



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

MINUTES OF PROCEEDINGS

THURSDAY 1 OCTOBER 2020

Room 30, Parliament Buildings, Belfast

Present: Mr Paul Givan MLA (Chairperson)
Ms Linda Dillon MLA (Deputy Chairperson)
Mr Doug Beattie MLA
Ms Sinéad Bradley MLA*
Ms Jemma Dolan MLA
Mr Gordon Dunne MLA
Mr Paul Frew MLA
Ms Emma Rogan MLA
Ms Rachel Woods MLA

* This Member attended the meeting via video conferencing.

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mrs Kathy O'Hanlon (Senior Assistant Assembly Clerk)
Mr Peter Madine (Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)

The Committee agreed that the meeting would begin in closed session in accordance with normal protocol to receive advice from the Assembly Bill Clerk on draft Committee amendments to the Domestic Abuse and Family Proceedings Bill.

The meeting commenced at 2.06 p.m. in closed session.

1. Domestic Abuse and Family Proceedings Bill – Consideration of Draft Committee Amendments - Advice from the Assembly Bill Clerk

The Committee noted an update by the Minister of Justice on the current position regarding Domestic Violence Protection Notices and Orders and the intention to focus on policy development in relation to Domestic Abuse Protection Notices and Orders instead.

The Committee considered correspondence from the Chairperson of the NI Policing Board Performance Committee regarding the current gap in relation to Domestic Abuse Protection Notices and Orders and requesting an update on the current position.

Agreed: The Committee agreed to send a copy of the Minister's correspondence to the NI Policing Board Performance Committee for information.

The Committee noted correspondence from the Women's Aid Federation, the Women's Policy Group and Children in Northern Ireland setting out their strong opposition to parental alienation being included in the Domestic Abuse and Family Proceedings Bill in any capacity.

Ms Stephanie Mallon, Assembly Bill Clerk, joined the meeting to provide advice on seven proposed Committee amendments to the Domestic Abuse and Family Proceedings Bill.

Agreed: The Committee agreed to bring forward six amendments to the Domestic Abuse and Family Proceedings Bill covering independent oversight, reporting arrangements, data collection, training, a duty to introduce measures similar to Domestic Abuse Prevention Notices and Orders, and provision of information.

Agreed: The Committee agreed not to take forward an amendment to clause 9 in light of further information provided by the Department of Justice.

The Chairperson thanked Ms Mallon for her advice and she left the meeting.

The meeting moved into public session at 2.42 p.m.

The Committee noted that the deliberations on the Bill Provisions and the Formal Clause by Clause Consideration would be reported by Hansard in accordance with normal protocol.

2. Apologies

There were no apologies.

The Clerk informed the Committee that, under Standing Order 115(6), Mr Dunne had delegated authority to the Chairperson, Mr Givan, to vote on his behalf until he joined the meeting.

3. Draft Minutes

Agreed: The Committee agreed the minutes of the meeting held on Monday 21 September 2020.

Agreed: The Committee agreed the minutes of the meeting held on Thursday 24 September 2020.

4. Matters Arising

Item 1 – Legislative Error Resulting in Invalid Convictions for Sexual Offences

The Committee noted the response from the Minister of Justice to the Committee's request that she make an urgent oral statement in the Assembly on Monday 28 September regarding the legislative error resulting in the convictions of 15 individuals for certain sexual offences prosecuted between 2009 and 2017 being set aside.

Agreed: The Committee agreed to write to the Minister of Justice on a range of issues including the need for an independent inquiry and the processes for bringing such issues to her attention.

Agreed: The Committee agreed to schedule an oral evidence session with the Minister on the matter.

Item 2 – Responses from the Minister of State at the NIO and the Minister of Justice in relation to the Victims’ Pension Scheme

The Committee considered responses from the Minister of State at the Northern Ireland Office and the Minister of Justice regarding funding for the Victims’ Pension payments.

