Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill: Departmental Amendments

1 December 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

The Chairperson (Mr Givan): I welcome Dr Veronica Holland, head of violence against the person branch; Stephen Martin, deputy director of enabling access to justice division; and John Bradley, head of civil legal aid reform branch. The meeting is being recorded by Hansard, and the transcript will be published on the Committee web page.

First, we will deal with the Department's revised amendments, with the exception of those that relate to civil legal aid. We will deal with that issue after we have disposed of the other amendments. The Committee has gone through the amendments. I will not invite Veronica to talk us through them because the letter is self-explanatory, and members have had an opportunity to consider the amendments provided.

I have just one question, Veronica. Will you elaborate on why the Department feels that it is necessary to remove the reference to the Northern Ireland Courts and Tribunals Service (NICTS) in clause 29, "Guidance on data collection"?

Dr Veronica Holland (Department of Justice): Essentially, the basis for that is that the Department would be giving advice to itself. The view of the draftsperson and the Department is that that does not make sense. That is not to say that the Northern Ireland Courts and Tribunals Service would not be covered to the same extent; it is part and parcel of the operationalisation task and finish group that is meeting at the moment with the police and Public Prosecution Service (PPS). Whatever information goes to the police and PPS in relation to the information that is to be obtained will also be shared with the Courts and Tribunals Service. However, as I say, because the Courts and Tribunals Service is part

of the Department, the Department would, essentially, be giving itself advice or putting that requirement on itself.

The Chairperson (Mr Givan): Why is that same argument not relevant to the reference to training, where the Northern Ireland Courts and Tribunals Service is cited specifically in the Bill?

Dr Holland: The Committee was keen that it be made explicit that there was an onus with regard to that training; it was mandatory in nature and would be undertaken annually. From the Committee's perspective, the concern was that, if that was not reflected in the legislation, it would not be covered. That relates to a duty as opposed to a more general aspect.

The Chairperson (Mr Givan): OK. I will bring in other members on those amendments.

Ms Dillon: I do not have a question, Veronica, but I would like to clarify my position on an issue raised on Thursday about the domestic abuse protection order (DAPO) and domestic abuse protection notice (DAPN), and the age at which those become applicable. We had talked about whether it should be 18 years or 16 years. On the basis of the letter from the Commissioner for Children and Young People (NICCY), the Department's letter, the fact that it is 18 years in other jurisdictions and given that the focus is on interventions other than giving young people a criminal record, I support keeping the age threshold at 18 years. I think that it is the right approach by the Department.

Dr Holland: When speaking to colleagues in other jurisdictions, a concern raised, which is probably shared by some voluntary sector bodies, was that, if the age threshold was 16 years-plus, there was the potential that 16- and 17-year-olds could be put out of their homes and made homeless. Some of the concern related to the fact that a breach of the order would criminalise them and bring them within the remit of the criminal justice system. There was also concern about the impact that that would have on them more generally. I appreciate that there is, of course, still the issue of the abusive behaviour, and that needs to be looked at. As we indicated, some of those issues would be dealt with through youth justice input and work with individuals in that situation, as well as the potential for non-molestation orders or occupation orders to be brought forward.

Ms Dillon: Yes. We have been very clear as a Committee that not just a justice approach is needed; education has to be a crucial element, and, hopefully, that would address some of the issues around young people and healthy relationships. Thank you for that, Veronica.

Miss Woods: Thank you, Veronica. I want clarification on the regulations for DAPOs and DAPNs. Who will pay for those orders and notices? Is that in the regulations or will it come afterwards?

Dr Holland: Payment is not covered in the regulations. That would be considered with regard to the money available to police for bringing those forward. There is also a sense that, for a number of those orders, there will be movement within the system to a certain extent. In some instances where a non-molestation order or occupation order is being taken forward, some of the funding associated with it will move within the system, if that makes sense. That will have to be looked at in more detail. It does not need to be provided for in the regulations.

Miss Woods: I have one more question on that. Will it form part of the consultation being launched by the Department?

Dr Holland: With regard to funding, a section in the consultation paper seeks views on the public and financial impact.

The Chairperson (Mr Givan): Does any other member want to comment on this group of amendments?

Ms Dillon: I acknowledge and commend the Justice Department and the Education Department for adding the issue of preschools, which Sinéad Bradley raised at Thursday's meeting. It was good work to get that done so quickly.

The Chairperson (Mr Givan): Veronica, we have not taken a formal decision on that group of amendments, but I think that we have an agreed position. That is why I do not feel the need to labour

those aspects of it. The Committee will take a formal position on them shortly, after we deal with the legal aid aspect.

Dr Holland: Thank you. That is helpful.

The Chairperson (Mr Givan): I appreciate that the Department, having listened last week, has reflected the will of the Committee in those discussions, and we can make progress on that basis. Thank you for that.

If you are happy, Veronica, we will move on to legal aid. Stephen, you are going to take us quickly through the proposed amendments.

Mr Stephen Martin (Department of Justice): John has been working with the draftsman, so he will lead the Committee through that.

Mr John Bradley (Department of Justice): I will begin with our proposed new clause 27. It will provide for a financial eligibility waiver for victims of domestic abuse to enable access to legal aid and to defend an article 8 application being brought by their abuser. It would replace the current clause 27, from which it differs in a number of important ways. The Committee will recall that the Department expressed concern that the current provision could give rise to an increase in litigation, the complication of litigation by an increase in the number of allegations of domestic abuse arising in such circumstances and, in particular, the misuse of the waiver by abusers to perpetuate their abuse further through the courts. Those concerns arose, principally, out of two features of the current clause 27: the lack of an evidential test that the director can apply to identify a victim; and the ability to use a waiver to bring proceedings as well as to defend them. Replacement clause 27 addresses both issues by limiting the circumstances of the waiver to defending applications brought by their abuser and by adding provision for guidance. Under the Legal Aid and Coroners' Courts Act, they would not identify the evidence that would enable the director to be satisfied that a person was a victim of abuse, as intended.

Replacement clause 27 would also limit the application of the waiver to representation in lower courts rather than:

> *"advice and assistance or representation"*

more generally, as currently provided. That is because advice and assistance are not generally required in circumstances where someone is seeking to defend an application that has been made to the court to move immediately into representation lower, and because we believe that circumstances can better be provided for in respect of higher representation through existing powers that the Department has to protect people in those circumstances.

Would you like me to describe clause 27A now or do you want to do them separately?

The Chairperson (Mr Givan): Feel free to go on to 27A.

Mr Bradley: Clause 27A is modelled on the Department's previous amendment A26, which is to provide for a report on the legislation and other steps that might be taken to further protect domestic abuse victims in the course of article 8 family proceedings. It anticipates that further regulations might be required under the Access to Justice Order for that purpose but that some other course of action might best serve the purpose. It provides a timetable for that report and defines its purpose as either reducing, including, in specific circumstances, to nil the financial costs incurred by a client in these circumstances and preventing, as far as reasonably possible, the undue use of the court system to bring proceedings in an abusive manner against a qualifying person. The remainder of the provisions in clause 27A relate to definitions of the various terms used, such as "qualifying proceedings", "relevant client", "abusive person" and so forth.

