financial waiver would not apply. However, because they will be appealing a decision at the lower court, they will be appealing to a higher court. They will be going to the family care centre or to the High Court in those cases. In proceedings at the family care centre and the High Court, Paul, at the LSA, already has discretion to disregard part or all of their income or capital when calculating their eligibility.

Miss Woods: How much is that used?

Mr Andrews: It is not used currently, because the financial eligibility test for the higher courts is more flexible than it is for the lower courts. So, the financial threshold means that most people who had funding at the lower courts will get it at the higher courts and some people who did not have funding at the lower courts will get it at the higher courts. The discretion is not used, to the best of my knowledge. I have never used the discretion in that context, because it has never been asked for. I think that what John was trying to emphasise was that, if a package of measures were put forward to deliver the desired outcome, that could form a different part, which actually could provide greater comfort to the victim.

The other point that may be worth mentioning, Rachel, is that it only goes to the higher court with legal aid if it is a meritorious appeal. Assuming, for the sake of today's discussion, that there is merit in the appeal that the abused person wants to bring to the higher court, that brings that issue back to them

not being penalised by going on appeal to the higher court. If we say that there is merit in it, I do not think that they should be penalised with how this works out in practice.

Miss Woods: No wording of our clause A26 has come from the Department, so, in trying to get detail and clarification, the ask is to have the defence put in to the current clause as it is in the Bill. Has any consideration been given to any other possible solutions?

Mr Martin: We sort of hinted at one in my opening remarks. There is potential for the waiver to be focused on defensive proceedings brought against the victim by their abuser in the Family Proceedings Court, where most of these cases are dealt with, and then the Department bringing forward regulations or guidance on what a victim is. As John said, that would need a bit of focused work. We could not put that kind of information in primary legislation because it would need detailed discussion and engagement with stakeholders, but that is the kind of amendment that could come forward.

Miss Woods: You covered that on regulations and having to define or prove — not even defining, but proving victim. Presumably, you would still have to prove the abuser as well underneath that. Does that not makes things more complicated?

Mr Martin: Not necessarily. John outlined earlier the kind of test of who a victim is. It is if there has been a conviction or a case has gone to the PPS, as Sinéad Bradley suggested. If there has been a finding of fact by a court, for example, in granting a non-molestation order, those are cases in which there has been a victim and an abuser. There has been a finding of fact. If the definition of a victim for the purposes of the LSA's decision-making is in that kind of territory, those are the kinds of things that we would need to look at.

Miss Woods: Chair, I leave it there and maybe come back.

Mr Frew: I am not going to get into the detail. There is no doubt that that is Rachel's pigeon. It is her amendment, and it is now in the Bill, so we will have to find a solution. However, I can tell you now that new clause A26 is not the solution. It is just a report. If you were telling us that new clause A26 was an amendment to add to the Bill, I would be there with you, but it is not to replace clause 27. Absolutely not.

I am interested in your report, to be published within two years. I will be interested to find out exactly what it does and how much scope it covers in trying to protect as many domestic abuse victims as possible. Again, it is not to stop court cases; it is just to ensure that there is a level playing field. Access to justice is a very important issue, as you all know. I know that you guys are talking from an economic perspective because you probably always hear from this Committee about economic issues and problems. I get that, but, in the domestic violence setting, it is not an economic issue. To be honest, if it is an economic problem, I can tell you scenario after scenario where I have been contacted by constituents asking, "How did he get legal aid? How did she get legal aid? What is going on?". So, here we are, in the unique position of trying to level the playing field for more people to get legal aid.

The definition of a victim has to be settled and how you go about getting that definition or proof and then also the definition of a perpetrator. I do not want this to be a free pass for ever for a victim of domestic violence to go to court at any juncture on any subject. It has to be clearly defined on the issue of victim and perpetrator with regard to article 8 scenarios, but there may be a way round that.

Even if you were to put in something strict there, there may be a way out whereby a perpetrator gets someone else to take the victim to court. That is something that I am trying to play with in my head. A parent wanting to take somebody to court might use a child to do so, not even in a domestic abuse setting but in any setting. A parent can use a child to take a neighbour to court on a completely different scenario, and they will get legal aid for it. They drag their child through the court system, which is horrendous, but it happens. It happened to me. So, in that regard, we have to be careful. We have to come together to find a solution.

It was commented earlier that you do not want the victim to use this as part of a vendetta. Whilst you guys understand legal aid, I do not know that you understand coercive control because very few victims of domestic violence would ever use the court as a vendetta. In my eyes, they do not want to see the inside of a court. A victim of domestic violence will not want to go near the perpetrator in a court setting.