Agreed: The Committee agreed to write to the Minister of Justice and request regular updates on the funding position including information on the outcome of the meeting with the Secretary of State.

Agreed: The Committee agreed to provide a copy of its correspondence to the First Minister and deputy First Minister on the issue to the Committee for the Executive Office and ask it to pursue this matter.

Mr Dunne joined the meeting at 3.00 p.m.

5. Domestic Abuse and Family Proceedings Bill – Further Consideration of clauses 9, 11 and 17

The Committee noted correspondence from Barnardo’s on clause 9 of the Bill.

The following official joined the meeting at 3.01 p.m. via video conferencing.:

Dr Veronica Holland, Head of Violence Against the Person Branch, Department of Justice.

Dr Holland provided further information and clarification in relation to clause 9 and the potential departmental amendments to clauses 11 and 17.

The oral evidence was reported by Hansard.

Mr Beattie joined the meeting at 3.22 p.m.

The Committee considered clause 9 and the proposal by the Department to amend the Bill Explanatory and Financial Memorandum (EFM) to provide greater clarity regarding this clause.

Ms Woods indicated that she was still not content that this addressed her concerns regarding the wording of the clause.

Agreed: The Committee agreed that it was content with clause 9 as drafted with the caveat that the proposed amendments to the EFM are made by the Department.

The Committee considered potential departmental amendments to clauses 11 and 17 to reduce the threshold for the parental responsibility from under age 18 to under age 16 to ensure non-physical abuse of 16 and 17 year olds in a parent-child relationship is clearly provided for in legislation which is required as a result of the proposed amendment to the Child Cruelty Offence in the Children and Young Person's Act 1968.

The Committee was of the view that there was not enough time to properly consider the amendments that had been provided last week and the implications or consequences of reducing the age threshold. The Committee was however also concerned that the gap as a result of the amendment to the Child Cruelty Offence needed to be properly addressed.

Agreed: The Committee agreed that it was content to support the Department's proposed amendment to amend the Child Cruelty Offence in Section 20 of the Children and Young Person's Act 1968 to ensure that non-physical ill treatment of a child, by someone with parental responsibility for them, is criminalised.

Agreed: The Committee agreed to note the Department's potential amendments to clauses 11 and 17.

Agreed: The Committee agreed to request further information on the implications of the potential amendments, the consequences of not making the amendments and any other options to address the gap to enable the Committee to consider this further before Consideration Stage of the Bill.

The Chairperson thanked Dr Holland for her attendance.

The meeting was suspended at 3.39 p.m.

The meeting recommenced at 4.01 p.m.

Present: Mr Paul Givan MLA (Chairperson)
Ms Linda Dillon MLA (Deputy Chairperson)
Ms Sinead Bradley MLA*
Mr Doug Beattie MLA
Ms Jemma Dolan MLA
Mr Gordon Dunne MLA
Mr Paul Frew MLA
Ms Emma Rogan MLA
Ms Rachel Woods MLA

* This Member re-joined the meeting via video conferencing.

6. October Monitoring Round and Finance Update

The following officials joined the meeting at 4.02 p.m. via video conferencing.:

Ms Deborah Brown, Director of Justice Delivery Directorate, Department of Justice,
Ms Lisa Rocks, Deputy Director of Financial Services Division, Department of Justice

The officials outlined the October Monitoring Round position and provided a finance update.

The oral evidence was followed by a question and answer session.

The oral evidence was reported by Hansard.

The officials agreed to provide a copy of the October Monitoring Round templates to be submitted to the Department of Finance.

The Chairperson thanked the officials for their attendance.

Agreed: The Committee agreed to send the questions on the October Monitoring Round and financial position that were not covered in the oral evidence session to the Department of Justice for a written response.

7. Domestic Abuse and Family Proceedings Bill – Formal clause by clause consideration

The Committee commenced its formal clause by clause consideration of the Domestic Abuse and Family Proceedings Bill.