Part of the intention behind this revised clause is to deal with those limited or exceptional circumstances where it may be useful to extend the application of the financial eligibility waiver provided for by clause 27 to cover, for example, the bringing of applications in certain limited circumstances or to extend it otherwise, as may be necessary. It is also intended to look at issues such as the use of the courts by their current powers to prevent abusive applications being brought.

The Chairperson (Mr Givan): OK. Thank you, John. That is helpful. I will ask a couple of quick questions to clarify this for my benefit. Amendment 27(1A)(b) states that the director must be satisfied that someone is a victim of abuse. All of us struggle to set out what the parameters for that are. What would be the director's parameters in reaching a determination on who is a victim of abuse?

Mr J Bradley: The intention is that, under what would be clause 27(2), the Department would issue guidance that set out in what circumstances the director could be satisfied that someone was a victim of abuse. The form of that guidance, we imagine, would, essentially, amount to a list of forms of evidence that the director could take as evidence that a person was a victim.

We discussed previously the fact that the clearest such evidence available is evidence that a person has been convicted of a relevant offence or of an offence aggravated in the way anticipated by the Bill by domestic abuse. There might be other forms of evidence: for example, there has been a finding of fact in a court that a person engaged in such behaviour, or there is another documentary form of evidence that would enable the director to be satisfied. We would like to explore with stakeholders what forms of evidence might best be used for that purpose, and the consequences and risks of including each of those within the definition. Essentially, there is a balance to be struck between, on the one hand, limiting it only to convictions, where the director can be absolutely certain that the person is a victim; and, on the other, to admitting other less definitive forms of evidence to stand, which broadens the application to waiver to more deserving parties. However, each step taken in that direction opens up greater risk of its use by people who are not victims of abuse and who may, in fact, be abusers. The intention is that we explore that issue fully with stakeholders and go forward with proposals in the guidance as to what balance should, in the end, be struck between those two countervailing considerations.

The Chairperson (Mr Givan): Would that guidance have any statutory underpinning?

Mr J Bradley: The intention is that clause 27(2) will provide that statutory underpinning. The Department could, of course, issue guidance to the director. However, our concern, at present, is that, without an express provision that anticipates that guidance coming forward, a challenge may be made that we were unduly fettering the discretion that had been granted to the director by the primary legislation. By putting it in the Bill, we ensure that our guidance is more robust. It is not as vulnerable to challenge at a later stage because it is anticipated by the Bill,

The Chairperson (Mr Givan): Will that come through the Assembly via regulation?

Mr J Bradley: The intention is that we consult on the guidance, and it would therefore come before the Committee for consideration as part of that process. We hope that we will be able to work with the Committee on its development as the Department develops its proposals.

The Chairperson (Mr Givan): OK. Clause 27 refers to representation in the lower courts. Will you elaborate on that? As the Bill is now, it cites "advice and assistance or representation". Will you comment on your wording vis-à-vis the current wording?

Mr J Bradley: The two key differences in our wording are that, first, as you observed, "advice and assistance" would not be covered by the waiver; and, secondly, that representation in the higher courts would not be covered by the waiver. The reason why we seek to exclude advice and assistance is that the circumstance anticipated here is that an abused person is seeking to defend an application made by their abuser. In those circumstances, they are not in need of advice and assistance; they are in need of assistance and representation, which is provided under our representation lower certificate. So, "advice and assistance" is not relevant for the abused person in those circumstances. The reason why we seek to exclude representation higher is that, by applying this waiver directly to representation higher, we step on the toes of existing provisions that allow the director to, on a discretionary basis, disregard income and capital for the purposes of ensuring equitability, which we consider to provide a superior protection in the circumstances where they are required. The circumstances that could arise might include, for example, a person being granted the waiver to defend an application for these proceedings brought in the lower courts and those proceedings then transferring to a higher court. The director would then be in a position to use his discretion to ensure that a person who had the protection in the lower courts was not less favourably treated when moving into the different statutory realm of representation higher and could manage to ensure that their protection was maintained. Essentially, it would make use of the existing protections rather than seeking to apply it in the very limited circumstances where representation higher would be needed.

The Chairperson (Mr Givan): This is for my benefit. In the wording that you have provided, representation includes when an action is being taken against a client — the respondent — and that person can go to their solicitor and get assistance right from the start of proceedings, including once they are in the family court.

Mr J Bradley: Yes. Representation lower covers all the help, assistance and representation that a person needs in the course of ongoing proceedings. "Advice and assistance" is intended to cover those circumstances where proceedings are contemplated only: when you might seek advice and assistance as to whether you ought to bring proceedings against another party. Where proceedings have already been initiated and you need to defend them, representation lower is the system under which you get the help that you need in those circumstances.

The Chairperson (Mr Givan): For completeness, let me pick up on the other amendment. It is made clear that the report that sets out the Department's proposals would be by way of regulations under the Access to Justice Order. Would the oversight of those proposals be by way of affirmative or negative resolution in the Assembly?

Mr Martin: Chair, those regulations are by negative resolution, but the report has to be laid before the Assembly, so you get two bites at the cherry, essentially. You get the report, and any subsequent regulations would be laid before you.

The Chairperson (Mr Givan): Is it confined solely to reporting on the article 8 aspect of that amendment and not on wider aspects of legal aid in respect of other offences under domestic abuse?

Mr J Bradley: At present, we have not been able to identify the circumstances in which it might be necessary to widen it. If we start the policy work to look at the support that might be necessary for victims in these circumstances, and that suggests that, in fact, support is needed in other areas, I expect that the report might comment on that to let the Committee have the benefit of the evidence that we have to that effect. However, what is contemplated directly is looking at proceedings involving children and proceedings involving victims of domestic abuse to see what forms of support are necessary in those circumstances.

The Chairperson (Mr Givan): Is it intended that this replace new clause 27 and that, once you get to the point of laying this report, it would supersede —?

Mr J Bradley: That is one potential recommendation that the report might make. I do not necessarily take the view that it would be automatic. Among the things that the report will want to look at is the operation of clause 27 in practice. We are seeking to establish in the Department and the Legal Services Agency (LSA) the arrangements that will be necessary to monitor and evaluate the operation of this clause to determine whether it is helping the people whom we hope it will help, and we are considering the cost implications to look at its potential unintended effects. We will write the report with the benefit of evidence on what the effect of clause 27 has been. It is key not to prejudge what that evidence might tell us. It might tell us that clause 27 has been successful; it might tell us that it has been successful to a limited extent and that we can build on it; or it might tell us that the clause is having negative impacts and needs to be modified or, as the case might be, replaced. However, the report is intended to give us time to gather evidence about what the best course of action is and to take that action. As Stephen said, the proposals and legislation recommended by the report will come back before the Committee and the Assembly for their proper consideration in due course.

