



Northern Ireland
Assembly

Domestic Abuse and Family Proceedings Bill
Notice of Amendments tabled on
3 November 2020 for Consideration Stage

Clause 8, Page 5, Line 24

Leave out 'constituting the offence' and insert 'by virtue of which the offence is constituted'

Minister of Justice

Clause 9, Page 6, Line 6

After 'if' insert '(any or all)'

Minister of Justice

Clause 9, Page 6, Line 11

At end insert -

‘, or

(c) both of these apply—

- (i) a reasonable person would consider the course of behaviour, or an incident of behaviour which A directed at B as part of the course of behaviour, to be likely to adversely affect the child (including likely to cause the child to suffer fear, alarm or distress), and
- (ii) the child usually resides with A or B (or with A and B).’

Minister of Justice

Clause 9, Page 6, Line 11

At end insert -

‘(2A) Subsection (2) does not require there to be evidence of some detrimental impact on the child that is attributable to A’s behaviour (or of the child’s awareness of, or understanding of the nature of, A’s behaviour), but nothing in this section prevents such evidence from being led in proceedings for the domestic abuse offence.’

Minister of Justice

Clause 10, Page 6, Line 38

Leave out ‘course of behaviour would constitute the domestic abuse offence’ and insert ‘domestic abuse offence would be constituted by virtue of the course of behaviour’

Minister of Justice

Clause 11, Page 7, Line 15

Leave out ‘18’ and insert ‘16’

Minister of Justice

Clause 13, Page 7, Line 40

At end insert -

‘(3) This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment).’

Minister of Justice

Clause 17, Page 9, Line 21

Leave out ‘18’ and insert ‘16’

Minister of Justice

New Clause

Before clause 21 insert -

‘Definitions for child cruelty offence

Meaning of ill-treatment etc. in offence provision

20A. In section 20 (cruelty to persons under 16) of the Children and Young Persons Act (Northern Ireland) 1968—

- (a) in subsection (1), the words from “(including” to “derangement)” are repealed,
- (b) before paragraph (a) of subsection (2) insert—
 - “(za) a reference to—

- (i) ill-treatment is to ill-treatment whether physical or otherwise;
- (ii) suffering or injury is to suffering or injury whether physical or otherwise;”.’

Minister of Justice

New Clause

Before clause 25 insert -

‘Requirement for training within relevant bodies

24A.—(1) Each of the following must provide such training on the effect of this Part as it considers appropriate for its personnel—

- (a) the Police Service of Northern Ireland,
- (b) the Public Prosecution Service for Northern Ireland.

(2) The Department of Justice must provide such training on the effect of this Part as it considers appropriate for staff within the Northern Ireland Courts and Tribunal Service.’

Minister of Justice

New Clause

Before clause 25 insert -

‘Enabling of information-sharing with schools etc.

24B.—(1) The Department of Justice may by regulations make provision for the purpose of or in connection with enabling or requiring a relevant person exercising public functions to inform—

- (a) a designated person in relation to a school of an incident of domestic abuse affecting a child who is a pupil of the school,
- (b) a designated person in relation to a college of an incident of domestic abuse affecting a child who is a student of the college.

(2) Here—

- (a) a relevant person exercising public functions is a person of a description, or a person acting in a particular capacity, specified in regulations under this section,
- (b) a designated person—
 - (i) in relation to a school, is a person of a description (or a person acting in a particular capacity) specified in regulations under this section,
 - (ii) in relation to a college, is a person of a description (or a person acting in a particular capacity) specified in regulations under this section,
- (c) an incident is one whether alleged or proved,
- (d) a child is a person under 18 years of age.

(3) Regulations under this section may contain provision—

- (a) describing what is, whether or not exclusively by reference to matters in Chapter 1 or 2, to be regarded as an incident of domestic abuse concerning a child,
- (b) concerning—
 - (i) pupils or students generally, or particular categories of pupil or student,
 - (ii) schools or colleges generally, or particular categories of school or college,
- (c) stating who is to be regarded as a pupil of a school or a student of a college,

- (d) setting out circumstances in or reasons for which—
 - (i) a relevant person may or must give information to a designated person,
 - (ii) a different person, including of a description specified, may or must give information to a relevant person (for example, information identifying a school or a college of which a child is a pupil or a student),
- (e) with respect to information—
 - (i) regulating or limiting the use or disclosure of information by a relevant person or a designated person,
 - (ii) specifying offences and penalties for unauthorised use or disclosure of information,
- (f) involving such further matters as the Department of Justice considers appropriate.