Clause 1 - The domestic abuse offence

Clause 2 - What amounts to abusive behaviour

Clause 3 - Impact of behaviour on victim

Clause 4 - Meaning of behaviour etc.

Agreed: The Committee agreed to group Clauses 1 to 4 for the purpose of putting the question.

The Committee considered Clauses 1 to 4 as drafted.

Agreed: The Committee agreed that it was content with Clauses 1 to 4 as drafted.

Clause 5 – Meaning of personal connection

The Committee considered Clause 5 as drafted.

Agreed: The Committee agreed that it was content with Clause 5 as drafted.

Clause 6 – Establishing connection by notice

Clause 7 – How notice is to be served

Agreed: The Committee agreed to group Clauses 6 and 7 for the purpose of putting the question.

The Committee considered Clauses 6 and 7 as drafted.

Agreed: The Committee agreed that it was content with Clauses 6 and 7 as drafted.

Clause 8 – Aggravation where victim is under 18

The Committee considered Clause 8 and an amendment proposed by the Minister of Justice to tidy up the wording of the Clause:

Clause 8, page 5, line 24

leave out ‘constituting the offence’ and insert ‘by virtue of which the offence is constituted’

Agreed: The Committee agreed that it was content with the amendment proposed by the Minister of Justice.

Agreed: The Committee agreed that it was content with Clause 8, subject to the amendment proposed by the Minister of Justice.

Clause 9 – Aggravation where relevant child is involved

The Committee considered Clause 9 as drafted.

Agreed: The Committee agreed that it was content with Clause 9 as drafted with the caveat that the proposed amendments to the EFM are made by the Department.

Clause 10 - Behaviour occurring outside the UK

The Committee considered Clause 10 and an amendment proposed by the Minister of Justice to tidy up the wording of the Clause:

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’

Agreed: The Committee agreed that it was content with the amendment proposed by the Minister of Justice.

Agreed: The Committee agreed that it was content with Clause 10, subject to the amendment proposed by the Minister of Justice.

Clause 11 - Exception where responsibility for children

The Committee considered Clause 11 as drafted.

Agreed: The Committee agreed that it was content with Clause 11 as drafted.

Clause 12 – Defence on grounds of reasonableness

The Committee considered Clause 12 as drafted.

Agreed: The Committee agreed that it was content with Clause 12 as drafted.

Clause 13 – Alternative available for conviction

The Committee considered Clause 13 and an amendment proposed by the Minister of Justice to ensure that there is no risk of implying that the provisions in the 1967 Act are ousted by what is contained in Clause 13:

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).’

Agreed: The Committee agreed that it was content with the amendment proposed by the Minister of Justice.

Agreed: The Committee agreed that it was content with Clause 13, subject to the amendment proposed by the Minister of Justice.

Clause 14 – Penalty for the offence

The Committee considered Clause 14 as drafted.

Agreed: The Committee agreed that it was content with Clause 14 as drafted.

Clause 15 – Aggravation as to domestic abuse Clause 16 – What amounts to the aggravation

Agreed: The Committee agreed to group Clauses 15 and 16 for the purpose of putting the question.

The Committee considered Clauses 15 and 16 as drafted.

Agreed: The Committee agreed that it was content with Clauses 15 and 16 as drafted.

Clause 17 – Exception regarding the aggravation

The Committee considered Clause 17 as drafted.

Agreed: The Committee agreed that it was content with Clause 17 as drafted.

Clause 18 – Meaning of personal connection

The Committee considered Clause 18 as drafted.

Agreed: The Committee agreed that it was content with Clause 18 as drafted.

Clause 19 – Establishing connection by notice

Clause 20 – How notice is to be served

Agreed: The Committee agreed to group Clauses 19 and 20 for the purpose of putting the question.

The Committee considered Clauses 19 and 20 as drafted.

Agreed: The Committee agreed that it was content with Clauses 19 and 20 as drafted.