I am happy to keep your new clause A26 in there. I do not know the burden of work involved, and I do not know how much we have to widen it to consider all scenarios whereby a court could be used as a weapon against a victim. That is what I want to look at. Let us try to fix, or, to use different terminology, improve clause 27 to make sure that the proposer and the Department are content. I will end on that positive note.

Mr Andrews: I will embrace the positive note, Mr Frew, by saying that that is a helpful contribution. I am not particularly fixated on the economics in a very narrow sense. I am conscious that, in the lower courts, 66% of people who get legal aid are on passported benefits, so they do not pay any contribution. A number will pay a limited contribution, which, as you see in the amendment, is a maximum of £234.

I also acknowledge your point about someone being used as a vehicle by an abuser. I made a similar observation the other day where the parent of the abuser could present themselves as distinct from the abuser to get access to the child. That might be entirely appropriate if the grandmother — I am not picking on grandmothers; I am just using them as an illustration — has genuinely distanced herself from the abuser. However, the child will have been brought nearer the abuser. We recognise those very practical considerations. My only concern is that, although there are things that are easily identified and remedied, there are lots of other things that we need to work through. We might not get a counsel of perfection at the start, but we need to remedy them quickly and move to address them.

I hope that that observation is helpful.

Mr Frew: Yes. Thank you.

The Chairperson (Mr Givan): Sinéad, your hand is up; I am not sure whether that is to come back in on this. Can you unmute?

Ms S Bradley: Yes. The letter stated that the Committee view would be heard and that something would be brought forward to us. Is there a timeline for that? I am eager to see that sooner rather than later.

Mr Martin: That is an excellent point. Obviously, we will have to talk to the Minister. Further Consideration Stage is pencilled in for 7 December, so it would be difficult to get an amendment back to you for you to consider next Thursday and make that timeline. We will take the Minister's mind on that. If she is so minded, we will prepare an amendment and send it to the Committee for your views and discussion. It is a conversation that I need to have with the Minister first.

The Chairperson (Mr Givan): The Committee has been in touch with the Department; it knows our time frame. We do not have any other meetings scheduled; the amendments have to be tabled for Further Consideration Stage by 9.30 am next Wednesday. Today was the day for the Committee to consider the Department's amendments, which we have, apart from one on legal aid. It puts the Committee in a very difficult position. It will probably end up in the Assembly with individual parties taking a view, and we know how that worked out last time.

Sinéad, if you have not finished, feel free to jump in again.

Ms S Bradley: I am fine, Chair.

Ms Dillon: I am keen for us to see the wording of the amendment, as I would like to have a Committee position. Chair, am I right in saying that we have scheduled the potential for a meeting on Tuesday?

The Chairperson (Mr Givan): We have made provisional arrangements in case we cannot agree our positions today. If we need to put forward a Committee amendment, Tuesday was the meeting for agreeing the wording of it. It looks likely that we will have to have a meeting on Tuesday because the Department is going to tidy up a couple of the other ones. However, I think that we will reach a consensus on the other amendments with the Department; at least, I have a form of wording to suggest to the Committee. We plan to have a meeting on Tuesday.

Ms Dillon: If it is possible — I am not saying that it will be — to have the wording of an amendment before that meeting, I would certainly like to have a Committee position. It may not be possible; we have to be realistic. We will know whether it is possible only when we see the wording.

Dr Holland: On the other amendments, if there is a meeting scheduled for Tuesday, it would be helpful for the Committee to have had sight of those and for them to be signed off ahead of tabling. I appreciate that it is not for us to dictate when the Committee meets.

The Chairperson (Mr Givan): Provisional arrangements were made for a meeting on Tuesday, if necessary. I have no difficulty with having a meeting on Tuesday. I am not so sure that the Department will be ready with a civil legal aid amendment in time, by the sounds of it.

Mr Frew: Guys, get the amendment that you are working on to the Minister, and to the Committee, as quickly as you can. You will not have left it to the last minute; you will be aware of the Consideration Stage debate. You have come here to get clarification on the mind of the Committee, which you have done. I am sure that that is very helpful, but you are bound to have something drafted on an amendment.

Mr Martin: We have not yet drafted a provision with the draftsman. We have an idea of how we might instruct the draftsman, but we wanted to be clear from this session, which has been helpful, about the Committee's mind.