(4) Regulations under this section may contain provision applying in relation to an organisation of a description specified, or which provides educational or training programmes of a description specified, as if the organisation were a college or a college of a particular category (and a reference in this section to a college or a student of a college is to be read accordingly).

(5) Regulations under this section may contain provision amending statutory provisions (as construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954).

(6) Regulations under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.’

Minister of Justice

Clause 25, Page 13, Line 28

Leave out ‘may’ and insert ‘must’

Minister of Justice

Clause 25, Page 13, Line 30

Leave out ‘other matters’ and insert ‘such other matters as it considers appropriate’

Minister of Justice

Clause 25, Page 13, Line 34

Leave out from ‘may’ to end of line 35 and insert -
‘must—

- (a) keep any guidance issued under this section under review, and
- (b) revise any guidance issued under this section if it considers revision to be necessary in light of review.’

Minister of Justice

New Clause

After clause 25 insert -

‘Report on the operation of this Part

25A.—(1) The Department of Justice must prepare a report, covering the reporting period, in relation to the following categories of offence—

- (a) an offence under section 1(1) (including where aggravated as referred to in section 8 or 9),
- (b) an offence of any kind that is aggravated as referred to in section 15.

(2) The report must set out this information—

- (a) the number of—
 - (i) offences within each of the categories as recorded by the Police Service of Northern Ireland on the basis of allegations made to them,
 - (ii) files submitted by the Police Service to the Public Prosecution Service for Northern Ireland in respect of offences within each of the categories,
 - (iii) cases prosecuted by the Public Prosecution Service for offences within each of the categories,
 - (iv) convictions in cases prosecuted by the Public Prosecution Service for offences within each of the categories,
- (b) the typical length of time, for offences within the categories as a whole—
 - (i) from recording of offences by the Police Service on the basis of allegations made to them,
 - (ii) to disposal of cases at court (disregarding appeal processes).

(3) The report is to include, so far as available—

- (a) information about training provided in accordance with section [24A],
- (b) information about—
 - (i) how court business is arranged so as to ensure the efficient disposal of cases for offences within the categories as a whole,
 - (ii) the experience at court of witnesses (including witnesses who are children) in cases for offences within the categories as a whole.

(4) The report is to include, in addition—

- (a) information about any—
 - (i) issuing, review or revision of guidance by the Department of Justice under section 25,
 - (ii) steps taken by the Department for raising awareness of matters relating to domestic abuse in Northern Ireland,
- (b) information about such further things as the Department considers appropriate.

(5) The report must be laid before the Assembly by the Department of Justice as soon as practicable after the report is completed by the time and in the form determined by the Department.

(6) The reporting period is the period, of not less than 2 years and not more than 3 years beginning with the day on which this Part comes into operation, as determined by the Department of Justice.’

Minister of Justice

New Clause

Before clause 26 insert -

‘Factors relevant to residence and contact orders

A26.—(1) In the Children (Northern Ireland) Order 1995, in Article 12A (residence and contact orders and domestic violence)—

- (a) in paragraph (1), after “in favour of” insert “—
 - (a) any person, the court shall have regard to any conviction of the person for a domestic abuse offence involving the child,
 - (b) ”,
- (b) after paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(a), a domestic abuse offence involving the child is—

 - (a) an offence under section 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 if—
 - (i) the offence is aggravated as provided for in section 9 of that Act, and
 - (ii) the aggravation of the offence relates to the child, or
 - (b) an offence of any kind (apart from one under section 1 of that Act) if—
 - (i) the offence is aggravated as provided for in section 15 of that Act, and
 - (ii) the child is not the person against whom the offence was committed but the aggravation of the offence relates to the child.”,
- (c) in paragraph (2), for “paragraph (1)” substitute “paragraph (1)(b)”,
- (d) in paragraph (3), after “Article 3” insert “(and in that paragraph neither sub-paragraph limits the effect of the other sub-paragraph)”.