New clause 20A – Definitions for child cruelty offence

The Committee considered an amendment proposed by the Minister of Justice to insert a new Clause 20A to amend the child cruelty offence in Section 20 of the Children and Young Persons Act (NI) 1968.

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;”.

Agreed: The Committee agreed that it was content with the proposed new Clause 20A.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 20A be added to the Bill.

Clause 21 – No right to claim trial by jury

The Committee considered Clause 21 as drafted.

Agreed: The Committee agreed that it was content with Clause 21 as drafted.

Clause 22 – Special measures directions

The Committee considered Clause 22 as drafted.

Agreed: The Committee agreed that it was content with Clause 22 as drafted.

Clause 23 – Prohibition of cross-examination in person

The Committee considered Clause 23 as drafted.

Agreed: The Committee agreed that it was content with Clause 23 as drafted.

Clause 24 – Meaning of offence involving domestic abuse etc.

The Committee considered Clause 24 as drafted.

Agreed: The Committee agreed that it was content with Clause 24 as drafted.

New Clause 24A – Interim protection for the victim

The Committee considered its proposed amendment to insert a new Clause 24A: Interim protection for the victim:

After Clause 24 insert –

Interim protection for the victim

24A. (1) The Department of Justice may by regulations, within 24 months of commencement, make provision for measures which may be made for the purposes of protecting and supporting the victim or alleged victim.

(2) The regulations may include provisions about—

(a) court orders

(b) measures other than court orders

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly.

Agreed: The Committee agreed that it was content with the new Clause 24A as drafted.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 24A be added to the Bill.

Clause 25 – Guidance about domestic abuse

The Committee considered Clause 25 and an amendment proposed by the Minister of Justice at the request of the Committee to change ‘may’ to ‘must’ in relation to issuing guidance:

Clause 25, page 13, line 28, leave out ‘may’ and insert ‘must’

Clause 25, page 13, line 30, leave out ‘other matters’ and insert ‘such other matters as it considers appropriate’

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.’*

Agreed: The Committee agreed that it was content with the amendment proposed by the Minister of Justice.

The Committee considered its proposed amendment to Clause 25 to provide that the Department may by regulations make provision for informing the school of a child who saw, heard or was present during a domestic abuse incident:

Clause 25, Page 13, Line 31, at end insert-

(1A) In supporting the operation of Part 1, the Department may by regulations make provision for informing the school of a child who saw, heard or was present during a domestic abuse incident.

Agreed: The Committee agreed that it was content with its proposed amendment as drafted.

Agreed: The Committee agreed that it was content with Clause 25, subject to the amendment proposed by the Minister and its proposed amendment.

New Clause 25A – Guidance on data collection

The Committee considered its proposed amendment to insert a new Clause 25A:
Guidance on data collection:

After Clause 25 insert –

Guidance on data collection

25A (1) The Department of Justice—

(a) may issue guidance to the relevant bodies about the sort of information which it seeks to obtain from them for the purpose of the assessment by it of the operation of this Part, and

(b) must have regard to information which it obtains from the relevant bodies in relation to the operation of this Part when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Part.

(2) The relevant bodies are—

(a) Police Service of Northern Ireland

(b) Public Prosecution Service Northern Ireland,

(c) the Northern Ireland Courts and Tribunals Service, and

(d) such additional bodies as the Department considers appropriate.

Agreed: The Committee agreed that it was content with the new Clause 25A as drafted.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 25A be added to the Bill.

New Clause 25B – Training

The Committee considered its proposed amendment to insert a new Clause 25B:
Training:

After Clause 25 insert –

Training

25B. (1) *It shall be the duty of the Department to ensure that sufficient training of policing and criminal justice agencies, including but not limited to-*

- (a) Police Service of Northern Ireland,*
- (b) Public Prosecution Service Northern Ireland, and*
- (c) the Northern Ireland Courts and Tribunals Service, and is made available to allow for the effective operation of this Act.*

(2) Training must be provided annually.