Miss Woods: This point might be for Veronica: clause 24 concerns the prohibition of cross-examination in person. In family proceedings, where specified evidence is adduced that a person who is a party to the proceeding and is personally connected has engaged in behaviour that was abusive, that party may not cross-examine the witness in person. It was my understanding that during that, and in the family mediation as well, the Department would bring forward further regulations, or guidance, for the courts in how that is set out.

Dr Holland: Not in relation to that one, unless it was something on Jane's side, in the family proceedings, in the clause 24 cross-examination.

Miss Woods: It could be family proceedings, in cross-examination.

Dr Holland: No, we did not envisage that there would be any further guidance issued on that one. That provision is already in place in relation to human trafficking, modern slavery and sexual offences. The domestic abuse offence bit will be an add-on to existing practice. However, it may be that there was something on Jane's side. Apologies, I am not sufficiently familiar with her content to advise on that.

Miss Woods: If there is to be a level to which the courts have to go in evidence for domestic abuse, without there being conviction, proceedings started or anything else in family proceedings, how is that envisaged? Does there then need to be an evidentiary list, or a list of what constitutes the victim, drawn up for the courts? If so, does that not apply to legal aid, because it would be the same?

Mr Martin: As soon as you started talking about that similarity in the evidence, I took a note to see what read-across there would be between the evidential requirements for the court and for the Legal Services Agency. There is obviously a difference, in that a court is there to make findings of fact and can look at different standards of evidence and proof and come to a determination by balancing one thing against the other. The LSA is not in a position to do that. The thought occurred to me is that one potential trigger for the financial eligibility waiver would be a determination by a court that the evidentiary requirement has been met for the purposes of Bar and cross-examination.

Miss Woods: That requires the Department to draw regulations to outline what could be deemed abusive behaviour to stop cross-examination, because it would not be fact-finding if there was an allegation of abuse.

Mr Martin: Yes. However, that part of the Bill is not my area.

Dr Holland: Now you may be able to link into it.

Mr Martin: If there is a test used for that purpose, it could read across into the legal aid thing and help. That was my thought.

Dr Holland: We should certainly have discussions with Jane about that. There may be something in the family provisions that we could somehow link in for our purpose.

Mr Martin: It would be helpful.

Miss Woods: If one of the problems is how to identify what a victim is without being prescriptive, it will obviously be further guidance coming down from the courts.

Mr J Bradley: As we are trying to solve the same problem in two different spaces, we should certainly talk to each other.

Miss Woods: That is all that I wanted to ask.

The Chairperson (Mr Givan): OK. There are no other points of clarity to be asked about legal aid issue. Members are you happy, when we are in public session, to go quickly through the other ones to reach a Committee view? Veronica, you are welcome to stay for this, but we will follow it up in writing, just in case there are points that we want to clarify with you.

Dr Holland: That is fine, and it would be helpful from my perspective.

The Chairperson (Mr Givan): We were going to go into closed session, but I do not think that we need to for the other ones if members are happy. I will try my best to come up with where I think we are.

Members, if you take the Department's paper, we will go through it in that order. The first one is about the guidance on the data collection amendment. I might not have asked this at the time, but the only query that I had about that —.

Mr Frew: Sorry, Chair, what date is on your letter? Appendix A, is that what you are looking at?

Miss Woods: The 24 November letter?

The Chairperson (Mr Givan): Yes. I am looking at appendix A. Sorry, let me just be sure that I have the right one. Sorry, wrong document. Page 18 of your table pack. That is the one that I have scribbled over. Is that it?

Mr Frew: Yes.

The Chairperson (Mr Givan): There are no issues with the long title. There are no issues with clause 39, which is the short title.

Proposed new clause A26 is on information-sharing with schools. It is the Operation Encompass issue. The only area that the Committee discussed on that was the potential inclusion of preschools, and the Department can look at that aspect.

The proposed amendment to clause 28, which is to leave out subsection (2) —.

Mr Frew: That is through Operation Encompass.

The Chairperson (Mr Givan): — is OK.

On protective measures for victims, the age issue was going to be looked at in a new clause.

Dr Holland: I will discuss the issue of the perpetrator being post-18 with the Northern Ireland Commissioner for Children and Young People (NICCY) tomorrow.

The Chairperson (Mr Givan): The other aspect was —

Mr Frew: Subsection (2)(b).

The Chairperson (Mr Givan): — subsection (2)(b).

Dr Holland: Yes, subsection (2)(b) is the broader element in the Committee provision.

The Chairperson (Mr Givan): Yes. We will see whether subsection (2)(b) can be incorporated.

