

JOHN McCaUGHAN
HEAD OF COMMAND SECRETARIAT

Our Ref: Com Sec 6518-20

5 June 2020

Dear Chair,

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

Thank you for your letter dated 7 May 2020 to the Chief Constable and for the opportunity to provide further views and comments on the content of the Domestic Abuse and Family Proceedings Bill. I have been asked to reply on his behalf.

The Police Service of Northern Ireland has been involved in the working group for the Domestic Abuse and Family Proceedings Bill from an early stage and have provided opinions that have assisted in shaping the bill, with the aim of improving how we better police domestic abuse and achieve improved criminal justice outcomes for victims of domestic abuse in Northern Ireland.

Our view remains as in our previous correspondence to the Department of Justice dated 17 February 2020 from Detective Superintendent Anthony McNally that "In summary, there are no substantive issues that we see (with the Bill), we are of course keen that once confirmed we get down to "operationalising" this legislation with yourselves and other partners, and working through the guidance the Department will issue".

Please see below our views on the specific areas of the bill and proposed amendments:-

- *How this new domestic abuse legislation enhances existing legislation and whether it fully addresses the gaps in existing law and will improve the ability of the justice agencies to prosecute domestic abuse cases.*

The introduction of the Bill aims to give police greater powers to tackle the full range of abusive behaviours used by perpetrators of domestic abuse. In summary, the Police Service of Northern Ireland has no substantive issues with the Bill, however from an operational perspective we will rely on accompanying statutory guidance. Guidelines will greatly assist us if they provide clarity in the definition and examples of offences, which will be the foundation used to shape officer training, which in turn is pivotal for successful enforcement of the Bill. We will continue to work with the Department of Justice and partner agencies to progress this area of work.

- *The definition of the offence and the definition of abusive behaviour*

In a previous consultation there were concerns as to the lack of any or adequate definition of 'coerciveness'. An obvious change is what appears to be the removal of a reference to coercive behaviour as on the first draft of the Bill. There is now only a brief reference to *controlling* under clause 2 (3) (c).

The question remains if the Police Service of Northern Ireland can 'police' the Bill in the absence of a definition for '**dependent**' under 2 (3) (a) and '**controlling**' under 2 (3) (C). Additionally, whilst (1) (3) provides that '*references in this section to **psychological harm** include fear, alarm and distress*'; it is a concern of ours that this does not provide for an adequate definition of 'psychological harm'. The impact of not having an adequate definition could cause difficulty from an operational perspective. From reviewing the Bill there are no interpretative provisions. It is noted that there is the inclusion of a *reasonable test*. It is our view that this is imminently sensible as an objective test.

- *Any identified issues regarding the investigation and prosecution of the new Offence*

The Police Service of Northern Ireland would welcome assurances of brief timelines where the legislature will provide accompanying guidance, as this will play a crucial part in the successful enforcement of the Bill. Clear operational guidance will be necessary to provide the foundation to training PSNI officers, as effective training will be required to ensure robust investigations and successful criminal justice outcomes to increase victim confidence and encourage further reporting.

- *Whether the 'reasonable' defence included in the legislation is framed appropriately and the intent of when it would apply is clear.*

We understand the inclusion of such a defence. However the interpretation of what is a reasonable defence would, of course, rest with the courts.

Clause 12, whilst framed of itself in 12 (1), appears neither pragmatic nor clear in 12 (2), and indeed does not sit comfortably with 12 (1).

'An issue', within 12(2) may benefit from a definition.

It may be beneficial to consider including a more general reasonable test as that found within Clause 2 (2) (ii) ie by the creation of a 12 (3) to read something along the lines of '*would be considered by a reasonable person in all the particular circumstances as reasonable*'.

- *Whether the penalties provided for in the Bill are appropriate and adequate.*

We welcome the significant sentencing that the Bill provides. We will continue to work in partnership with the PPS and Courts to ensure that cases presented to the court result in improved criminal justice outcomes for the victims of domestic abuse.

- *Any other legislative or non-legislative approaches to tackle domestic abuse not currently in place that should be taken forward either in this Bill or in another piece of legislation or by other means*

There is no legislative provision in Northern Ireland for the offence of stalking. The Police Service of Northern Ireland is in close liaison with the Department of Justice who are shaping the draft Bill.

In conclusion, we have no substantive issues with the Bill.

Yours sincerely,

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