(3) Training is mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies, including but not limited to the agencies listed in subsection (1).

(4) Having identified the relevant staff in subsection (3) at the beginning of an annual reporting period, the Department must publish the uptake of training by each relevant organisation at the end of each year.

Agreed: The Committee agreed that it was content with the new Clause 25B as drafted.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 25B be added to the Bill.

New Clause 25C – Independent Oversight

The Committee considered its proposed amendment to insert a new Clause 25C:
Independent Oversight

After Clause 25 insert –

Independent oversight

25C. (1) *The Department of Justice must not later than 1 year after the commencement of this Act appoint an independent person to-*

- (a) contribute to the development of the guidance under Section 25, and*
- (b) review, report and make recommendations in relation to the operation of Part 1.*

(2) The person must produce a report annually on the activities in Subsection (1), starting not later than 2 years after the commencement of this Act.

(3) The Department must—

- (a) lay the report before the Northern Ireland Assembly, and*
- (b) arrange for it to be published.*

Agreed: The Committee agreed that it was content with the new Clause 25C as drafted.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 25C be added to the Bill.

New Clause 25D – Report on the operation of this Act

The Committee considered its proposed amendment to insert a new Clause 25D: Report on the operation of this Act

After Clause 25 insert –

Report on the operation of this Act

25D. (1) *The Department of Justice must prepare a report on the operation of –*

(a) an offence under section 1(1), and

(b) an offence that is aggravated as described in sections 8, 9 and 15.

(2) *The report must set out, in relation to those sorts of offences—*

(a) the number of cases for which criminal proceedings are undertaken,

(b) the number of convictions in criminal proceedings,

(c) the average length of time—

(i) from service of the complaint or indictment,

(ii) to finding or verdict as to guilt (including plea of guilty),

(f) information about the experience of witnesses (including witnesses who are children) at court,

(g) such additional information as the Department of Justice finds considers appropriate.

(3) *The report must, in relation to those sorts of offences, include distinct statistics for each of them.*

(4) *For the purpose of the report, the Department of Justice must seek information on how court business is arranged so as to ensure the efficient disposal of cases involving those sorts of offences.*

(5) *The report must also include —*

(a) activities and associated timespans for delivering the guidance in Section 25 and any plans for review,

(b) strategies to communicate the provisions of Part 1 to the public and to victims in particular, and

(c) any additional activities which support the operation of the Act.

(6) *The Department must prepare a report under this section—*

(a) not more than 2 years after Commencement, and

(b) thereafter, at intervals of not more than 3 years.

(7) *The Department must—*

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.

Agreed: The Committee agreed that it was content with the new Clause 25D as drafted.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 25D be added to the Bill.

New Clause A26 – Article 12A Children (NI) Order 1995

The Committee considered an amendment proposed by the Minister of Justice to insert a new Clause A26 to amend Article 12(A) of the Children (NI) Order 1995.

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)”.’

Agreed: The Committee agreed that it was content with the proposed new Clause A26.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause A26 be added to the Bill.

Clause 26 – Prohibition of cross-examination in person

The Committee considered Clause 26 and an amendment proposed by the Minister of Justice to correct a small error that occurred when the Bill was being processed prior to introduction:

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 provision’

Clause 26, page 18, line 3

Leave out ‘family’

Clause 26, page 18, line 6

Leave out ‘family’

Clause 26, page 17, line 5,

Leave out ‘(2) and insert ‘3(2)’

Agreed: The Committee agreed that it was content with the amendment proposed by the Minister of Justice.

Agreed: The Committee agreed that it was content with Clause 26, subject to the amendment proposed by the Minister of Justice.

New Clause 26A – Special measures directions in family proceedings

The Committee considered an amendment proposed by the Minister of Justice to insert a new Clause 26A to provide for special measures directions in family proceedings.