Miss Woods: Thank you for that. It will come as no surprise to you that I have a number of questions. I will work backwards and pick up on what has already been said. The proposals are for the lower courts only and for representation only. The Bill includes "advice and assistance". Are you stating that, as it stands, the Department's proposed amendment includes "advice and assistance" and representation lower including pre-proceedings?

Mr Martin: I will clarify that. "Advice and assistance" and representation lower are two of the three civil legal aid regimes that exist within the legislation. "Advice and assistance" is used for the provision, as the name suggests, to an assisted party in circumstances where either no proceedings are contemplated or proceedings are only contemplated. It ceases to apply in circumstances where proceedings have been initiated. Representation lower is the scheme by which assisted parties receive the advice, assistance, representation or other help that they need from a lawyer to assist them in the course of ongoing proceedings. We are not contemplating the overall circumstances

where a person is seeking to defend an application made against them. It will apply only in circumstances where such an application has been made, and therefore the relevant scheme is the representation lower scheme. It does not limit the form of assistance, help or representation that the person will get to representation only. It just demarcates that the scheme *[Inaudible.]*

Miss Woods: OK. From speaking to members of the legal profession in the last 24 hours, that is not my understanding of what the principles of the amendment seek to do. I appreciate that representation in the lower courts is predicated on somebody defending. Again, for clarification, what if I go to a solicitor and initiate child contact proceedings? The amendment states that representation is only for respondents who are defending. It is my understanding that, although it is a requirement for solicitors to offer mediation to couples, parents or ex-partners on child contact before any proceedings, that is not covered in the Department's amendment as it stands.

Mr Martin: No, as it stands, it is not. The Department's amendment would allow for the application waiver only in circumstances where an application had been made to the courts for an article 8 proceeding by the abusive partner. It would not apply to the provision of advice and assistance for other purposes.

Miss Woods: OK. Do you see that being an unnecessary barrier for a lot of people who are seeking advice and assistance? They would have to bear that cost, and even if the waiver applied, it would do so only when proceedings were taken against them.

Mr Martin: The important thing to remember is that the cost of advice and assistance is £88, and that does not cover mediation. I am not quite sure about the mediation point because there is currently no legal aid for pre-court mediation schemes. The Department is looking at that as part of its early intervention action plan for separating parents. Advice assistance costs £88, and it covers a fairly narrow set of circumstances, as John indicated. If proceedings are being taken against you, those kinds of issues will be covered by the representation lower certificate.

Mr J Bradley: Part of the purpose of having 27A as an additional amendment is that we can look beyond the immediate purpose of clause 27, which is to assist in circumstances where an application is being brought against an assisted party, to what additional forms of support might be useful. If mediation pre-proceedings or pre-litigation is anticipated, what effective forms of support can we offer people to enable them to explore that route? It might be that a financial eligibility waiver for advice and assistance is the most useful form; it may not be that some other form of help is more helpful in those circumstances.

The one relevant consideration to bear in mind is that a financial eligibility waiver does not give anyone access to free legal aid; it gives them access to legal aid subject to their making a financial contribution. In circumstances where a person is above the financial eligibility threshold and, therefore, in need of a waiver, their contribution could be very significant, especially for advice and assistance, where, in the first instance, the costs are limited to £88 for an application to the Legal Services Agency (LSA). All that is only to say that, when looking at the report that is intended to be brought forward under what would be clause 27A, that issue could be explored in it in order to ensure that we offer the best form of protection in those circumstances.

Miss Woods: With respect, I would make the same argument for its inclusion in order to ensure the best support for victims at the earliest possible stage.

The regulation applies only to an applicant for the lower courts; you have limited it to the lower courts and briefly explained that. However, it is my understanding that cases where there is implacable hostility between A and B, for example, would be referred from rep lower to representative higher by way of a family care centre or, indeed, straight to the High Court. Does the Department's amendment mean that the waiver would no longer apply in that case?

Mr Martin: That is correct. When the case is transferred from the family proceedings centre (FPC) to the family care centre or the High Court, the waiver will no longer apply. It would be under the terms of the representation higher scheme. Two potential circumstances arise there. One is where a person has a waiver for the lower courts, and, on moving to the representation higher scheme, which has a different financial eligibility test, they may find themselves financially eligible and no longer in need of a waiver. The alternative is that they transfer up to the higher court and find that they are still outside the financial eligibility limits for representation higher. In those circumstances, the waiver will not apply to them. The intention is for us to work with the LSA to explore the application of the existing discretions

that are available to the director under the Financial Provisions Act, which include his discretion to disregard capital or income for the purposes of determining a person's eligibility and assessing the size of their contribution.

Miss Woods: Whilst I appreciate that it is about working with LSA in order to explore an existing waiver or discretionary power, can you confirm that that has not been used?

Mr J Bradley: It has not been used because the circumstances have not arisen to date. The circumstances that we are talking about are where a person who has had the financial eligibility waiver exercised in their favour in the lower courts transfers to the higher courts. That circumstance has not yet arisen, because the financial eligibility waiver is not in place. The discretionary power has not been used in family cases. The task that is in front of us is to determine the circumstances in which it would now apply in the context of the waiver being available in the lower courts.

In all circumstances, the financial eligibility test that applies in the higher courts is generally more protective of applicants than that which applies in the lower courts. We will be looking to ensure that that situation pertains so that the client is not less favourably treated under rep higher than they would be under rep lower when the financial eligibility waiver is operational.

Miss Woods: The existing waiver has not been used because there has not been a need to use it with regard to eligibility. It has not been used — full stop. Why has it not been used? I have had many representations made to me, and I am sure that other members have too, by people, particularly women, being dragged through the higher courts on appeals and ending up with £80,000 of debt. So, if there is a way of putting a waiver out that has not been used — obviously, that needs to be looked at — but that should not be to the detriment of having this in place as well.

Complex cases, such as those involving mental health issues or other serious allegations, would be referred to the higher courts, again, by the Magistrates' Court or the lower courts. Does the Department's amendment mean that those victims cannot access the waiver and that as soon as a case has been pushed up to the higher courts there is no waiver for complex cases or for those involving mental health allegations or serious allegations?

Mr Martin: Yes. For clarity, when a case transfers from the family proceedings court to a higher court for any reason, the waiver will cease to apply. Under our proposed amendment, it would apply only in representation lower. Again, we will need to look at what other protections might apply in representation higher courts and the ongoing proceedings, but the principle will be that the person is not less favourably treated when the proceedings transfer to the higher courts than they are under the existing scheme.

Part of the purpose of clause 27A is to allow us to give consideration to what those protections might be, how the waiver might operate in the lower courts and how a waiver might eventually be introduced in representation higher if that is the best available form of protection. The intention is not to introduce this and stop here; it is to introduce this and then look at what additional or alternative protections might be in the best interests of those vulnerable people.

