



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Protection from Stalking Bill: Committee  
Deliberations

4 November 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

### Protection from Stalking Bill: Committee Deliberations

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**Members present for all or part of the proceedings:**

Mr Mervyn Storey (Chairperson)  
Ms Sinéad Ennis (Deputy Chairperson)  
Mr Doug Beattie  
Ms Sinéad Bradley  
Ms Jemma Dolan  
Mr Robin Newton  
Mr Peter Weir  
Miss Rachel Woods

**Witnesses:**

Ms Barbara Compston	Department of Justice
Mr Brian Grzymek	Department of Justice
Mr Andrew Laverty	Department of Justice

**The Chairperson (Mr Storey):** We now have the Committee's informal deliberations on the Protection from Stalking Bill. I appreciate the indulgence of the Committee, as we have a considerable amount of work to get through. I also appreciate the Committee's help in working through the Bill in the next few moments.

Papers are in member's packs and in the tabled pack. The Committee Clerk's memo was emailed to members yesterday. Departmental officials attended the meeting on 14 October to discuss the issues raised in the evidence received on the Bill and to answer members' questions. The Department has provided the text of the proposed amendment to clause 17. The Committee will now undertake its informal deliberations on the clauses and the proposed amendments. Brian Grzymek and Barbara Compston from the Department of Justice will be available, via StarLeaf, should members have any questions or require any further information or clarification on any issues raised during the informal deliberations. I thank them in advance for attending today and for their help with our consideration of the Bill.

The informal deliberations provide an opportunity for members to discuss the issues raised and to indicate whether they are content with the clauses and the proposed amendments, whether they require any further information or clarification, whether they wish to amend clauses and whether they are minded to reject any particular clauses. If members need more time to consider a particular clause or particular clauses, the Committee can continue its deliberations next week. The Committee Stage of the Bill must be completed by 10 December, however. What we are doing today is therefore time-limited.

I inform members that, when agreeing on a clause or accepting an amendment, members can express views and make comments. The Committee can make recommendations on, for example, the implementation or outworking of a clause, and those recommendations will be reflected in the Committee's report on the Bill.

If the Committee is minded to make amendments to any of the clauses, the purpose and the desired outcome of the amendment needs to be clarified. The Committee may then wish to write to the Minister of Justice, asking whether she accepts the proposed change and will table an amendment. Alternatively, or at the same time, the Committee can ask the Bill Clerk to prepare a draft amendment for its consideration. The Bill Clerk, Stephanie Mallon, will be listening to the Committee's deliberations today. If the Committee indicates that it wants any draft amendments to be prepared, she can advise and, if necessary, seek clarification of the purpose of the proposed amendment. The giving of advice by a Bill Clerk to a Committee takes place in closed session, and that will happen at the end of today's meeting or at next week's meeting, depending on the number or nature of proposed amendments to be discussed.

We will work through the Bill. The Committee Clerk's paper sets out the purpose of the session and the key issues that the Committee may wish to consider during its deliberations. Although the discussions will focus on the issues raised in the evidence received, there is overwhelming support for the Bill and for the creation of a new stalking offence and stalking protection orders (SPOs).

We will start with clause 1, which creates the offence of stalking. Key issues raised on the clause included whether it is wide enough to encompass all forms of stalking behaviour, including cyberstalking and, in particular, whether the list of behaviours provided for at clause 1(4) is adequate or there is merit in adding to the list any of the proposals that a number of organisations made; whether the definition in subsection (4)(e) should be amended to "any dwelling in which B resides", in order to ensure clarity and to ensure that victims renting a property have the same level of protection as those who own their home, as recommended by the Northern Ireland Women's European Platform; and whether clause 1(4)(j) meets the request by several organisations that the list be non-exhaustive and that that be clearly set out in the legislation.

I will raise with Brian the issue of amending clause 1(4) to "any dwelling in which B resides". Brian, will you comment on that concern?

**Mr Brian Grzymek (Department of Justice):** I must admit that, if we are talking about there being any problem — I am trying to find it — "any premises" does not require the person to own the premises. The principle in writing legislation is that you do not put in things that are self-explanatory. You certainly could expand it, but I do not think that that is needed, because "entering any premises" is clear. The Bill does not state "entering premises owned" or "rented" or "occupied" but "any premises". That could be a person's dwelling, rented premises, or even an office or other place where a person would be for part of their life or part of the day. It is an interesting suggestion, but it is not necessary.