New Clause

After Clause 26 insert—

‘Special measures directions in family proceedings

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

“Special measures directions in family proceedings

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*
- (b) 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 it is necessary to make a special measures direction (or more than one direction).

(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.

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.”.

Agreed: The Committee agreed that it was content with the proposed new Clause 26A.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 26A be added to the Bill.

New Clause 26B – Prohibition of cross-examination in person in civil proceedings

The Committee considered an amendment proposed by the Minister of Justice to insert a new Clause 26B in relation to prohibition of cross-examination in person in civil proceedings:

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).”.’

Agreed: The Committee agreed that it was content with the proposed new Clause 26B.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 26B be added to the Bill.

New Clause 26C – Special measures directions in civil proceeding generally

The Committee considered an amendment proposed by the Minister of Justice to insert a new Clause 26C to provide for special measures directions in civil proceedings generally:

New Clause 26C

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

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 if no special measures are in place (as compared to the position if special measures are in place), and

(b) if so, whether it is necessary to make a special measures direction (or more than one direction).

(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) [Paragraph (4)(a) does not apply to a conviction that is spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 unless evidence in relation to the conviction is admissible in or may be required in the proceedings by virtue of Article 8(2), (3) or (4) of that Order.]

(6) 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.

(7) *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.*

(8) *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 legislative provision (and includes an earlier provision or a provision applying in any part of the United Kingdom).

7I.— (1) *The Department of Justice may by regulations amend Article 7H so as to alter the definition of “civil proceedings” in paragraph (6) 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(6) 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).”.

Agreed: The Committee agreed that it was content with the proposed new Clause 26C.

Agreed: That the Committee recommends to the Assembly that the proposed new Clause 26C be added to the Bill.

Clause 27 – Commencement

The Committee considered Clause 27 as drafted.

Agreed: The Committee agreed that it was content with Clause 27 as drafted.

Clause 28 – Short Title

The Committee considered Clause 28 as drafted.

Agreed: The Committee agreed that it was content with Clause 28 as drafted.

Long Title

The Committee considered the Long Title as drafted.

Agreed: The Committee agreed that it was content with the Long Title as drafted.

The Chairperson advised the Members that the formal clause by clause scrutiny of the Domestic Abuse and Family Proceedings Bill had concluded.

Ms Dolan left the meeting at 4.57 p.m.

8. SL1: Amendments to the Police Act 1997 in relation to the AccessNI Filtering Scheme

The Committee considered a proposal by the Department of Justice to make a Statutory Rule to remove the multiple conviction rule by which Access NI is required to automatically disclose all convictions relating to an applicant for standard and enhanced checks, where that applicant has more than a single conviction held on their criminal record.

Agreed: The Committee agreed that it was content with the proposal for the Statutory Rule.

Agreed: The Committee agreed to request clarification from the Department of Justice regarding the information kept on the system permanently.

9. PSNI Retention and Disposal Schedule

The Committee considered the PSNI Retention and Disposal Schedule which is required to be laid before the Northern Ireland Assembly under Section 8(2) of the Public Records Act (Northern Ireland) 1923, and in accordance with the Rules of the Disposal of Documents Order 1925, by the Public Records Office of Northern Ireland. The Schedule specifies the minimum requirements for the retention and disposal of PSNI records and information.

Agreed: The Committee agreed that it was content with the PSNI Retention and Disposal Schedule.

Agreed: The Committee agreed to request further information on several issues.

10. Review of Sentencing Policy in Northern Ireland – Report on Responses to the Consultation

The Committee considered a summary of the responses to the consultation on the Review of Sentencing Policy in Northern Ireland provided by the Department of Justice.

Agreed: The Committee agreed to ask the Department to provide updates on the proposed way forward on each of the areas covered in the consultation and to schedule an oral briefing with Department of Justice officials in due course.