Miss Woods: I will argue that putting it wider than the way it is written at the moment and then assessing it in a couple of years' time also stands.

Is there a timescale in the Department's amendment for when the publication and getting guidance for the director on the applicable information about the commission or alleged commission of an offence would be drawn up and the date that it would start from?

Mr Martin: The guidance will need to be in place before the director is called on to make his first decision on the application of a waiver, so when the waiver is operational and someone makes an application, you need to have the guidance in place in advance in order to allow the director to make that decision in a satisfactory manner. We have not put a firm date for that. The intention is to bring it in line with when we enter the provision of the waiver into operation.

Miss Woods: When will that be, given the Department's currently worded amendment? When do you envisage that happening?

Mr Martin: Our first piece of work after Final Stage is to start working on that guidance. As I said, we cannot give you a firm date, but that is the first thing that we need to do because, as John said, the waiver will not work effectively without it.

Miss Woods: I appreciate that. If there is no firm date, there is no date to work towards and there is no date to have it in, yet proposed new clause 27A has a two-year reporting requirement to report on the effectiveness of clause 27. How can you assess whether the waiver is working effectively for victims if there is no firm date for the guidance and if, two years after Royal Assent, an assessment will be done?

Mr Martin: We have been working on the drafting of that. The way that the proposed clause 27(2) is crafted means that the guidance must be produced by the Department. We cannot simply avoid it by not doing it, and because the waiver does not operate effectively without it, in circumstances where the waiver came into operation and the Department did not produce guidance, the Department would be immediately in default of its duty under clause 27(2). The timeline, if you like, for the production of the guidance is that it must be in place when the waiver becomes operational.

Miss Woods: I appreciate that. I am not questioning whether the Department must produce it; it is written down here, but without a date that it needs to be operational by, how do you foresee a two-year assessment period in 27A adequately assessing its effectiveness if it is not in place by the time the reporting is done?

Mr Martin: In a way, that is the answer — is it not? — because 27A is not just about reporting on the effectiveness of clause 27; it is broader than that, but we will need a reasonable period for clause 27 to be operational. As I said, that is the first piece of work that we need to do. We cannot commit to a date until we look at our resources and do the planning. Once we have done that, we will be happy to come back to the Committee on that. We need to take a little bit of time to look at the resources that we have available, reprioritise our other work, some of which is also a significant priority, and then come back to the Committee. I cannot give you a firm date today.

Mr J Bradley: The answer to the question of when the guidance will be available is that it will be available on the entering into force of the waiver. As soon as the waiver is operational, there will be guidance to support it. That is what the legislation requires. There are no circumstances under which the legislation permits us to have the waiver operational and to not produce the guidance.

Miss Woods: Just to clarify the point, when does the waiver come into operation?

Mr J Bradley: It comes into operation when the relevant section of the Bill comes into operation.

Miss Woods: Do you have a date for that?

Mr Martin: Again, no, because that will be subject to a separate commencement order, and it will be commenced when it is ready to be commenced. As I said, this is something that we are prioritising, but we have a whole lot of other things to prioritise. We need to look at our resource position. I cannot give you a firm date on either issue at this stage. It will need to come into operation within a reasonably short time, but I cannot give you a definitive date at this stage.

Miss Woods: That is exactly what concerns me with all this. The Department has come forward with those amendments, has taken clause 27 in its entirety and has tied down the eligibility of victims for civil legal aid to only the lower courts, only respondents and only those when you are funding representation. It does not have any forward programme for what is going to be done in the higher courts.

We have something in place, and it is clearly not working because it has not been used. It is limiting and restricting part of the court system for victims of abuse. We are bringing in the Domestic Abuse and Family Proceedings Bill with no indication about what date any of those provisions will be commenced and no indication for victims of domestic abuse, who are currently being trailed through the courts, of when it will actually come in because it is competing with priorities that are already in the Department and with resources, and we do not know when it will be commenced — it will commence when it will be commenced — because there is no firm date in the Department's amendments as they stand.

I echo the Chair's question about how those amendments are being laid. I have very big concerns that that will be done through the negative resolution procedure. I do not see this as having two bites of the cherry; it must come in through the draft affirmative resolution procedure. It is far too important, because we are looking at legal aid and support for victims through the court system.

The defence case on having legal aid only states:

"if—
(a) the client is the respondent in the proceedings,"

Will you outline the reason for the amendment being worded like that and tell me why it is necessary? Does it address the concerns that were raised with us last week about the potential abuse of these provisions by perpetrators who are alleging to be victims? Does it allay the Department's fears about that?

Mr J Bradley: You are right to say that the reason why it is limited to people seeking to defend an application is because it is in response to the potential use of the waiver either by people who should not be entitled to it, that is, those who are not victims of abuse, or, in the worst case, by abusers in order to perpetuate abuse. Yes, it is for exactly that reason. Given that our understanding of the rationale for this is that it will mitigate the effect of the perpetuation of abuse through the courts by abusers because it will limit only the defending applications, it answers that purpose without opening up the risk of the misuse of the provision by others.

Miss Woods: Will you clarify that, as it is written, it addresses the Department's concerns on that?

Mr Martin: There are risks, and we outlined them at our last session, so in the interests of time we are not going to rehearse them. Any of those options carry risk. This amendment would remove some of the more significant risks, but risks remain, hence why we want to look afresh, through proposed new clause 27A, at that in a reasonable time frame. Does it address all the risks that we identified? No. Does it address the most significant risks? Yes.

Miss Woods: OK. Thank you. It limits the scope if a victim wanted to take proceedings against their abuser. It covers those victims only when cases are taken against them.

Mr J Bradley: That is correct; it allows only for the defence of proceedings. It was our calculation that allowing beneficiaries of the waiver to bring applications would entail too much additional risk relating to the misuse of the waiver. Therefore, on balance, in order to mitigate that risk appropriately, it was necessary to limit the waiver to defending applications with the intention of using proposed clause 27A to explore what circumstances it could safely and reasonably be extended to bringing applications or what alterative credentials might apply in those circumstances.

Miss Woods: With regards to last point and the guidance under subsection 2, surely there would be applicable information in that guidance about the commissioner-led commission that would weed out, to use a bad term, people who are potentially abusing the system in elective proceedings. You would have less risk of abusers using the system and pretending to be victims in order to get an eligibility waiver because the guidance already exists for the director of legal services to decide if that information is applicable.

Mr J Bradley: If we could limit this to where there has been a conviction, we can avoid those clear circumstances. Our reading of what the Committee wanted is that there will be circumstances where there has not been a conviction for a variety of reasons. The broader that you go in defining a victim, the more risk you bring in. It is a trade-off. If we limited that guidance solely to convictions, that would be one thing, but trying to capture all those who are victims or who you may see as victims brings an additional risk. That is the key issue.