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

**Mr Grzymek:** The definition does not distinguish between an owner-occupied dwelling, a rented or leased dwelling, or, indeed, a dwelling that someone was visiting or hiring: for example, if on holiday in rental accommodation.

**The Chairperson (Mr Storey):** Thank you. I appreciate that. Are there any comments from other members? Please indicate if there are. There are not so we will move on to clause 2.

Clause 2 creates the offence of threatening or abusive behaviour. Some of the key issues that were raised about the clause were the rationale for introducing the offence, and whether it can be used only as an alternative conviction for domestic abuse or stalking offences or can be used instead of a breach of the peace offence in other circumstances. Another issue that was raised was whether the course of conduct element should be removed to provide clarity so that, where there is a course of conduct, it is always stalking and the offence should apply only to a single incident in order to prevent the likelihood of downgrading the offence of stalking.

Do members have any comments on clause 2? Rachel, you had a concern about the clause.

**Miss Woods:** Chair, can you hear me OK?

**The Chairperson (Mr Storey):** Yes, we can, and we are delighted that you have been able to join us. I trust that you are well.

**Miss Woods:** I am OK. Everybody on the bus is fine, which is good.

**The Chairperson (Mr Storey):** Good.

**Miss Woods:** I have managed to get myself to COP26. We are live from the green zone.

My concern was about the reasonable person test in clause 2. I sent some comments to the Committee Clerk. I believe that it is about clause 2(4). In other places in the Bill, the reasonable person test is worded in the third person, which is more objective. The test in clause 2 seems to be worded so that it applies to a reasonable victim. I am not sure whether that is just the wording or the way in which the clause has been set up, but it reads a bit strangely.

Why is there no "person B" in clause 2, and who is this "reasonable person"? If it is likely to cause a reasonable person fear, alarm or distress, why is the wording not the same as it is in clause 1, for example, where it is suggested that it is likely to cause that in a reasonable person? I would like some information on that, if possible.

**Mr Grzymek:** In both cases, we are talking about the test of reasonableness. In clause 1, where it states:

*"cause a reasonable person to suffer",*

the reasonable person who suffers is the recipient of the behaviour. In clause 2, we are talking about a defence, which is whether the behaviour would be seen as reasonable. Ultimately, that may be considered, possibly by a policeman, a judge or a number of other people whom you could call a "reasonable person". A wide range of people would be deemed to be reasonable.

The terminology was produced by the legislative draftsman, and I am very happy to have a conversation with him about whether there is any advantage in changing it. In both cases, however, we are talking about a test of reasonableness, and, for the offence in clause 1, a reasonable person suffering fear or alarm is the victim. In clause 2(2), it is more about who might be the recipient of information about the defence, and, in that, there is a test of reasonableness.

I am not sure that adding the word "person" would make a significant difference. Rachel, if you can explain what the difference is, I am very happy to give that further consideration.

**Miss Woods:** Thanks, Brian. No problem.

It is actually clause 2(1)(b). It states:

*"A person ("A") commits an offence if— ...  
(b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm".*

Does that then imply a reasonable victim? Does the victim have to be reasonable for the offence to occur?

That reasonable person test in clause 1 is worded very differently. I appreciate that it is maybe different because clause 1 deals with persons A and B, but the reasonable person test in clause 2 seems to read slightly differently than the reasonable person test that we saw in the now Domestic Abuse and Civil Proceedings Act 2021 and in clause 1 of this Bill. It perhaps comes across that the victim must be reasonable in those circumstances.

**The Chairperson (Mr Storey):** Yes.

**Miss Woods:** I may be reading it wrongly, but it just reads a bit strangely.

**Mr Grzymek:** Clause 1(1)(b) is very much about person A's course of conduct, so, in some ways, you are talking about different people and about a reasonable person test relating to different actions.

I am not sure that I wholly understand your point. I understand that you want to make sure that the legislation is right, and so do we. I will have a chat with our legislative draftsman to see whether he is content that the legislation as drafted does not create any lacunae. I do not think that it does, but, at the same time, I am very happy to check.

**The Chairperson (Mr Storey):** Rachel, we will also send to Brian the email that you sent to the Committee this morning. Would that be helpful?