Agreed: The Committee agreed to ask the Minister of Justice how she intends to respond to the motion passed by the Assembly on Monday 28 September regarding the introduction of legislation equivalent to Helen's Law.

10. PSNI and PSNI Reserve (Injury Benefit) (Amendment) Regulations 2020 – Proposed Consultation

The Committee noted information provided by the Department of Justice on a proposal to undertake an eight week targeted consultation on the Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) (Amendment) Regulations 2020. The amendment to the Regulations will ensure that those who joined the police pension scheme established by the 2015 police pension regulations have the same access to benefits provided through the Police Injury Benefit Regulations as are available to officers who are members of earlier pension schemes.

11. AccessNI – Proposed Amendments to the Filtering Scheme

The Committee considered additional information provided by the Department of Justice on amendments to the AccessNI filtering scheme and the Minister's proposed policy that, rather than a blanket non-disclosure of youth non-court disposals, no such information should be disclosed before it is independently scrutinised by the Department's Independent Reviewer of criminal record certificates.

Agreed: The Committee agreed that it was generally supportive of the Minister's policy position but will scrutinise it in detail as part of the Justice (Miscellaneous Provisions) Bill.

13. Committee Forward Work Programme - October 2020

The Committee considered information provided by the Department of Justice regarding work items that it wished to schedule during October 2020.

Agreed: The Committee agreed to schedule the items requested by the Department of Justice for the meetings on 8, 15 and 22 October 2020.

Agreed: The Committee agreed that a suitable date for the oral evidence session with the Minister should be identified.

14. Correspondence

- i. The Committee considered a response from the Department of Justice regarding the introduction of a Places of Worship Protection Scheme for NI and action being taken to assist Places of Worship who have experienced attacks.

Agreed: The Committee agreed to request an update from the Department on the outcome of the Minister's assessment of the need for such a scheme in Northern Ireland.

Agreed: The Committee agreed to send a copy of the response to CARE NI who raised the issue with the Committee.

The Committee noted the following

- ii. A response from the Committee for Procedures advising that it will include the issue of whether there is a need for a mechanism to establish the views of, and consent from, the Assembly on provisions on devolved matters contained in Westminster Acts that have not yet been commenced in its Inquiry into the Legislative Consent Motion Process.
- iii. The National Statistics Bulletin 'Northern Ireland Prison Population 2019/20'.
- iv. The Investment Strategy Northern Ireland – Department of Justice's Procurement Activity Report September 2020.
- v. A copy of a letter from the Lord Chief Justice to the Minister of Justice regarding the appointment process to fill a Court of Appeal vacancy.
- vi. A letter from Dr Steve Aiken MLA to the Speaker and all Committee Chairpersons on issues relating to the Withdrawal Agreement, the NI Protocol and the Internal Market Bill.

15. Chairperson's Business.

The Chairperson advised the Committee that the Speaker had written to all Committee Chairpersons providing a copy of a letter from the First Minister and deputy First Minister which provides the NICS Administrative Guidance for EU Exit transition period Statutory Instruments.

The Chairperson advised the Committee that further guidance will be provided regarding the role of committees in relation to Statutory Instruments and Committee staff will discuss the process with Department of Justice officials.

16. Any Other Business

Mr Beattie raised concerns that he had with the Minister's approach to a number of issues including her lack of participation on the Covid-19 Enforcement Working Group and the lack of information provided on the recent deaths of two prisoners in custody.

Agreed: The Committee agreed that the issues could be raised during the oral evidence session to be scheduled with the Minister.

Agreed: The Committee agreed that Members would submit any other area/issues that they wished to cover with the Minister during the oral evidence session.

Agreed: The Committee agreed to request further information on the deaths in custody.

17. Date, Time and Place of the next meeting

The next meeting will be held on Thursday 8 October 2020 at 2.00 p.m. in Room 30, Parliament Buildings.

The meeting was adjourned at 5.27 p.m.

Mr Paul Givan MLA
Chairperson, Committee for Justice