Miss Woods: That is there anyway because it is in the guidance. What I am trying to say is that you have confined the defence requirement to the client being a respondent in proceedings to try to reduce the risk of abusers using the system, but surely you would have to have applicable information in the guidance about the commissioner or the alleged commission of domestic abuse in order to weed that out anyway. Do the two things—?

Mr J Bradley: That is the point that we are trying to make. If there was a watertight definition of a victim and there was a conviction, that is very clear, and there is very clear information. In those circumstances, we could go slightly broader with the types of proceedings. We could do that in order to avoid that interaction and cut down on the abuse.

The alternative is that we go slightly broader on defining who a victim is, but we are then creating other issues. It is the interaction between those two factors that is the issue. If the guidance is very tightly defined, that is one thing, but we got the sense that that is not where the Committee is. It is the interaction between the two; you cannot look at them in isolation.

Miss Woods: I appreciate that. With respect, there is no Committee position on this point. I appreciate that you are trying to come back on a number of things that were mentioned by the Committee. I am certainly not looking at any way of having a conviction tied to this, but in balancing that out and with people abusing the system, I do not buy that risk enough to have it written in an amendment. That would needlessly restrict the eligibility and create an artificial group of victims that may be eligible for the waiver. There was a lot of risk with the cost, and we still have not got to the bottom of the double-figure millions that we were told about. Does the Department have any financial pressures or costs that relate to its amendment?

Mr Martin: The Department's proposed amendment would limit the cost because it would limit the types of proceedings. We have not been able to cost that out in the short period of time that we have had, but it would certainly be a more limited cost than the broader amendment.

Miss Woods: We do not have any information on either of those apart from the double-figure millions, and we still have not quantified where that came from.

Mr Martin: During our normal policy development process, we would have done impact assessments, human rights impact assessments and business cases. We have not had time to do any of those things, because we have had only a couple of weeks. Those impact assessments, human rights assessments and business cases for doing other things will be part of what we will look at for proposed clause 27A. In the very short period that we have had, we have not been able to produce those documents.

Miss Woods: Chair, this is my last point, and I will then allow other members to come in; I could take all day. I appreciate the difference between A26 and 27A, but I see them as more delaying amendments, and they certainly will not work for victims of domestic abuse who need legal aid in order to deal with child contact orders. They will create an artificial group of victims and will not be workable to allow those in the legal profession to help victims. That is what we are here for: to assist victims. Those amendments will not do that without the information that we need. We do not have guidance, we do not know what it is and we do not have a date for when it will be commenced. I appreciate the Department coming back on that, but I cannot support the amendment.

Mr J Bradley: If it is helpful, on the timings, which was one of the points that you raised, our proposed clause 27 and clause 27 in the Bill are in the same position on timing. Each will come into operation on commencement of the relevant chapter of the Bill. There is no departure in our proposals from those that stand part of the Bill. To reiterate, the guidance that is required under our proposed clause 27 will be required on exactly the same timescale, so any concerns about potential delay do not arise from any of the changes that we proposed to make to clause 27. They exist in the current provisions.

Ms Dillon: I have a quick point on the lower and higher courts. I accept what you said and that the protections in the higher court are potentially greater. Is there a halfway meeting point where there could be some sort of assessment of whether the waiver that is in place would better serve the defendant than what we are saying would be in place in the lower court? That would mean that that waiver could stay in place if it was a better form of protection without unintentionally negatively impacting on the victim or respondent.

On the point about the definition relating only to the defendant, I have to be honest and say that my understanding was that we were trying to stop the abuse of people being repeatedly brought back to court. Those were the conversations that we had as a Committee. I am content with that at this time only because I fear that there would be further abuse if we were to go outside that definition, but more work needs to be done to establish that that will not happen. In most of the cases that I have dealt with, people have been repeatedly taken back to court and were the respondent. I very seldom find cases of abused persons taking court proceedings, because, in the majority of cases, they are so glad

to be out of those circumstances. I have no doubt that, like any of those things, there will be those cases. The law is so complex and difficult, particularly when it comes to family law and children. I understand where Rachel's concerns come from. It needs to be backed up properly with evidence and facts. We need to make sure that what we put in place is right. I am supportive at this point because it is about the respondent. That is why I am glad that clause 27A is there; we need to get further evidence on it to see whether more, or better, measures could be put in place to protect victims of abuse, as we know that family courts are being used to further abuse.

You would like to think that all those laws were put in place with good intentions and scrutiny and with evidence and information to back them up. However, I am concerned about putting something in place without that. We may not be able to reach a Committee position on this because it is my position that, at this point, it is where the person is a respondent. However, I do not want it to be limited to that for ever, which is why clause 27A is important.

Perhaps there is a halfway meeting point in terms of the upper courts. I share Rachel's concerns that people could be going there without any protections. It comes back to the same point, which is why I supported it initially: it is about protecting victims from further financial and psychological abuse. It is about the abuser draining the victim's resources and having fiscal control over the victim even after they are out of the relationship.

Ms S Bradley: There is no Committee view, but it is becoming apparent that there is no Committee objective in terms of what was to be achieved. That was my understanding, as was Linda's. This is the Domestic Abuse Bill. We were talking to the part of it where the court system is being perpetually weaponised against the victim. I have taken direction from family lawyers in that regard. I understand the reasoning behind clause 27A as a further provision looking retrospectively at the data and at what happened.

You said in your presentation that there was some stepping on the toes of the director's discretion with the discount of capital. I wonder whether we should look into that more deeply. For example, if somebody has had success in a civil order and they then apply, I am advised by solicitors that one of the biggest obstacles to them immediately is the fact that their housing benefit and child tax credit is taken into account, even though that is not money in their pocket. Is the answer to that in the waiver? Is that early piece of work on the waiver the right place to resolve that?

As it stands, I am not convinced that clause 27 will have an immediate effect. I understand that we could refine it further, but there is some obvious low-hanging fruit in that we could help those who will be most affected by the perpetual weaponising of the courts and the fact that that money is accounted.

There is an appeals mechanism that triggers in the family care centre, and all that has to be taken into account. I do not know whether any consideration has been given to that or whether you anticipate it being in the guidance or in the further work that you intend to do.

Mr Martin: That is a neat expression of our intention in those two clauses and their interaction. Clause 27 tries to do something immediately and directly for vulnerable people who are being dragged repeatedly before the courts in a way that is limited in terms of its potential risk and unintended consequences. Clause 27A is clearly intended to operate in conjunction with that and to say that there are circumstances in which that limited and immediate measure will not help, and we want to take the time to understand what we can best do for people in those circumstances.

With regard to the operation of the waiver for the higher courts — cases that are transferred up or where things are appealed in the higher courts — the financial eligibility test at the higher courts allows for the provision of legal aid in circumstances where a person might have a moderate income or some degree of capital at hand. The waiver would remove that cap on the availability of legal aid, but it would also necessitate that anyone in whose favour the waiver operated at that level would make substantial contributions to their own costs, especially where a person has capital in hand, for example in the circumstances that you describe, where they have had a successful civil order granted in their favour. Where they have capital at hand of more than £3,000, their contribution will end up being as much as the full cost of the proceedings. The waiver would not end up operating to their benefit at all, even though it applies to them. That is why we say that we want to understand what circumstances these people are in when they come before the higher courts and how we can help them.