**Miss Woods:** Yes.

**Mr Grzymek:** That would be very helpful.

**The Chairperson (Mr Storey):** OK. Thank you. There are no other comments from members on clause 2, so we will move on to clause 3.

Clause 3 provides that all victims of an offence of stalking will have automatic eligibility for assistance, such as the use of live links or screens at court when giving evidence in proceedings. Some of the issues raised about clause 3 were the need for adequately resourced and fit-for-purpose special measures, the need for special measures to be extended to victims of stalking for the purpose of civil and family cases, and the need to ensure that complainants are aware of the availability of special measures options.

Are there any comments from members on clause 3?

**Ms Dolan:** Chair, to reiterate what you said, it is important that a programme of work be implemented to raise awareness of the availability of special measures.

**The Chairperson (Mr Storey):** Yes. Do you want to comment on that, Brian?

**Mr Grzymek:** I gave a commitment to that effect in previous meetings.

**The Chairperson (Mr Storey):** Yes.

**Mr Grzymek:** We would not put that sort of thing into legislation, but, in discharging its duties and responsibilities when the Bill is passed, the Department sees it being included in a public awareness campaign. That was very necessary with some other legislation that we put through. We would therefore not put it into the Bill, but we are committed to taking it forward as part of the legislation's implementation.

**The Chairperson (Mr Storey):** Thank you very much. There are no other comments from members on clause 3, so we will move on to clause 4.

Clause 4 adds the offences of stalking and threatening and abusive behaviour as alternative convictions in a trial for the domestic abuse offence under the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. Comments were made about the clause, but no specific issues were raised in our evidence sessions. Do members have anything that they want to raise specifically about clause 4. No? OK.

One issue about clause 4 was —. No. I am sorry. I was going to read out something that I do not need to. Apologies for that. We will move on to clause 5.

Clause 5 will amend article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981, the effect of which is to prohibit those accused of the stalking offence or the offence of threatening and abusive behaviour before a Magistrates' Court to elect for trial by jury at a Crown Court. Again, no specific issues were raised about the clause during our evidence sessions. No members wish to comment on clause 5, so we will move on to clause 6.

Clause 6 defines the acts and risks associated with stalking. Some of the issues that were raised about that clause were the standard of proof that will apply to the stalking protection orders, the need for adequately resourced stalking behaviour preparatory programmes, the need to communicate with victims and keep them updated, and whether there is a need for the rehabilitation period to be factored

into the Bill, as that will not be dealt with in existing legislation. No members wish to raise issues about clause 6, so we will move on to clause 7.

Clause 7 sets out what a stalking protection order is, who may apply for one and the grounds on which an application can be made. Issues that have been raised include whether the Chief Constable is able to delegate the authority to make the application for an SPO under this provision, the need for the views of the victim to be taken into account and the need for victims to be engaged in the process.

Brian, will you clarify the point on the delegation of power? Clause 7 names the Chief Constable.

**Mr Grzymek:** It is not unusual in legislation to name the Chief Constable. The Chief Constable has the power to delegate that responsibility to any warranted officer, as I understand it. Is that correct, Barbara?

**Ms Barbara Compston (Department of Justice):** Yes, that is correct.

**Mr Grzymek:** In essence, that is normal phraseology. It in no way signals that, in fact, the Chief Constable has to deal with SPOs personally. The expectation is that the police will deal with them. We are already discussing training with the police. They will have a training system and will put in place arrangements in all their divisions to ensure that such cases are dealt with properly and appropriately.

You referred to taking the views of the victim into account. Clearly, stalking cases start off with the victim coming to the police. If the police, having heard from the victim, assess the situation as one for which an order would be necessary — if stalking is taking place, and they see that an order is necessary in advance of a case being taken, through the prosecuting system, to the courts — an order allows the police to move to protect a victim earlier. In that context, clearly the police would have to take evidence or information from the victim to help them determine that an order was needed and what the order might include. The victim would very much be a part of that process. The aim of putting the police rather than the victim in the place of seeking the order is essentially to protect victims so that they do not have to go through the onerous task of going to court to seek an order. It is for the benefit of victims, but victims would be a part of the process. The police would be the drivers, however.