Minister of Justice

Clause 26, Page 16, Line 3

Leave out “provision” means a statutory provision or any other’ and insert “corresponding provision” means a corresponding statutory provision or any other corresponding’

Minister of Justice

Clause 26, Page 17, Line 5

Leave out ‘(2)’ and insert ‘3(2)’

Minister of Justice

Clause 26, Page 18, Line 3

Leave out ‘family’

Minister of Justice

Leave out ‘family’

Minister of Justice

New Clause

After clause 26 insert -

‘Special measures directions in family proceedings

26A.—(1) In the Family Law (Northern Ireland) Order 1993, after Article 11J (as inserted by this Act) insert—

“Special measures directions in family proceedings

Special measures in family proceedings: victims of abusive behaviour

11K.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person (“P”) where—

- (a) P is a party to or witness in family proceedings,
- (b) P is, or is at risk of being, subjected to abusive behaviour by a person who is—
 - (i) a party to the proceedings,
 - (ii) a relative of a party to the proceedings (other than P), or
 - (iii) a witness in the proceedings, and
- (c) P and that person are personally connected.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court’s own motion, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to)—

- (a) the availability of the special measures in question, and
- (b) any views expressed by P.

(4) The following apply for the purposes of this Article as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 (to give meanings to certain expressions)—

- (a) section 2 (as read with section 3(2)) of that Act,
- (b) sections 4 and 5 of that Act.

(5) In this Article—

“family proceedings” means—

- (a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules),
- (b) proceedings in a court of summary jurisdiction when exercising its jurisdiction under one or more of the following—
 - (i) the Domestic Proceedings (Northern Ireland) Order 1980,
 - (ii) Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,
 - (iii) the Children (Northern Ireland) Order 1995,
 - (iv) the Family Homes and Domestic Violence (Northern Ireland) Order 1998,
 - (v) Schedule 16 to the Civil Partnership Act 2004,

“relative” has the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

“rules of court” includes—

- (a) rules of court under Article 12, and
- (b) magistrates' courts rules,
as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

“special measures” means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

“special measures direction” means a direction by the court granting special measures.

Power to alter definition of family proceedings

11L.—(1) The Department of Justice may by regulations amend Article 11K so as to alter the definition of “family proceedings” in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”.’

Minister of Justice

New Clause

After clause 26 insert -

‘Prohibition of cross-examination in person in civil proceedings generally

26B. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7 insert—

“Prohibition of cross-examination in person in civil proceedings

Prohibition of cross-examination in person: introductory

7A.—(1) For the purposes of Articles 7B to 7F—

“civil proceedings” means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993), in—

- (a) the High Court, or
- (b) a county court,

exercising its civil jurisdiction,

“witness”, in relation to any proceedings, includes a party to the proceedings.

(2) The Department of Justice may by regulations amend this Article so as to alter the definition of “civil proceedings” in paragraph (1).

Direction for prohibition of cross-examination in person

7B.—(1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if it appears to the court that—

- (a) the quality condition or the significant distress condition is met, and
- (b) it would not be contrary to the interests of justice to give the direction.

(2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—

- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
- (b) would be likely to be improved if a direction were given under this Article.

(3) The “significant distress condition” is met if—

- (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
 - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
- (4) A direction under this Article may be made by the court—
- (a) on an application made by a party to the proceedings, or
 - (b) of the court's own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things)—
- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,
 - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,
 - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,
 - (d) any conviction or caution (of any kind) of which the court is aware for an offence committed by the party in relation to the witness,
 - (e) any conviction or caution (of any kind) of which the court is aware for an offence committed by the witness in relation to the party,
 - (f) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
 - (g) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,
 - (h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,
 - (i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,
 - (j) any relationship (of whatever nature) between the witness and the party.
- (6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.
- (7) For this purpose, "coherence" refers to a witness's ability in giving evidence to give answers which—
- (a) address the questions put to the witness, and
 - (b) can be understood, both individually and collectively.

Directions under Article 7B: supplementary

- 7C.—(1) A direction under Article 7B has binding effect from the time it is made until the witness in relation to whom it applies is discharged.
- (2) But the court may revoke a direction under Article 7B before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—
- (a) on an application made by a party to the proceedings, or
 - (b) of the court's own motion.
- (3) The court may revoke a direction under Article 7B on an application made by a party to the proceedings only if there has been a material change of circumstances since—
- (a) the direction was given, or
 - (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.
- (4) The court must state its reasons for—
- (a) giving a direction under Article 7B,
 - (b) refusing an application for a direction under Article 7B,
 - (c) revoking a direction under Article 7B,
 - (d) refusing an application for the revocation of a direction under Article 7B.