It seems to me that the operation of the existing discretion to disregard capital and income is a more potentially helpful starting point to look for solutions than trying to apply a waiver of the financial eligibility test in such circumstances. These are complex and contested areas of law, and, whatever

help we try to give, the outworkings will be determined in large part by what happens in the courts and the challenges to the decisions of the Department and the LSA about the operation of these things. It is important to take the time to get them right. We say that clause 27 now helps a vulnerable group of people who are in need of support, and we think that the protections that we have sought to introduce in redrafting it help to limit any potential negative consequences and will allow an early win to be grasped safely.

Clause 27 says that we will look at what further protections can be afforded and at how we can go safely into the territory of, for example, allowing applications to be made where circumstances say that that is the best way of resolving the issue to allow for protections for people who need representation in the higher courts. That is exactly the intended operation.

I do not think that a two-year window being envisaged for the presentation of a report to the Committee might prevent sensible proposals being brought forward earlier in light of evidence about the operation of the waiver if it is apparent that there are issues with its operation and practice or that there are people who, without its help, we could quickly and readily do something for. We hope that it gives confidence to the Assembly that, in a reasonable period, the wider issues can be looked into and that sensible proposals to help people can be brought forward.

Ms S Bradley: May I seek clarification? I take your point that, on the face of it, clause 27 is supposed to be the immediate piece. However, for the person who has been disqualified from access to legal aid because they have, for example, housing benefit, the provision is not there. The guidance is not there, so it does not immediately swoop in.

Mr Martin: The waiver will ensure that such a person, when it comes to representation for proceedings in the lower courts, will have access to legal aid. As I said, clause 27 requires guidance to be in place as the waiver is in place. There is no potential for the delay of its operation through that mechanism. Therefore, clause 27, when it enters into effect, will afford protection to a person who would otherwise be unable to access legal aid by reason of their income or their capital, from whatever source. They will be protected immediately in those circumstances. Clause 27A lets us look at other circumstances and other protections that might be available in those circumstances and lets us go further, if we can, to help people in various scenarios.

Ms S Bradley: I will not take long, Chair. In summary, it is fair to say that there is a nervousness that the intent is there, but it is not in the Bill. So, that gives that reassurance when it is not actually there, and then the timeline issue comes into play. So, I suppose there are serious concerns and a nervousness about that.

Mr Frew: Thank you very much for your presentation. Sorry, I had to nip out for Question Time. Please forgive me. Some of my questions might already have been asked and answered, so please give me grace on that.

We can see what is happening here. You guys have been very nervous about clause 27. With all the fears and concerns that you illustrated last week, you are trying to tighten a clause whose latitude is quite wide. It is not a Committee position, but you have heard some Committee members express concerns. Do you have another amendment that widens the scope a bit but still keeps it tight in your eyes?

Mr Martin: We were very mindful last week that the Committee was not keen that we tried to change the core purpose of clause 27. It talks about a waiver. What we are trying to do is qualify where that waiver applies. We are not changing it from a waiver to some other financial test. As John hinted, a different financial approach may be more beneficial.

Nevertheless, we are mindful that there is a broad waiver in the Bill. We are looking at removing some of the more significant risks by narrowing the application of the waiver. Clause 27A allows us to look at whether a waiver is, of itself, the best way of approaching the situation. It may be; equally, it may not.

I take on board Sinéad Bradley's points that the waiver will not necessarily be beneficial to everybody, but it is what is already in the Bill. We are trying to focus it on who we believe — in line with sentiments expressed by Committee members — it should be focused on and take away some of that risk of financial and unintended consequences. Ultimately, however, a waiver might not be the best approach, which is why we have clause 27A as well.

Mr Frew: I will get to clause 27A in a wee second. I repeat my question: do you have a plan B? Do you have another amendment that you could move if you felt that the Committee did not like 27A?

Mr Martin: Unfortunately, we do not. This is the amendment that we have prepared, based on last week's discussion. We do not have another amendment ready to move.

Mr Frew: OK, thank you. Paragraph (1A) of proposed new clause 27, which you said would stand part in subsection (2) were it to go forward, talks about:

"a client for the funding of representation (lower courts) in the proceedings".

Does that not contradict article 8(3), which says that family proceedings:

"means any proceedings —
(a) under the inherent jurisdiction of the High Court in relation to children".

Does that not cover everything, including the High Court?

Mr Martin: Article 8 proceedings can be brought at the family proceedings centre and can take place at the family care centre and at the High Court. This provision would not contradict that but would limit the application of the waiver to applications for representations to defend proceedings at the family proceedings centre only. That will make two modifications to what would apply under the current clause 27. It would exclude advice and assistance from the application of the waiver because, in circumstances where proceedings have already been initiated, advice and assistance are not necessary. It would exclude representation higher from the application of the waiver, because we would like the opportunity to explore what alternative or better protections might be suitable in circumstances where proceedings in the higher court are contemplated.

Mr Frew: So, while you assess that, which is understandable, a victim of domestic violence might be having to defend in the lower court and, then, for whatever reason, the judge says that it has to go to the High Court. Whilst clause 27 will kick in at the lower court, that waiver would be removed at the High Court. Is that correct? Is that your understanding?

Mr Martin: Yes, that is correct, essentially. The waiver would cease to apply on the transfer of the case from the lower court to the family care centre or the High Court.

Our intention, assuming that the waiver ends up as part the Bill, is to use existing powers that the Legal Services Agency or the director have to ensure that people are not disadvantaged by that. The application for the waiver in respect of representation higher is an imperfect solution for someone seeking to defend proceedings in those courts, not least because of the size of the potential contributions that those people make at their own cost. We want to look at a person who benefits from the waiver in the lower courts and finds their case transferring to a higher court being appropriately protected. Frankly, we are not sure that the waiver cuts it in those circumstances.

Mr Frew: You talk about existing powers, but those existing powers have never been used to protect people in the past — ever.

Mr J Bradley: Indeed, they have not. However, these circumstances have not arisen in the past because there is no current waiver applying in the lower courts to transfer up. This would be a new circumstance in the application of those powers.

Mr Frew: But do you know how many, or what percentage of, family proceedings at lower court go to the High Court, where this requirement may well be met as someone does not qualify for legal aid?

Mr Martin: It is a very small number. We do not have that information, but it is —

Mr J Bradley: I do not have the information; not to make excuses. An appreciable fraction of such cases is transferred to higher courts either by reason of complexity or implacable hostility between the parties. It is not an irrelevant question, and we would not suggest that it is. It is just that, in the minority of cases that transfers from family proceedings court to a higher court, we want the opportunity to look at what better protection might serve. As I say, there are powers that can be used in those

circumstances. However, they have not yet been exercised because we have not yet had a case involving a waiver that has moved up.