**Ms Dolan:** My question is relevant to clauses 7 and 11. Will you get us some guidance on the standard of proof needed to grant an interim SPO, either in guidance or in the explanatory and financial memorandum?

**Mr Grzymek:** It is a civil order, so the burden of proof will be at the lower standard. It will not be the standard of "beyond reasonable doubt". The aim of an order is really to disrupt behaviour. It might well disrupt serious behaviour so that it could not continue while a court case was being developed. Alternatively, the level of offending might be fairly low and might not lead to a court case. It could be that the order itself and the restrictions imposed might disrupt the behaviour and even stop it. There therefore might be a number of reasons for bringing orders into play.

As I said, it is a civil order, so the standard of proof would be the lower standard of proof, not "beyond reasonable doubt". That provides greater assurance to victims. If the standard of proof were "beyond reasonable doubt", victims would have to go through a much more robust process, and that would mean that the victim might be without cover or protection during that period.

**Ms Dolan:** OK. Thank you, Brian.

**Miss Woods:** On clause 7, I want to get further information about ensuring that the deferral of responsibility of stalking protection orders is not put back on to the victim. That issue was raised with us when we met the Suzy Lamplugh Trust. It has anecdotal evidence that orders are not being sought in England because of their cost and the resource required. The Department said that it intends to monitor closely, six and then 12 months after the regulations are commenced, the requests and SPOs that are issued, but is there any opportunity in the Bill for the Department to monitor SPOs, requests from alleged victims and victims and whether the PSNI is processing them?

**Mr Grzymek:** I am not sure that that is a matter for the Bill. We are setting up a group to support us with implementation, and that will include victims' groups representatives. They will help us ensure that we are adequately monitoring things as they develop.

Our experience in Northern Ireland has been that, when we pick up legislation that has been developed elsewhere, and there are gaps, problems or issues, we are forewarned. When similar legislation was brought out in England, some police forces produced exemplary systems. Sussex Police was commended for the quality of its work and its support for victims. We want to learn from the best, but we will take account of any criticisms that have occurred elsewhere, and those will inform our group going forward.

In essence, we are forewarned. We, and, for that matter, victims' groups, will therefore want to look carefully at how it is rolling out. If we were to feel that there was an issue, we would quickly pick it up with the police. My experience from talking to the police about this is that they have a good bit of experience of working with domestic abuse legislation training, which I think is completing about now. They have learnt a lot from that and will be using some of the same teams to take forward their own training on this when the Bill becomes law.

One can never say that nothing will ever go wrong. What I can say is that we are forewarned. We have a good understanding of where problems have occurred elsewhere, and, because we are working with victims, we will not just listen to the Police Service and its feedback but hear from victims' groups as the system develops.

**The Chairperson (Mr Storey):** Rachel, are you content with that?

**Miss Woods:** Yes, Chair. Absolutely. The SPOs are going to cost roughly £800 apiece. If there are going to be budgetary requirements, that that can happen will need to be ensured.

**The Chairperson (Mr Storey):** No members have any other issues to raise about clause 7, so we will move on to clause 8. The clause sets out the powers of the court to make a stalking protection order, the grounds on which the court may make an order and what may be included in the terms of an order.

Some issues raised were whether allowing retrospective behaviour could be considered as complying with article 7 of the European Convention on Human Rights and whether there is a risk that clause 8(4) could be manipulated to enable stalking behaviour to continue. Rachel, you have a few queries about the clause, if you want to raise them now.

**Miss Woods:** Thank you, Chair. I feel as though I am hogging the meeting.

**The Chairperson (Mr Storey):** No, no.

**Miss Woods:** For me, clause 8(4) is still quite problematic. Has the Department looked at the possibility of not having subsection (4) in the Bill? Would any issues arise from not having it in there? Having the ability not to interfere with somebody's religion, education or workplace through an SPO will potentially allow stalking to continue or for the legislation to be able to be manipulated by stalking perpetrators. Has not having that provision in the Bill been considered?

Moreover, the Northern Ireland Human Rights Commission raised issues about retrospectivity. It is my understanding that you can have retrospectivity in new laws if they concern civil proceedings but not criminal proceedings. I would like some clarification on that and on whether that means that behaviours and stalking events happening to a victim now could be the basis of evidence going forward once the Bill becomes law and the regulations have been commenced, meaning that a stalking protection order can be issued for events that are happening now or happened a month ago.