Alternatives to cross-examination in person

7D.—(1) This Article applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of Article 7B.

(2) The court must consider whether (ignoring this Article) there is a satisfactory alternative means—

- (a) for the witness to be cross-examined in the proceedings, or
- (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

- (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
- (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Paragraph (5) applies if, by the end of the period specified under paragraph (3)(b), either—

- (a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under paragraph (6) is not responsible to the party except in so far as acting in the interests of the party by virtue of this Article.

(8) For the purposes of this Article—

- (a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,
- (b) “qualified legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 7D(6)

7E.—(1) The Department of Justice must pay such sums as the Department may determine in respect of—

- (a) fees or costs properly incurred by a qualified legal representative appointed under Article 7D(6), and
- (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) Regulations made by the Department of Justice may provide for sums payable under paragraph (1)—

- (a) to be such amounts as are specified in the regulations,
- (b) to be calculated in accordance with—
 - (i) a rate or scale specified in the regulations, or
 - (ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 7D(6)

7F.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 7D(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 7D(7).

(2) A qualified legal representative appointed under Article 7D(6) must have regard to any guidance issued under this Article.

(3) The Department of Justice may from time to time revise any guidance issued under this Article.

(4) The Department of Justice must publish—

- (a) any guidance issued under this Article, and
- (b) any revisions of guidance issued under this Article.

Regulations under Articles 7A to 7E

7G.—(1) Any power of the Department of Justice to make regulations under Articles 7A to 7E includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 7A(2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Articles 7B to 7E are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).”.’

Minister of Justice

New Clause

After clause 26 insert -

‘Special measures directions in civil proceedings generally

26C. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7G (as inserted by this Act) insert—

“Special measures directions in civil proceedings

Special measures in civil proceedings: victims of specified offences

7H.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person (“P”) where—

- (a) P is a party to or witness in civil proceedings, and
- (b) P is the victim, or alleged victim, of a specified offence.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court’s own motion—

- (a) whether—
 - (i) the quality of P’s evidence, or
 - (ii) where P is a party to the proceedings, P’s participation in the proceedings, is likely to be diminished for reasons arising because P is the victim or alleged victim, and
- (b) if so, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2)(b) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to)—

- (a) the availability of the special measures in question, and
 - (b) any views expressed by P.
- (4) For the purposes of this Article—
- (a) P is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence,
 - (b) P is the alleged victim of a specified offence if another person has been charged with the offence.
- (5) In this Article—
- “caution” means—
- (a) in the case of Northern Ireland—
 - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
 - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted,
 - (b) in the case of England and Wales—
 - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
 - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
 - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,
 - (c) in the case of Scotland, anything corresponding to a caution falling within sub-paragraph (b) (however described) which is given to a person in respect of an offence under the law of Scotland,
- “civil proceedings” means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993) in—
- (a) the High Court, or
 - (b) a county court, exercising its civil jurisdiction,
- “conviction” means—
- (a) wherever occurring in Northern Ireland, Scotland, or England and Wales—
 - (i) a conviction before a court, or
 - (ii) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,
 - (b) wherever occurring within or outside the United Kingdom, a conviction in service disciplinary proceedings,
- “rules of court” includes county court rules as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,
- “service disciplinary proceedings” means—
- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act),
 - (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),
 - (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,
- “special measures” means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,
- “special measures direction” means a direction by the court granting special measures,

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Department of Justice.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this Article to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,

(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(7) For the purposes of this Article—

“offence” includes an offence under a law that is no longer in force,

“corresponding provision” means a corresponding statutory provision or any other corresponding legislative provision (and includes an earlier provision or a provision applying in any part of the United Kingdom).

Power to alter definition of civil proceedings

7I.—(1) The Department of Justice may by regulations amend Article 7H so as to alter the definition of “civil proceedings” in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Article 7H(5) are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft and approved by a resolution of the Assembly).’.

Minister of Justice