I reiterate this point because it is important in respect of the application for a waiver in the higher courts: a waiver from the financial eligibility test does not give you free legal aid; it gives you legal aid towards your contribution. When you are in representation higher, the size of that contribution can be significant. We feel that, in those circumstances, there may be something better that we can do for these people than replicate the waiver. We will take the opportunity to look at it.

Mr Frew: OK. I understand why you now propose new clauses 27 and 27A. You listened to last week's Committee meeting, when a number of us said that we liked the idea of a report within two years.

Why are we still limiting it to article 8? Are you telling me that there is nothing else in legislation that needs to be covered with regards to domestic violence and children, other than article 8 of the Children (Northern Ireland) Order 1995?

Mr J Bradley: Article 8 of the Children Order covers proceedings involving disputes between people with parental responsibility and the arrangements for the residence of and contact with children. The other major branch of proceedings that takes place under the Children Order is public law proceedings, those involving article 50 cases and the potential taking of children into care and other protective steps taken by social services.

As we view it, the issue here is disputes between private parties, about the way in which children are looked after, being a medium for continuing abuse or being linked to issues of domestic abuse generally. Clause 27A essentially tasks the Department with looking at the conjoined issues of domestic abuse and private law Children Order proceedings and make recommendations to ensure that abused parties are appropriately represented in those circumstances.

Mr Frew: Yes. Article 8 covers contact orders, residence orders, prohibited steps orders, and specific issue orders. Are you telling me that there is nothing else, in that order or elsewhere, where there is a conflict between two private people in which children are involved, that goes through court and should not be looked at in your report within the two-year period?

Mr J Bradley: No.

Mr Martin: No. As John said, in some of these cases, the acrimony will lead to public law proceedings under article 50, but that is between the state and the parents; it is not between the parents. As far as we are aware, those are the only types of proceedings for issues between parents. However, that does not preclude us from looking at something else that comes out of the discussions. Although it is article 8 that we have a statutory duty to look at, that does not preclude other things. However, we are not aware of anything else.

Mr Frew: OK. I am mindful of trying to keep within scope and limit, which is why I concentrate only on the Children (Northern Ireland) Order 1995. Are you telling me that articles 5, 6 and 7 on parental responsibility and article 4 on the child's welfare have nothing to do with the two parents?

Mr J Bradley: All such proceedings are linked. We highlighted article 8 in particular because it is what the current clause 27 does and what our new clause 27 that responds to it would do. It is the main focus of those disputes. However, to be clear, if we are looking at article 8 proceedings involving families in which there are allegations of domestic abuse, we will inevitably also be looking at linked proceedings involving children in the courts and their experience of them. It is not so much that there are no other relevant court proceedings that we might want to consider; it is that article 8 is the main focus of these disputes.

Mr Frew: Yes, but, in new clause 27A, you are qualifying the proceedings to article 8 alone. I simply ask: why? Article 13 concerns the change of a child's name or removal from the jurisdiction; article 15 concerns orders for financial relief with respect to children; and article 16 concerns family assistance orders. You have a whole range of articles in the Children (Northern Ireland) Order 1995. Should we remove from subsection (4) with regard to qualifying proceedings the reference to the "Article 8 Order" and insert "the Children (Northern Ireland) Order 1995" in its entirety?

Mr Martin: We could look at that fairly quickly, as I do not think that it is unreasonable. I think that 95% of the effort will focus on article 8 because that is where the cases are. However, I take your point that we might be inadvertently precluding some other issues.

Mr J Bradley: I am now thinking aloud, if you will indulge me slightly. To widen it to the Children Order in its entirety would draw in public law proceedings as well as private disputes, which does not seem to be wholly germane to what we are trying to achieve. I am concerned about what else straying beyond the children and family context under article 8 might draw in. It would risk moving us into areas that we have not yet considered and, indeed, that the Assembly has not envisaged being part of this process.

Mr Frew: But you are only reporting; you are not acting.

Mr J Bradley: Indeed.

Mr Frew: What would be wrong with assessing and reporting on the whole Children (Northern Ireland) Order 1995? You can report to say that it would be a bad idea to include articles 15, 16, 5, 6 and 7 in the scope of the waiver.

Mr Martin: Yes. Subject to our discussion with the draftsman and the Minister, that is something that we can look at. However, we will focus our effort on article 8 because that is where the bulk of proceedings are —

Mr J Bradley: At least in private family law.

Mr Martin: — in private family law, but I take your point. If there is a way that we can craft it without making it so broad that it is unachievable, we are happy to look at that. We will take that away. I would not want to give you an answer now because we would need to discuss it first.

Mr Frew: I understand. Thank you very much.

The Chairperson (Mr Givan): We have Question Time with the Justice Minister, so I will suspend. We will reconvene once that session is over because we need to complete this work. Folks, if you can be available, we will start again just after 3.30 pm.

The Committee suspended at 2.39 pm and resumed at 3.37 pm.

The Chairperson (Mr Givan): While we are waiting for the officials to join us, I will formally dispose of the other group of amendments. We can then come back to the civil legal aid issue. Are members content with the Department's amendments on information-sharing with schools; protective measures for victims of abuse; training; independent oversight; and the report on the operation of Part 1 of the Bill when enacted? Have members any views on the guidance aspect for the Northern Ireland Courts and Tribunal Service or are they relaxed about the Department's amendment? I have no strong views on it.

Miss Woods: I would rather that it were in the Bill, especially because it is in the training clause. I do not see the reason for it not being in the guidance.

Ms Dillon: I accept the Department's explanation that, in training, it is about an action, and in guidance, it is about giving advice to itself to do something. I do not have a very strong feeling about it, and I accept the explanation. If other members feel very strongly that it should be in the Bill, however, I am happy to support them and go with a Committee view.

Ms S Bradley: I have no strong opinion. I took the Department's explanation, and perhaps it is good drafting not to have it in there. Like the training, it is a distinctly different thing. I can see the Department's rationale, so I will not be pushing for its inclusion.

The Chairperson (Mr Givan): I am accepting of the Department's position on this one, given the explanation that it has given. I appreciate the point that you are making, Rachel.

Are members content that we accept the Department's amendment? I have noted that Rachel's preference was to keep it in, but we will proceed on that basis.

The Chairperson (Mr Givan): There is then the amendment to clause 38 about bringing clause 31:

"into operation on the day after the day on which this Act receives Royal Assent."

That would enable the appointment process for independent oversight to be established ahead of the offence coming into operation. Again, to me, that is a positive amendment. Are members content for the Committee to support that, as well as the proposed changes to the Bill's long title and short title?

Members indicated assent.

The Chairperson (Mr Givan): That leaves only civil legal aid. Let us check to see whether the officials are able to join us again through the broadcasting facility.

Dr Holland: Chair, it is the Department again.

The Chairperson (Mr Givan): We can see and hear you now. Can you hear us?