Ms Dillon: Is the age being checked with the Children's Commissioner. Will a steer be taken from her on that?

The Chairperson (Mr Givan): Yes. That is right.

Dr Holland: Yes. I will be chatting to the Children's Commissioner in the morning.

The Chairperson (Mr Givan): The next one is proposed new clause 30 on the training aspect. The Department was going to look at bringing back into play the issue of "including but not limited to". The annual reporting aspect was going to be brought in either by that replacement clause or by proposed new clause 32 on reporting.

On independent oversight, the Department was going to look at bringing back in subsection (1)(b).

Dr Holland: Yes, to remove the "2 years" and the "3 years" bits.

The Chairperson (Mr Givan): Yes, to address subsection (1)(b), it is to include the "to be consulted" aspect.

Dr Holland: Chair, may I just check the clause 31(1)(b) amendment? Is it:

"review, report and make recommendations in relation to the guidance"

that the Committee wants in there?

The Chairperson (Mr Givan): Yes. As the Bill stands, subsection 31(1)(b) states:

"review, report and make recommendations in relation to the operation of Part 1."

Dr Holland: It is therefore the broader paragraph (b) that you want put back in.

The Chairperson (Mr Givan): Yes.

Dr Holland: OK. On the guidance bit more generally, does the Department need to remove "consulted" and make it stronger?

The Chairperson (Mr Givan): In effect, I really want paragraph (b) to be replaced with paragraph (b).

Dr Holland: OK.

The Chairperson (Mr Givan): As it stands, the role of the independent person is to:

"review, report and make recommendations in relation to the operation of Part 1."

Dr Holland: OK. That will be for the draftsperson to do, but I imagine that that will probably end up not being two bits. The draftsperson will probably incorporate paragraph (b) into the current paragraph (a), given that it is making reference to reporting. I am content for the Department to look at that.

Mr Frew: Where does the guidance fall in the Bill? If it is not in Part 1, perhaps you should add the guidance? Where is the guidance in the blue Bill? If it not in Part 1, you might want to add that the independent overseer also has a part to play in revision of the guidance.

Dr Holland: No. It is Part 1, because Part 2 is the civil proceedings.

Mr Frew: By saying that the independent overseer is to:

"review, report and make recommendations in relation to the operation of Part 1",

that includes the guidance.

Dr Holland: Yes.

Mr Frew: OK.

The Chairperson (Mr Givan): That is addressing the issue that I mentioned. I do not want the appointment to be like a prohibition on the actual offence coming into effect, because the guidance is ready to go, but the independent person needs to be able to —.

Dr Holland: Yes, but if the Committee wants something specifically stated on the guidance, it could carry out a review report and weave that in in some way. We would no longer have in that bit about:

"contribute to the development of the guidance".

If the Committee wants some specific reference to the guidance in that provision, however, that can be done as well. We would be happy either way.

The Chairperson (Mr Givan): OK. That is fine.

Next is proposed new clause 32 on reporting on the operation. On that, you were going to —.

Dr Holland: We will remove the references to the subsequent three-year periods.

The Chairperson (Mr Givan): In proposed new clause 32(6)(b) and (c).

Dr Holland: Yes, paragraphs(b) and (c). Counsel will probably put in something about subsequent reporting periods being three years since the previous reporting period, or something to that effect. We will also put in a provision that means that that ongoing reporting will potentially be changed by way of regulations subject to affirmative resolution, but that would mean that the issue would come back to the House. It will be ongoing until such a time as the Assembly decides otherwise.

The Chairperson (Mr Givan): The training aspect could also be in the clause on reporting.

Dr Holland: Yes. It may move.

The Chairperson (Mr Givan): I am pretty content with the revised wording of "raising public awareness" and with how it has been explained, but that is a change from "strategies" to "raising public awareness". Sinéad, that is something that you had mentioned.

Ms S Bradley: Yes. I am content. I think that "strategies" is the firmer position, but the change that has been made is reasonable in the context. Given that we have the independent oversight, that is reasonable.

The Chairperson (Mr Givan): OK. That covers the amendments that Veronica had been dealing with. We are pretty close to being able to agree a joint position. We will meet on Tuesday to do that.

Dr Holland: It will be helpful for the Committee to have sight of those amendments and to be content, rather than have anything left outstanding. We cannot have the debate in the House, but we would be keen to get everything resolved should there be anything further.

This has been very helpful. Thank you.

The Chairperson (Mr Givan): Thank you, Veronica, as always.