**Mr Grzymek:** On the first point, the Department is trying to walk a careful line between the rights of the victim and the rights of the accused. When looking at prohibitions or requirements, we say, "In so far as practicable". Rachel and I had this conversation at the last meeting. Our understanding and expectation is that "so far as practicable" [*Inaudible owing to poor sound quality*] avoid that conflict. Essentially, it is conflicting with rights. We have to recognise that the accused person has rights such as not having their religious beliefs interfered with or attending work. At the same time, that does not trump the legislation. At the end of the day, "so far as practicable" essentially means that, if the prohibitions or requirements can be managed so that they do not interfere with those rights, but at the same time prevent the behaviour from continuing, that may be acceptable.

At the same time, it is only "so far as practicable". If in fact the prohibition conflicts with the person's religious beliefs, and there is no other mechanism to deliver safety from stalking, then it will go ahead.

It is not a question of saying that their religious or work rights take precedence. Essentially, the offence takes precedence, but if the order can be managed in such a way that it can provide the victim with protection while still allowing that person to exercise their human rights for worship or work, that should be taken on board. Whether that clause was in the Bill or not, essentially, that sort of consideration would have to be given anyway. It is better to have that clause in the Bill and say, "so far as practicable", which makes it very clear that the pre-eminent responsibility is to protect the person from stalking. However, subject to the delivery of that protection, if it is possible to protect the right of the perpetrator or the accused to worship or work, that will be a consideration. Certainly, it is a secondary, not a primary consideration.

Rachel, can you repeat the question on retrospectivity? I may have missed the beginning of that. I want to make sure that I have captured it correctly.

**Miss Woods:** No worries, Brian. Basically, it is what the Human Rights Commission raised. Is there a danger of setting a precedent of behaviours that are occurring now, before the Bill is enacted, and using that as evidence? Obviously, we cannot, under the Domestic Abuse and Civil Proceedings Act, be prosecuting in a year's time the behaviours now; that is a criminal offence. I understand the stalking protection orders to be civil matters in a Magistrates' Court. Is that what this Bill is creating with these stalking protection orders? Because it is a civil matter and civil proceedings, we can actually use behaviours and stalking behaviours that are happening now, so that victims can get the police to apply for a stalking protection order as soon as the Bill is enacted and the regulation has commenced on SPOs for behaviour that has happened prior to the Bill's being enacted?

**Mr Grzymek:** Our expectation and legal advice is that, because these are civil orders, previous behaviour can be taken into account and considered. It might be different if it was a criminal offence, but, even then, stalking is a series of behaviours that take place over a period of time. When SPOs are being made, behaviour that has preceded the legislation can be taken into account. Barbara, do you want to add to that?

**Ms Compston:** We had legislative competence provided by the Departmental Solicitor's Office (DSO) on the Bill. DSO indicated that such an application under clause 8 may take place before the provisions come into force, and it does not impinge on article 7 of the convention.

**Mr Grzymek:** In essence, our legal advice is very much that there is no impediment to behaviours occurring before legislation comes into force being taken into account, and that would not interfere with the person's human rights in this instance.

**Miss Woods:** Thank you very much.

**The Chairperson (Mr Storey):** Brian, can you clarify the point about the issue that was raised by the police about how the order will be served? You said the Department of Justice will be required to issue guidance to the Chief Constable. Will that clarify the point of concern raised by the PSNI, asking for clarity on how the order will be served and whether that can be in an ex parte manner, without attendance of the offender or alleged offender, or in their presence? Are we right to say that that will be clarified in the guidance that is to be issued?

**Mr Grzymek:** Andy wants to come in on that one.

**Mr Andrew Lavery (Department of Justice):** We touched on that last time. From memory — I am sure that Hansard will confirm this — our understanding was that we could include that in the guidance to make absolutely clear how and when the police can serve the orders. We are happy to make a commitment that that will be looked at as part of the guidance.

**The Chairperson (Mr Storey):** Are members content with clause 8? There are no other issues that members wish to raise. We will proceed to clause 9.

Clause 9 sets out the period of time for which an order has an effect. No specific issues were raised in relation to clause 9 in the evidence session. Do members have any other issues to raise? No. OK, the Committee is content. We will move to clause 10.