Dr Holland: Yes. Apologies for the issues with getting in.

The Chairperson (Mr Givan): You are OK. It is one of those things.

There are a couple of issues that I want to tease out. Is mediation a requirement before court action is taken?

Mr Martin: No, not in Northern Ireland. It is in some other jurisdictions, and that is one of the things that we are looking at as part of our private family law action plan, which the Committee got a written briefing on a number of weeks ago. Mediation would not be appropriate anyway in cases of domestic violence. The short answer is therefore that, no, it is not currently practised in Northern Ireland, and it would not be appropriate in cases of domestic violence anyway.

The Chairperson (Mr Givan): That is tied into the new offence that is being created in the Bill, so is it the same when it comes to the coercive control offence — psychological and financial control — that is being created?

Mr Martin: We are at an early stage of looking at mediation as part of the private family law action plan. My understanding from England and Wales and from the Republic of Ireland is that, where domestic abuse, however defined in those jurisdictions, is happening or is suspected, mediation is not undertaken. That is one of the issues that we are looking at as we develop our future proposals on mediation more generally in private family law.

The Chairperson (Mr Givan): Is it the Department's assessment that the intent behind clause 27 as it currently is in the Bill covers all courts, be they the lower courts or the higher courts? Is clause 27 as it stands applicable to all courts?

Mr J Bradley: As I understand it, it would, as drafted, be able to apply across all courts.

The Chairperson (Mr Givan): As it is currently drafted, does it remove the financial eligibility criteria for the circumstances in the clause?

Mr J Bradley: No. It would not remove any existing powers of discretion that the director of legal aid casework in the Legal Services Agency has.

The Chairperson (Mr Givan): For financial eligibility, it therefore does not remove the director's discretion in those areas.

Mr J Bradley: His discretion would still be in place. The issue that would arise would simply be that there would be two separate schemes of protection available to address the same issue. Those two might end up competing with each other, and it would require assessments to be made by applicants

as to which scheme of relief to apply for, and matters of that type. It would then require an assessment by the LSA as to which scheme ought to apply in which circumstances.

We would like to remove the protection that the current clause 27 would have afforded in those circumstances and replace it with a scheme of protection that has been designed to best meet the needs of vulnerable people in those circumstances. As we have said, our suspicion — our strong view — is that the waiver is probably not the best way in which to try to help those people. We would like the opportunity to explore what better form of help might be available, probably focused to some extent on that discretion currently available to the director.

The Chairperson (Mr Givan): Do members have any other queries for the officials on that? No?

When would you normally commence these powers, whether it be the current clause 27 or clause 27 by way of your amendment? If you were to put a commencement date on it, when would you normally seek to have that coming into effect?

Mr Martin: Commencement orders usually depend on the nature of the provision, because there is usually work to be done before something can be reasonably commenced. You would normally make sure that that work is done, after which you would commence the provisions, unless you need to commence particular parts of a clause. There is no hard and fast rule. As you will see, with our proposed new clause 27A, because there is the two-year time limit, we are proposing to commence that clause as soon as the Bill gains Royal Assent. That would not be appropriate for clause 27, because the guidance that we talked about earlier needs to be in place, and that is something that we are prioritising. It would need to be in place for that provision to be workable. Otherwise, we are into all the kinds of issues that we described during last Thursday's meeting.

The Chairperson (Mr Givan): Perhaps Veronica can guide me on this one. When do chapters 1 and 2 of the Bill become operational?

Dr Holland: When will they become operational?

The Chairperson (Mr Givan): Yes.

Dr Holland: They will, broadly speaking, be brought into force when the domestic abuse offence is being brought in.

The Chairperson (Mr Givan): OK. That will be brought in by way of an order from the Department.

Dr Holland: It will be a commencement order. Typically, a provision will either come into effect on Royal Assent or that is done by a commencement order. On Royal Assent, you will bring in only those things that can operationally and effectively come into effect at that time. The typical way for doing it for the majority of provisions is that they are brought forward by way of a commencement order.

The Chairperson (Mr Givan): OK. The Bill is drafted in such a way that chapters 1 and 2 will be brought in by way of a commencement order.

Dr Holland: Yes.

Ms Dillon: We probably need to remember some of our earlier conversations. Even if you consider our conversations with the Chief Constable of the PSNI, the PSNI has said that it will take a period — potentially up to a year — for its staff to be trained to deal with the offence. I am not asking you to give us dates for the guidance, because I know that you cannot. I would like to think, however, that the guidance will be in place well before that period is up. If that is the case, the guidance will be in place before the legislation will be used by the PSNI when it is making a case against a perpetrator. Would that be fair to say?

Mr J Bradley: The intention is that clause 27, as with the rest of chapters 1 and 2, will come into force on the appointed day of the commencement order, alongside the domestic abuse offence itself. It will all become operative simultaneously. It makes little sense to bring clause 27 into operation in advance of the creation of the domestic abuse offence, because there will be no domestic abuse offence against which to tie it, if you see what I mean. Commencement of the various provisions will therefore be simultaneous.

Ms S Bradley: Are there any examples anywhere of where you can really tighten up by when a commencement order must be presented or enacted?

Mr Martin: Ordinarily, as John said, there is a sequence for things. Most Bills are interrelated, in that one bit can be effective only really once the other bits are commenced. Unless, as Veronica has said, there are particular reasons to commence something on Royal Assent, it is usually done by commencement order, and there usually are not other mechanisms for specifying particular times. It would therefore be an unusual practice unless there is a very specific reason, as we have proposed for clause 27A, because it sets the clock ticking from the two years after the date of Royal Assent. There is a good reason to commence that provision immediately, because we are otherwise giving ourselves undue extra time, whereby we are controlling the timetable instead of the legislation controlling it.

The Chairperson (Mr Givan): Do Members need any other points of clarity? If not, the Committee will need to try to consider this in a little more detail. At this stage, I thank the officials for providing us with all that information. It has been very helpful.

The Committee went into closed session from 3.50 pm until 4.32 pm.

The Chairperson (Mr Givan): OK, members, we will now complete our work on the Further Consideration Stage amendments. The Department proposes at Further Consideration Stage an amendment that is a new clause 27 to replace the clause 27 that is in the Bill following Consideration Stage. It is proposed that the Committee table an amendment to both the existing clause and the proposed new one on commencement being associated with and tied into the commencement order that would give operational effect to chapters 1 and 2 of the Bill.

The members opposed are Linda, Emma and Jemma.

Ms Dillon: We are opposed to the clause as it stands in the Bill.

The Chairperson (Mr Givan): Those in favour of that commencement being applied to clause 27 as it stands are Sinéad, Doug, Paul, Rachel and me.

On the Department's proposed amendment to replace clause 27, all members present are in favour of the commencement of chapters 1 and 2 coming into operational effect via a commencement order. Members agree with the Committee position on that.

Members, I thank you for your time and patience in trying to work through this issue. The Further Consideration Stage will take place in due course.