Clause 10 sets out how the stalking protection order may be varied, renewed or discharged and who can apply for those measures. One issue that was raised was about whether the appeal provision in

article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 should be highlighted in the explanatory and financial memorandum, rather than in the Bill, to ensure that perpetrators or their representatives are aware of their right of appeal. That issue was raised. Do members wish to make any other comments in relation to clause 10? Rachel?

**Miss Woods:** It is me again. It is the same comment, Chair.

**The Chairperson (Mr Storey):** We are going to start charging you, Rachel. Do not worry.

**Miss Woods:** That is fine. That is OK. My point about clause 10 is about the appeals process. This was raised in the House at Second Stage. I believe that it was Mr Allister who queried that. It is about other legislation that has reference to appeals, such as the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Section 39 makes specific reference to that with regard to a County Court — the making of an order or the refusal to make an order. I just want to query why that is not in here, when other protection orders have reference to the appeals process. I do not mind that it is not there, but is the Department satisfied that it does not need to be there, when it is in other legislation with provisions to make orders?

**Mr Grzymek:** The short answer is yes, it is. Either the Chief Constable or the person against whom the stalking protection order is made can apply to a court of summary jurisdiction to vary, renew or discharge the order. In effect, that gives the person the capacity to go back to the court to challenge or test the order. Bearing in mind that this is a civil order, not a criminal order, we feel that that is sufficient.

**The Chairperson (Mr Storey):** Do members have any other comments? There are no other comments. If members are content, we will go to clause 11.

Clause 11 sets out a description of an interim stalking protection order and the powers of a court of summary jurisdiction to make an interim stalking protection order; who may apply for an interim order; what may be included in the terms of an interim order; and the duration of that order. No specific issues were raised in relation to this, other than with regard to what Rachel mentioned earlier around clause 8. Do you want to comment on that, Rachel?

**Miss Woods:** It is the same as the comments that I made on clause 8(4). It is about the limitations and "so far as practicable". It is just the same issue that I had, but that has been covered in clause 8. Thank you.

**The Chairperson (Mr Storey):** Thank you.

**Mr Grzymek:** This is the interim one. The aim of this interim order — it would be an interim order and not the main order. In essence, it will apply where the police feel that there is a very serious risk and a situation where they cannot wait for a slower process. This will be an exceptional measure where there is very clear concern about the safety of the individual. It was felt that an interim order could be brought in more quickly to give them that protection, so it should be seen in that light. Obviously, it will not replace the main order, but, at the same time, it is one of those ones where, if necessary, it is there to protect the individual. That is why we have got it there and, in many ways, it mirrors what has happened *[Inaudible owing to poor sound quality.]*

**The Chairperson (Mr Storey):** OK, thank you. If there are no other issues, and if members are content, we will go to clause 12.

Clause 12 sets out what details must be specified within the terms of an order or an interim order and the procedural details on the operation of the Bill in a court of summary jurisdiction. No specific issues were raised in the evidence that we received. Do members have any comments? No? Thank you. If members are content, we will go to clause 13.

Clause 13 provides that it is a criminal offence to breach the terms of an order or an interim order without reasonable excuse. It will be for a court to decide what constitutes a reasonable excuse in a particular case. One of the issues that was raised was whether the maximum penalty on summary conviction for breaching the order should be 12 months rather than six months, bringing the legislation into line with England and Wales. In its written response, the Department indicated that it:

*"considers the penalty for failure to comply with notification requirements as currently drafted to be consistent and proportionate".*

Obviously, Brian, that raises a question for me and some other members. How do we draw a distinction between what they have in England and Wales and what we are proposing here? How, then, can we say that it is consistent and proportionate if the penalty in England and Wales is 12 months and we are proposing six months here?

**Mr Grzymek:** As you know, although we have a devolved Administration, the offences and penalties in our legal system are very similar in many respects to those in England and Wales, as indeed they are to Scotland and in other places, but they are not identical. We are talking about being proportionate. In essence, through common law and past practice, we have come up with *[Inaudible owing to poor sound quality]* six months for only a summary offence. That has been enforced across quite a number of laws in Northern Ireland so, for consistency, it would be unusual for us to depart from that in order to follow a 12-months model from England for this one offence and not for others.

To a reasonable degree, my Department's responsibility is to *[Inaudible owing to poor sound quality]* our own laws and to advise other Departments as to what constitutes a broadly proportionate response to different levels of offending. This would be consistent with other bits of legislation across the criminal justice system and, as such, we did not think that there was sufficient argument to suggest that we should depart from the norm, which would be a six-month penalty in this type of case.

**Mr Lavery:** Chair, I will briefly add to that. You may recall that I mentioned this during the previous evidence session. Although the legislation in England and Wales references 12 months, there is a piece of underpinning legislation that has not been commenced in England and Wales. That means that, for all practical purposes, six months is also the maximum sentence that can be imposed in England and Wales, owing to the different underpinnings in the two different jurisdictions. Although, as Brian says, for all practical purposes, our maximum sentence is six months, a lot of English legislation — in fact, a great deal of English legislation — references 12 months, but the maximum penalty is read as six months, because that other piece of legislation, which is quite old, has not yet been commenced. There is no indication that it will be commenced in the near future. As it stands, the two pieces of legislation are directly comparable, even though two different maximum periods are referenced in them.

**The Chairperson (Mr Storey):** Brian mentioned read-across to other pieces of legislation where this is the case. In the outworkings of that, is the maximum tariff six months, or are we in the position where the tariff is six months but, in practice, most people get only three months?

**Mr Lavery:** I think that the maximum sentence in Northern Ireland is six months.

**The Chairperson (Mr Storey):** Yes, the tariff may say that it should be six months, but are judges mandated to give six months, or do they have discretion to say that it will be three months? Is there any practice or analysis that tells us that that is what happens in real terms?

**Mr Grzymek:** The judiciary make judgements based on the evidence before them in the court. Where you have a maximum sentence not exceeding six months, they clearly have the capacity to give a shorter sentence, but it is very much dependent on the circumstances and evidence presented. In essence, the judiciary are independent from the Department. The Department sets the tariffs and the maximum levels within those, and the judges are ruled by precedent, common law and sentencing guidelines that have been put down in a number of cases. In essence, assessing what constitutes the appropriate sentence, based on the facts presented to them when a case is heard, is a matter for them. We can say that we have the capacity to give six months, but the judge will look at all the facts of a case to determine what constitutes the right sentence, given the circumstances.

**The Chairperson (Mr Storey):** Are there any other comments in relation to clause 13?

**Mr Lavery:** I will add one small point to make it absolutely clear. Although the legislation in England allows for a sentence of up to 12 months, it is not that a sentence of 12 months can be given — it effectively means six months. It is directly comparable with the Northern Ireland situation in that, in effect, the maximum sentence that can be given in England and Wales is six months, because the other legislation has not been enacted.

**The Chairperson (Mr Storey):** There are no other comments in relation to that. We are content with clause 13. We will move to clause 14.

Clause 14 requires the defendant who is subject to an order or interim order to provide certain personal details to the police before the end of three days beginning on the date on which the order comes into force. The issues in relation to that are largely covered by operational issues, so there are no other comments in relation to that. Content? Thank you.

Clause 15 sets out where and how a defendant must notify the police, how notification must be acknowledged and the police powers to verify and identify the defendant when they attend a police station to notify the police. Again, this clause is largely covered by operational issues. Do any members have any comments on that clause? Content? Thank you.

Clause 16 provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. The key issues raised in relation to this clause are similar to some of those raised in relation to clause 13. They are with regard to the maximum penalty — the 12 to six months. The officials have covered that in their previous answers. Have members have any other comments to make? Content?

That brings us to clause 17. This requires the Department of Justice to issue and publish guidance to the Chief Constable about the exercise of his functions under the second part of the Bill. It is envisaged that the statutory guidance will provide information about the procedure for applying for the stalking and protection order, as well as providing a practical toolkit for the police to use in making the application. Obviously, some comments were made regarding the guidance, but no substantive issues were raised in the evidence. The Committee has already asked the Department to bring forward an amendment to implement the proposal, made by the Assembly's Examiner of Statutory Rules, that the guidance should be laid in the Assembly. The Department has provided the text of the proposed amendment for this. It can be found in the meeting pack. Have members any queries or questions?

Rachel, are you still there? Can you hear us, Rachel? We seem to have lost Rachel. She sent an email earlier today in relation to this. It reads:

*"In the issuing of guidance – need to clarify that the Departmental amendment only covers guidance to be issued on the bill and SPOs to the PSNI/Chief Constable only? I would wish the committee to consider asking the Department to expand this narrow scope of guidance. Guidance should be for everyone on this bill, as it was for the new offence of Domestic Abuse."*

Brian, do you want to comment on that?

**Mr Grzymek:** I am not quite sure what Rachel means by "everyone".

**Mr Laverty:** The guidance will be published, Chair, which means that it will be available to everyone. Laying it in the Assembly will not increase the circulation of the guidance. It will not increase the scope of those who have access to it. By publishing it, we will make it available to anyone who has an interest.

**Mr Grzymek:** Yes. Essentially, that is our normal practice and, as such, it is available to everyone. We would read that as actually meeting Rachel's concern. Obviously, we will lay it in the Assembly, but we will also publish it, which means that it will be generally available.

**The Committee Clerk:** Perhaps, in Rachel's absence, I can clarify this. The issue that she was raising is that the guidance only covers SPOs, whereas the guidance for the domestic abuse offence covered the actual offence and understanding of that etc. That is what she is getting at. She is questioning why the guidance does not cover the stalking offence as well as SPOs, rather than just focusing on SPOs.

**Mr Grzymek:** I am just being reminded that we will also publish an annex that will show the operation and will pick up a number of those points. I am not sure that this is one that needs to be in legislation, but I understand the point about making sure that people have a good understanding of what the law is and how it might apply. When we publish the document, it will have an annex that will cover a number of —

**The Chairperson (Mr Storey):** Brian, we will also send that over to you in communications so that you have it.

**Mr Grzymek:** That will be very helpful.

**The Chairperson (Mr Storey):** OK. Thank you. There are no other comments about clause 17, so that brings us to clauses 18, 19 and 20.

Clause 18 defines various words and phrases used in the Bill, clause 19 sets out when the provisions will come into force and clause 20 gives the short title of the Bill. Content? No comments to make? Thank you.

Members, that concludes the informal deliberations on the Bill. A wide range of issues has been raised in the evidence, and the list of issues for members to consider is at paragraph 12 of the Clerk's memo, which is at pages 3 to 10 of the tabled pack. The Department has provided its written response to those issues in the tables issued for today's meeting. Members, we want to consider that list of issues and whether or not there is anything else that we want to raise with officials. Are there any other comments on that? No? OK.

I will just raise a couple of issues, Brian, before we let you depart.

**Mr Grzymek:** Grand.

**The Chairperson (Mr Storey):** Obviously, with the domestic abuse Bill, a number of issues were eventually read across and put into that legislation, including the mandatory training, the data collection and the requirement on the Department to have the operation of the Act monitored or reported on. Is the Department giving consideration to doing the same with this Bill?

**Mr Grzymek:** We are, in fact, looking at picking up all those points, but we are not proposing to include them in the Bill, purely because I made — we talked about this at the last couple of meetings — a number of commitments about what the Department would take forward. We have certainly made a number of commitments as to what we will do about moving these things forward. We have an implementation group set up that brings together all the key players, and we are bringing the victims' groups into that now. That will help guide us through the implementation. As part of that, I would have thought that all those issues will be on the agenda of that group. That should provide the Committee with sufficient assurance that this is being dealt with seriously by the Department and that we are not just talking to ourselves and like-minded people but are bringing the voluntary sector in as well, as, indeed, we have at every stage of the Bill. One of the notable factors with the Bill has been that, from the outset, we have worked very closely with all the voluntary organisations that are concerned with stalking, and we have engaged them in training and other sessions as we have gone along. That is the model that we will take forward, and all those issues will be picked up as part of that. I do not see a necessity to include specific reference to these things in the Bill, not least because the sort of detail that would be needed to progress that would be significant. We will be working through those issues with that group in the coming months.

**The Chairperson (Mr Storey):** Do members have any other issues? OK. Members, if there are no other issues to raise at this stage, we will bring this part of our consideration of the Bill to a conclusion. Yes, everybody is content. I thank the officials for their attendance today, for the time that they have given and for their help during today's proceedings. Thank you very much.

**Ms Compston:** Thank you.

**Mr Grzymek:** Thanks. Our pleasure.